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SUBCHAPTER I—GENERAL PROVISIONS

§6901. Congressional findings

(a) Solid waste

The Congress finds with respect to solid waste—

(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products;

(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;

(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above

have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.

(b) Environment and health

The Congress finds with respect to the environment and health, that—

(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;

(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;

(3) as a result of the Clean Air Act [42 U.S.C. 7401 et seq.], the Water Pollution Control Act [33 U.S.C. 1251 et seq.], and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;

(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;

(6) if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming;

(7) certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes; and

(8) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken.

(c) Materials

The Congress finds with respect to materials, that—

(1) millions of tons of recoverable material which could be used are needlessly buried each year;

(2) methods are available to separate usable materials from solid waste; and

(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

(d) Energy

The Congress finds with respect to energy, that—

(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;

(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and

(3) technology exists to produce usable energy from solid waste.

(Pub. L. 89–272, title II, §1002, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2796; amended Pub. L. 95–609, §7(a), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 98–616, title I, §101(a), Nov. 8, 1984, 98 Stat. 3224.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Water Pollution Control Act, referred to in subsec. (b)(3), probably means act June 30, 1948, ch. 758, 62 Stat. 1155, known as the Federal Water Pollution Control Act, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

CODIFICATION

The statutory system governing the disposal of solid wastes set out in this chapter is found in Pub. L. 89–272, title II, as amended in its entirety and completely revised by section 2 of Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2795. See Short Title of 1976 Amendment note below.

The act, as set out in this chapter, carries a statutory credit showing the sections as having been added by Pub. L. 94–580, without reference to amendments to the act between its original enactment in 1965 and its complete revision in 1976. The act, as originally enacted in 1965, was classified to section 3251 et seq. of this title. For a recapitulation of the provisions of the act as originally enacted, see notes in chapter 39 (§3251 et seq.) of this title where the act was originally set out.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Subsec. (b)(5) to (8). Pub. L. 98–616 added pars. (5) to (7), struck out former par. (5) providing that "hazardous waste presents, in addition to the problems associated with non-hazardous solid waste, special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and", redesignated former par. (6) as (8), and substituted a period for the semicolon at end.

1978—Subsec. (a)(4). Pub. L. 95–609 substituted "solid waste" for "solid-waste".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–195, §1, Oct. 5, 2012, 126 Stat. 1452, provided that: "This Act [enacting section 6939g of this title] may be cited as the 'Hazardous Waste Electronic Manifest Establishment Act'."

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, §1521, Aug. 8, 2005, 119 Stat. 1092, provided that: "This subtitle [subtitle B (§§1521–1533) of title XV of Pub. L. 109–58, enacting sections 6991j to 6991m of this title, amending sections 6991 to 6991f, 6991h, and 6991i of this title, and enacting provisions set out as notes under section 6991b of this title] may be cited as the 'Underground Storage Tank Compliance Act'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–119, §1, Mar. 26, 1996, 110 Stat. 830, provided that: "This Act [amending sections 6921, 6924, 6925, 6947, and 6949a of this title and enacting provisions set out as a note under section 6949a of this title] may be cited as the 'Land Disposal Program Flexibility Act of 1996'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–386, title I, §101, Oct. 6, 1992, 106 Stat. 1505, provided that: "This title [enacting sections 6908, 6939c to 6939e, and 6965 of this title, amending sections 6903, 6924, 6927, and 6961 of this title, and enacting provisions set out as notes under sections 6939c and 6961 of this title] may be cited as the 'Federal Facility Compliance Act of 1992'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–582, §1, Nov. 1, 1988, 102 Stat. 2950, provided that: "This Act [enacting sections 6992 to 6992k of this title and section 3063 of Title 18, Crimes and Criminal Procedure, and amending section 6903 of this title] may be cited as the 'Medical Waste Tracking Act of 1988'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–616, §1, Nov. 8, 1984, 98 Stat. 3221, provided that: "This Act [enacting sections 6917, 6936 to 6939a, 6949a, 6979a, 6979b, and 6991 to 6991i of this title, amending this section and sections 6902, 6905, 6912, 6915, 6916, 6921 to 6933, 6935, 6941 to 6945, 6948, 6956, 6962, 6972, 6973, 6976, 6982 and 6984 of this title and enacting provisions set out as notes under sections 6905, 6921 and 6926 of this title] may be cited as 'The Hazardous and Solid Waste Amendments of 1984'."

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–482, §1, Oct. 21, 1980, 94 Stat. 2334, provided: "This Act [enacting sections 6933, 6934, 6941a, 6955, and 6956 of this title, amending sections 6903, 6905, 6911, 6912, 6916, 6921, 6922, 6924, 6925, 6927 to 6931, 6941 to 6943, 6945, 6946, 6948, 6949, 6952, 6953, 6962, 6963, 6964, 6971, 6973, 6974, 6976, 6979, and 6982 of this title; and enacting and repealing provisions set out as a note under section 6981 of this title] may be cited as the 'Solid Waste Disposal Act Amendments of 1980'."

Pub. L. 96–463, §1, Oct. 15, 1980, 94 Stat. 2055, provided: "This Act [enacting sections 6901a, 6914a and 6932 of this title, amending sections 6903, 6943 and 6948 of this title, and enacting provisions set out as notes under sections 6363 and 6932 of this title] may be cited as the 'Used Oil Recycling Act of 1980'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–580, §1, Oct. 21, 1976, 90 Stat. 2795, provided that: "This Act [enacting this chapter and provisions set out as notes under this section and section 6981 of this title] may be cited as the 'Resource Conservation and Recovery Act of 1976'."

SHORT TITLE

Pub. L. 89–272, title II, §1001, as added by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, provided that: "This title (hereinafter in this title referred to as 'this Act'), together with the following table of contents, may be cited as the 'Solid Waste Disposal Act' " [table of contents omitted].

NATIONAL COMMISSION ON MATERIALS POLICY

Pub. L. 91–512, title II, §§201–206, Oct. 26, 1970, 84 Stat. 1234, known as the "National Materials Policy Act of 1970", provided for the establishment of the National Commission on Materials Policy to make a full investigation and study for the purpose of developing a national materials policy to utilize present resources and technology more efficiently and to anticipate the future materials requirements of the Nation and the world, the Commission to submit to the President and Congress a report on its findings and recommendations no later than June 30, 1973, ninety days after the submission of which it should cease to exist.

EXECUTIVE DOCUMENTS

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§6901a. Congressional findings: used oil recycling

The Congress finds and declares that—

(1) used oil is a valuable source of increasingly scarce energy and materials;

(2) technology exists to re-refine, reprocess, reclaim, and otherwise recycle used oil;

(3) used oil constitutes a threat to public health and the environment when reused or disposed of improperly; and

that, therefore, it is in the national interest to recycle used oil in a manner which does not constitute a threat to public health and the environment and which conserves energy and materials.

(Pub. L. 96–463, §2, Oct. 15, 1980, 94 Stat. 2055.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Used Oil Recycling Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6902. Objectives and national policy

(a) Objectives

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

(1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;

(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;

(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

(4) assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment;

(5) requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date;

(6) minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment;

(7) establishing a viable Federal-State partnership to carry out the purposes of this chapter and insuring that the Administrator will, in carrying out the provisions of subchapter III of this chapter, give a high priority to assisting and cooperating with States in obtaining full authorization of State programs under subchapter III;

(8) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;

(9) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;

(10) promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and

(11) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

(b) National policy

The Congress hereby declares it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

(Pub. L. 89–272, title II, §1003, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2798; amended Pub. L. 98–616, title I, §101(b), Nov. 8, 1984, 98 Stat. 3224.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §101(b)(1), designated existing provisions as subsec. (a).

Subsec. (a)(4) to (11). Pub. L. 98–616, §101(b)(2), struck out par. (4) which provided for regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment, added pars. (4) to (7), and redesignated former pars. (5) to (8) as (8) to (11), respectively.

Subsec. (b). Pub. L. 98–616, §101(b)(1), added subsec. (b).

§6903. Definitions

As used in this chapter:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "construction," with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

(2A) The term "demonstration" means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

(3) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(4) The term "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Publishing Office.

(5) The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(6) The term "hazardous waste generation" means the act or process of producing hazardous waste.

(7) The term "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(8) For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.

(9) The term "intermunicipal agency" means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

(10) The term "interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.

(11) The term "long-term contract" means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

(12) The term "manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(13) The term "municipality" (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(14) The term "open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.

(15) The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

(16) The term "procurement item" means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

(17) The term "procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(18) The term "recoverable" refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

(19) The term "recovered material" means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

(20) The term "recovered resources" means material or energy recovered from solid waste.

(21) The term "resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

(22) The term "resource recovery" means the recovery of material or energy from solid waste.

(23) The term "resource recovery system" means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

(24) The term "resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(25) The term "regional authority" means the authority established or designated under section 6946 of this title.

(26) The term "sanitary landfill" means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.

(26A) The term "sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

(27) The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and

agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C. 2011 et seq.].

(28) The term "solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

(29) The term "solid waste management facility" includes—

(A) any resource recovery system or component thereof,

(B) any system, program, or facility for resource conservation, and

(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

(30) The terms "solid waste planning", "solid waste management", and "comprehensive planning" include planning or management respecting resource recovery and resource conservation.

(31) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(32) The term "State authority" means the agency established or designated under section 6947 of this title.

(33) The term "storage", when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(34) The term "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(35) The term "virgin material" means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

(36) The term "used oil" means any oil which has been—

(A) refined from crude oil,

(B) used, and

(C) as a result of such use, contaminated by physical or chemical impurities.

(37) The term "recycled oil" means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

(38) The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

(39) The term "re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(40) Except as otherwise provided in this paragraph, the term "medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III or any household waste as defined in regulations under subchapter III.

(41) The term "mixed waste" means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(Pub. L. 89–272, title II, §1004, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2798; amended Pub. L. 95–609, §7(b), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 96–463, §3, Oct. 15, 1980, 94 Stat. 2055; Pub. L. 96–482, §2, Oct. 21, 1980, 94 Stat. 2334; Pub. L. 100–582, §3, Nov. 1, 1988, 102 Stat. 2958; Pub. L. 102–386, title I, §§103, 105(b), Oct. 6, 1992, 106 Stat. 1507, 1512; Pub. L. 113–235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in pars. (27) and (41), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3252 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1992—Par. (15). Pub. L. 102–386, §103, inserted before period at end "and shall include each department, agency, and instrumentality of the United States".

Par. (41). Pub. L. 102–386, §105(b), added par. (41).

1988—Par. (40). Pub. L. 100–582 added par. (40).

1980—Par. (14). Pub. L. 96–482, §2(a), defined "open dump" to include a facility, substituted requirement that disposal facility or site not be a sanitary landfill meeting section 6944 of this title criteria for prior requirement that disposal site not be a sanitary landfill within meaning of section 6944 of this title, and required that the disposal facility or site not be a facility for disposal of hazardous waste.

Par. (19). Pub. L. 96–482, §2(b), defined "recovered material" to cover byproducts, substituted provision for recovery or diversion of waste material and byproducts from solid waste for prior provision for collection or recovery of material from solid waste, and excluded materials and byproducts generated from and commonly reused within an original manufacturing process.

Pars. (36) to (39). Pub. L. 96–463, §3, added pars. (36) to (39).

1978—Par. (8). Pub. L. 95–609, §7(b)(1), struck out provision stating that employees' salaries due pursuant to subchapter IV of this chapter would not be included after Dec. 31, 1979.

Par. (10). Pub. L. 95–609, §7(b)(2), substituted "management" for "disposal".

Par. (29)(C). Pub. L. 95–609, §7(b)(3), substituted "the collection, source separation, storage, transportation, transfer, processing, treatment or disposal" for "the treatment".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Government Publishing Office" substituted for "Government Printing Office" in par. (4) on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official of Environmental Protection Agency related to compliance with resource conservation and recovery permits used under this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector

transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§6904. Governmental cooperation

(a) Interstate cooperation

The provisions of this chapter to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

(b) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

(1) cooperative effort and mutual assistance for the management of solid waste or hazardous waste (or both) and the enforcement of their respective laws relating thereto, and

(2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts.

No such agreement or compact shall be binding or obligatory upon any State a party thereto unless it is agreed upon by all parties to the agreement and until it has been approved by the Administrator and the Congress.

(Pub. L. 89–272, title II, §1005, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2801.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6905. Application of chapter and integration with other Acts

(a) Application of chapter

Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

(b) Integration with other Acts

(1) The Administrator shall integrate all provisions of this chapter for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Federal Insecticide, Fungicide, and Rodenticide Act [7

U.S.C. 136 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.

(2)(A) As promptly as practicable after November 8, 1984, the Administrator shall submit a report describing—

(i) the current data and information available on emissions of polychlorinated dibenzo-p-dioxins from resource recovery facilities burning municipal solid waste;

(ii) any significant risks to human health posed by these emissions; and

(iii) operating practices appropriate for controlling these emissions.

(B) Based on the report under subparagraph (A) and on any future information on such emissions, the Administrator may publish advisories or guidelines regarding the control of dioxin emissions from such facilities. Nothing in this paragraph shall be construed to preempt or otherwise affect the authority of the Administrator to promulgate any regulations under the Clean Air Act [42 U.S.C. 7401 et seq.] regarding emissions of polychlorinated dibenzo-p-dioxins.

(3) Notwithstanding any other provisions of law, in developing solid waste plans, it is the intention of this chapter that in determining the size of a waste-to-energy facility, adequate provisions shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interests within the area encompassed by the solid waste plan.

(c) Integration with the Surface Mining Control and Reclamation Act of 1977

(1) No later than 90 days after October 21, 1980, the Administrator shall review any regulations applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under the Surface Mining and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. If the Administrator determines that any requirement of final regulations promulgated under any section of subchapter III relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subchapter III of this chapter with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977.

(Pub. L. 89–272, title II, §1006, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2802; amended Pub. L. 96–482, §3, Oct. 21, 1980, 94 Stat. 2334; Pub. L. 98–616, title I, §102, title V, §501(f)(2), Nov. 8, 1984, 98 Stat. 3225, 3276.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsecs. (a) and (b), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Marine Protection, Research and Sanctuaries Act of 1972, referred to in subsecs. (a) and (b), is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, which enacted chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsecs. (a) and (b), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (b)(1), (2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (c), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, which is classified generally to chapter 25 (§1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3257 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Subsec. (b)(1), (2). Pub. L. 98–616, §102, designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(3). Pub. L. 98–616, §501(f)(2), added par. (3).

1980—Subsec. (c). Pub. L. 96–482 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

URANIUM MILL TAILINGS

Pub. L. 98–616, title VII, §703, Nov. 8, 1984, 98 Stat. 3289, provided that: "Nothing in the Hazardous and Solid Waste Amendments of 1984 [see Short Title of 1984 Amendment note set out under section 6901 of this title] shall be construed to affect, modify, or amend the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7901 et seq.]".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6906. Financial disclosure

(a) Statement

Each officer or employee of the Administrator who—

(1) performs any function or duty under this chapter; and

(2) has any known financial interest in any person who applies for or receives financial assistance under this chapter

shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Action by Administrator

The Administrator shall—

(1) act within ninety days after October 21, 1976—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

(2) report to the Congress on June 1, 1978, and of each succeeding calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions within the Environmental Protection Agency which are of a nonpolicy-making nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Penalty

Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(Pub. L. 89–272, title II, §1007, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2802.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (b)(2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 14th item on page 164 of House Document No. 103–7.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6907. Solid waste management information and guidelines

(a) Guidelines

Within one year of October 21, 1976, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

(1) provide a technical and economic description of the level of performance that can be attained by various available solid waste management practices (including operating practices) which provide for the protection of public health and the environment;

(2) not later than two years after October 21, 1976, describe levels of performance, including

appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.]; (D) protection of ambient air quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; (E) disease and vector control; (F) safety; and (G) esthetics; and

(3) provide minimum criteria to be used by the States to define those solid waste management practices which constitute the open dumping of solid waste or hazardous waste and are to be prohibited under subchapter IV of this chapter.

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management practices, including the consideration of regional, geographic, demographic, and climatic factors.

(b) Notice

The Administrator shall notify the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines or proposed regulations under this chapter of the content of such proposed suggested guidelines or proposed regulations under this chapter.

(Pub. L. 89–272, title II, §1008, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2803; amended Pub. L. 95–609, §7(c), (d), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 103–437, §15(r), Nov. 2, 1994, 108 Stat. 4594.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, as amended, referred to in subsec. (a)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254c of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–437 substituted "Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House" for "Committee on Public Works of the Senate and the Committee on Interstate and Foreign Commerce of the House".

1978—Subsec. (a)(3). Pub. L. 95–609, §7(c), substituted "subchapter IV of this chapter" for "title IV of this Act".

Subsec. (b). Pub. L. 95–609, §7(d), struck out "pursuant to this section" after "any suggested guidelines" and inserted "or proposed regulations under this chapter" after "suggested guidelines" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section

21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6908. Small town environmental planning

(a) Establishment

The Administrator of the Environmental Protection Agency (hereafter referred to as the "Administrator") shall establish a program to assist small communities in planning and financing environmental facilities. The program shall be known as the "Small Town Environmental Planning Program".

(b) Small Town Environmental Planning Task Force

(1) The Administrator shall establish a Small Town Environmental Planning Task Force which shall be composed of representatives of small towns from different areas of the United States, Federal and State governmental agencies, and public interest groups. The Administrator shall terminate the Task Force not later than 2 years after the establishment of the Task Force.

(2) The Task Force shall—

(A) identify regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns;

(B) identify means to improve the working relationship between the Environmental Protection Agency (hereafter referred to as the Agency) and small towns;

(C) review proposed regulations for the protection of the environmental and public health and suggest revisions that could improve the ability of small towns to comply with such regulations;

(D) identify means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic condition of such systems and infrastructure; and

(E) provide such other assistance to the Administrator as the Administrator deems appropriate.

(c) Identification of environmental requirements

(1) Not later than 6 months after October 6, 1992, the Administrator shall publish a list of requirements under Federal environmental and public health statutes (and the regulations developed pursuant to such statutes) applicable to small towns. Not less than annually, the Administrator shall make such additions and deletions to and from the list as the Administrator deems appropriate.

(2) The Administrator shall, as part of the Small Town Environmental Planning Program under this section, implement a program to notify small communities of the regulations identified under paragraph (1) and of future regulations and requirements through methods that the Administrator determines to be effective to provide information to the greatest number of small communities, including any of the following:

(A) Newspapers and other periodicals.

(B) Other news media.

(C) Trade, municipal, and other associations that the Administrator determines to be appropriate.

(D) Direct mail.

(d) Small Town Ombudsman

The Administrator shall establish and staff an Office of the Small Town Ombudsman. The Office shall provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the Agency. Each regional office shall identify a small town contact. The Small Town Ombudsman and the regional contacts also may assist larger communities, but only if first priority is given to providing assistance to small towns.

(e) Multi-media permits

(1) The Administrator shall conduct a study of establishing a multi-media permitting program for small towns. Such evaluation shall include an analysis of—

(A) environmental benefits and liabilities of a multi-media permitting program;

(B) the potential of using such a program to coordinate a small town's environmental and public health activities; and

(C) the legal barriers, if any, to the establishment of such a program.

(2) Within 3 years after October 6, 1992, the Administrator shall report to Congress on the results of the evaluation performed in accordance with paragraph (1). Included in this report shall be a description of the activities conducted pursuant to subsections (a) through (d).

(f) "Small town" defined

For purposes of this section, the term "small town" means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 2,500 individuals.

(g) Authorization

There is authorized to be appropriated the sum of $500,000 to implement this section.

(Pub. L. 102–386, title I, §109, Oct. 6, 1992, 106 Stat. 1515.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6908a. Agreements with Indian tribes

On and after October 21, 1998, the Administrator is authorized to enter into assistance agreements with Federally [1] recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the development and implementation of programs to manage hazardous waste, and underground storage tanks.

(Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2499.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, and not as part of the Solid Waste Disposal Act which comprises this chapter.

[1] So in original. Probably should not be capitalized.

SUBCHAPTER II—OFFICE OF SOLID WASTE; AUTHORITIES OF THE

ADMINISTRATOR

§6911. Office of Solid Waste and Interagency Coordinating Committee

(a) Office of Solid Waste

The Administrator shall establish within the Environmental Protection Agency an Office of Solid Waste (hereinafter referred to as the "Office") to be headed by an Assistant Administrator of the Environmental Protection Agency. The duties and responsibilities (other than duties and responsibilities relating to research and development) of the Administrator under this chapter (as modified by applicable reorganization plans) shall be carried out through the Office.

(b) Interagency Coordinating Committee

(1) There is hereby established an Interagency Coordinating Committee on Federal Resource Conservation and Recovery Activities which shall have the responsibility for coordinating all activities dealing with resource conservation and recovery from solid waste carried out by the Environmental Protection Agency, the Department of Energy, the Department of Commerce, and all other Federal agencies which conduct such activities pursuant to this chapter or any other Act. For purposes of this subsection, the term "resource conservation and recovery activities" shall include, but not be limited to, all research, development and demonstration projects on resource conservation or energy, or material, recovery from solid waste, and all technical or financial assistance for State or local planning for, or implementation of, projects related to resource conservation or energy or material, recovery from solid waste. The Committee shall be chaired by the Administrator of the Environmental Protection Agency or such person as the Administrator may designate. Members of the Committee shall include representatives of the Department of Energy, the Department of Commerce, the Department of the Treasury, and each other Federal agency which the Administrator determines to have programs or responsibilities affecting resource conservation or recovery.

(2) The Interagency Coordinating Committee shall include oversight of the implementation of

(A) the May 1979 Memorandum of Understanding on Energy Recovery from Municipal Solid Waste between the Environmental Protection Agency and the Department of Energy;

(B) the May 30, 1978, Interagency Agreement between the Department of Commerce and the Environmental Protection Agency on the Implementation of the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; and

(C) any subsequent agreements between these agencies or other Federal agencies which address Federal resource recovery or conservation activities.

(Pub. L. 89–272, title II, §2001, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2804; amended Pub. L. 96–482, §4(c), Oct. 21, 1980, 94 Stat. 2335; Pub. L. 96–510, title III, §307(a), Dec. 11, 1980, 94 Stat. 2810.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Resource Conservation and Recovery Act, referred to in subsec. (b)(2)(B), is Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2796, which is classified generally to this chapter (§6901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Subsection (b)(3) of this section, which required the Interagency Coordinating Committee to submit to Congress on March 1 of each year, a five-year action plan for Federal resource conservation or recovery activities, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 2nd item on page 175 of House Document No. 103–7.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–510 substituted reference to Assistant Administrator for reference to Deputy Assistant Administrator.

Pub. L. 96–482 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–510, title III, §307(c), Dec. 11, 1980, 94 Stat. 2810, provided that: "The amendment made by subsection (a) [amending this section] shall become effective ninety days after the date of the enactment of this Act [Dec. 11, 1980]."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6911a. Assistant Administrator of Environmental Protection Agency; appointment, etc.

The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], shall be appointed by the President by and with the advice and consent of the Senate.

(Pub. L. 96–510, title III, §307(b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 98–80, §2(c)(2)(B), Aug. 23, 1983, 97 Stat. 485.)

EDITORIAL NOTES

REFERENCES IN TEXT

Reorganization Plan Numbered 3 of 1970, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in text, is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 98–80 struck out ", and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5" after "advice and consent of the Senate".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Dec. 11, 1980, see section 9652 of this title.

§6912. Authorities of Administrator

(a) Authorities

In carrying out this chapter, the Administrator is authorized to—

(1) prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this chapter;

(2) consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;

(3) provide technical and financial assistance to States or regional agencies in the development and implementation of solid waste plans and hazardous waste management programs;

(4) consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as he deems advisable;

(5) utilize the information, facilities, personnel and other resources of Federal agencies, including the National Institute of Standards and Technology and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator's functions under this chapter; and

(6) to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this chapter relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this chapter and of chapter 51 of title 49.

(b) Revision of regulations

Each regulation promulgated under this chapter shall be reviewed and, where necessary, revised not less frequently than every three years.

(c) Criminal investigations

In carrying out the provisions of this chapter, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of this chapter, and to refer the results of these investigations to the Attorney General for prosecution in appropriate cases.

(Pub. L. 89–272, title II, §2002, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2804; amended Pub. L. 96–482, §5, Oct. 21, 1980, 94 Stat. 2335; Pub. L. 98–616, title IV, §403(d)(4), Nov. 8, 1984, 98 Stat. 3272; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

CODIFICATION

In subsec. (a)(6), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1988—Subsec. (a)(5). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

1984—Subsec. (c). Pub. L. 98–616 added subsec. (c).

1980—Subsec. (a)(6). Pub. L. 96–482 added par. (6).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6913. Resource Recovery and Conservation Panels

The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as "Resource Conservation and Recovery Panels") to provide Federal agencies, States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.

(Pub. L. 89–272, title II, §2003, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2804; amended Pub. L. 95–609, §7(e), Nov. 8, 1978, 92 Stat. 3081.)

EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95–609 inserted "Federal agencies," after "to provide".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6914. Grants for discarded tire disposal

(a) Grants

The Administrator shall make available grants equal to 5 percent of the purchase price of tire shredders (including portable shredders attached to tire collection trucks) to those eligible applicants best meeting criteria promulgated under this section. An eligible applicant may be any private purchaser, public body, or public-private joint venture. Criteria for receiving grants shall be promulgated under this section and shall include the policy to offer any private purchaser the first option to receive a grant, the policy to develop widespread geographic distribution of tire shredding facilities, the need for such facilities within a geographic area, and the projected risk and viability of any such venture. In the case of an application under this section from a public body, the Administrator shall first make a determination that there are no private purchasers interested in making an application before approving a grant to a public body.

(b) Authorization of appropriations

There is authorized to be appropriated $750,000 for each of the fiscal years 1978 and 1979 to carry out this section.

(Pub. L. 89–272, title II, §2004, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2805.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6914a. Labeling of lubricating oil

For purposes of any provision of law which requires the labeling of commodities, lubricating oil shall be treated as lawfully labeled only if it bears the following statement, prominently displayed:

"DON'T POLLUTE—CONSERVE RESOURCES; RETURN USED OIL TO COLLECTION CENTERS".

(Pub. L. 89–272, title II, §2005, as added Pub. L. 96–463, §4(a), Oct. 15, 1980, 94 Stat. 2056.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2005 of Pub. L. 89–272 was renumbered section 2006 and is classified to section 6915 of this title.

§6914b. Degradable plastic ring carriers; definitions

As used in this title—

(1) the term "regulated item" means any plastic ring carrier device that contains at least one hole greater than 1¾ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles, and which is of a size, shape, design, or type capable, when discarded, of becoming entangled with fish or wildlife; and

(2) the term "naturally degradable material" means a material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis.

(Pub. L. 100–556, title I, §102, Oct. 28, 1988, 102 Stat. 2779.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, is title I of Pub. L. 100–556, Oct. 28, 1988, 102 Stat. 2779, which enacted sections 6914b and 6914b–1 of this title, and provisions set out as a note under section 6914b of this title. For complete classification of this title to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONGRESSIONAL FINDINGS

Pub. L. 100–556, title I, §101, Oct. 28, 1988, 102 Stat. 2779, provided that: "The Congress finds that—

"(1) plastic ring carrier devices have been found in large quantities in the marine environment;

"(2) fish and wildlife have been known to have become entangled in plastic ring carriers;

"(3) nondegradable plastic ring carrier devices can remain intact in the marine environment for decades, posing a threat to fish and wildlife; and

"(4) 16 States have enacted laws requiring that plastic ring carrier devices be made from degradable material in order to reduce litter and to protect fish and wildlife."

§6914b–1. Regulation of plastic ring carriers

Not later than 24 months after October 28, 1988 (unless the Administrator of the Environmental

Protection Agency determines that it is not feasible or that the byproducts of degradable regulated items present a greater threat to the environment than nondegradable regulated items), the Administrator of the Environmental Protection Agency shall require, by regulation, that any regulated item intended for use in the United States shall be made of naturally degradable material which, when discarded, decomposes within a period established by such regulation. The period within which decomposition must occur after being discarded shall be the shortest period of time consistent with the intended use of the item and the physical integrity required for such use. Such regulation shall allow a reasonable time for affected parties to come into compliance, including the use of existing inventories.

(Pub. L. 100–556, title I, §103, Oct. 28, 1988, 102 Stat. 2779.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

§6915. Annual report

The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—

(1) a statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter;

(2) statements of the Administrator's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this chapter, measured through the end of such fiscal year;

(3) a summary of outstanding solid waste problems confronting the Administrator, in order of priority;

(4) recommendations with respect to such legislation which the Administrator deems necessary or desirable to assist in solving problems respecting solid waste;

(5) all other information required to be submitted to the Congress pursuant to any other provision of this chapter; and

(6) the Administrator's plans for activities and programs respecting solid waste during the next fiscal year.

(Pub. L. 89–272, title II, §2006, formerly §2005, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2805, and renumbered Pub. L. 96–463, §4(a), Oct. 15, 1980, 94 Stat. 2056; amended Pub. L. 98–616, title V, §502(b), Nov. 8, 1984, 98 Stat. 3276.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2006 of Pub. L. 89–272 was renumbered section 2007 and is classified to section 6916 of this title.

AMENDMENTS

1984—Par. (1). Pub. L. 98–616 substituted "detailed" for "detail".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to transmittal of annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 19th item on page 164 of House Document No. 103–7.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6916. General authorization

(a) General administration

There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this chapter, $35,000,000 for the fiscal year ending September 30, 1977, $38,000,000 for the fiscal year ending September 30, 1978, $42,000,000 for the fiscal year ending September 30, 1979, $70,000,000 for the fiscal year ending September 30, 1980, $80,000,000 for the fiscal year ending September 30, 1981, $80,000,000 for the fiscal year ending September 30, 1982, $70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986, $80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988.

(b) Resource Recovery and Conservation Panels

Not less than 20 percent of the amount appropriated under subsection (a), or $5,000,000 per fiscal year, whichever is less, shall be used only for purposes of Resource Recovery and Conservation Panels established under section 6913 of this title (including travel expenses incurred by such panels in carrying out their functions under this chapter).

(c) Hazardous waste

Not less than 30 percent of the amount appropriated under subsection (a) shall be used only for purposes of carrying out subchapter III of this chapter (relating to hazardous waste) other than section 6931 of this title.

(d) State and local support

Not less than 25 per centum of the total amount appropriated under this chapter, up to the amount authorized in section 6948(a)(1) of this title, shall be used only for purposes of support to State, regional, local, and interstate agencies in accordance with subchapter IV of this chapter other than section 6948(a)(2) or 6949 of this title.

(e) Criminal investigators

There is authorized to be appropriated to the Administrator $3,246,000 for the fiscal year 1985, $2,408,300 for the fiscal year 1986, $2,529,000 for the fiscal year 1987, and $2,529,000 for the fiscal year 1988 to be used—

(1) for additional officers or employees of the Environmental Protection Agency authorized by the Administrator to conduct criminal investigations (to investigate, or supervise the investigation of, any activity for which a criminal penalty is provided) under this chapter; and

(2) for support costs for such additional officers or employees.

(f) Underground storage tanks

(1) There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of subchapter IX (relating to regulation of underground storage tanks), $10,000,000 for each of the fiscal years 1985 through 1988.

(2) There is authorized to be appropriated $25,000,000 for each of the fiscal years 1985 through 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of approved State underground storage tank release detection, prevention, and correction programs under subchapter IX.

(Pub. L. 89–272, title II, §2007, formerly §2006, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2805, renumbered Pub. L. 96–463, §4(a), Oct. 15, 1980, 94 Stat. 2055; amended Pub. L. 96–482, §§6, 31(a), Oct. 21, 1980, 94 Stat. 2336, 2352; Pub. L. 98–616, §2(a), (i), Nov. 8, 1984, 98 Stat. 3222, 3223.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §2(a), substituted "$80,000,000 for the fiscal year ending September 30, 1982, $70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986, $80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988" for "and $80,000,000 for the fiscal year ending September 30, 1982".

Subsecs. (e), (f). Pub. L. 98–616, §2(i), added subsecs. (e) and (f).

1980—Subsec. (a). Pub. L. 96–482, §31(a), authorized appropriation of $70,000,000, $80,000,000, and $80,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b). Pub. L. 96–482, §6(a), inserted ", or $5,000,000 per fiscal year, whichever is less," after "subsection (a)".

Subsec. (d). Pub. L. 96–482, §6(b), added subsec. (d).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6917. Office of Ombudsman

(a) Establishment; functions

The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this chapter.

(b) Authority to render assistance

The Ombudsman shall render assistance with respect to the complaints, grievances, and requests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

(c) Effect on procedures for grievances, appeals, or administrative matters

The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this chapter, any other provision of law, or any Federal regulation.

(d) Termination

The Office of the Ombudsman shall cease to exist 4 years after November 8, 1984.

(Pub. L. 89–272, title II, §2008, as added Pub. L. 98–616, title I, §103(a), Nov. 8, 1984, 98 Stat. 3225.)

SUBCHAPTER III—HAZARDOUS WASTE MANAGEMENT

§6921. Identification and listing of hazardous waste

(a) Criteria for identification or listing

Not later than eighteen months after October 21, 1976, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

(b) Identification and listing

(1) Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 6903(5) of this title), which shall be subject to the provisions of this subchapter. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate. The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratagens) [1] at levels in excess of levels which endanger human health.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of this subchapter until at least 24 months after October 21, 1980, and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

(i) The identification through surveying, platting, or other measures, together with recordation of such information on the public record, so as to assure that the location where such wastes are disposed of can be located in the future; except however, that no such surveying, platting, or other measure identifying the location of a disposal site for drilling fluids and associated wastes shall be required if the distance from the disposal site to the surveyed or platted location to the associated well is less than two hundred lineal feet; and

(ii) A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material, with such information to be acquired prior to closure and to be placed on the public record.

(B) Not later than six months after completion and submission of the study required by section 6982(m) of this title, the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subchapter for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 6982(m) of this title.

(C) The Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f),

(n), (o), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

(iii) Cement kiln dust waste.

(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 6912 of this title—

(I) as to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future, and

(II) to provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(ii)(I) In conducting any study under subsection (f), (n), (o), or (p), of section 6982 of this title, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this subparagraph is made public, would divulge information entitled to protection under section 1905 of title 18, the Administrator shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter. Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(iii) The Administrator may prescribe regulations, under the authority of this chapter, to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of (I) solid waste from the extraction, beneficiation, and processing of phosphate rock or (II) overburden from the mining of uranium ore.

(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(C) Not later than six months after the date of submission of the applicable study required to be

conducted under subsection (f), (n), (o), or (p), of section 6982 of this title, the Administrator shall, after public hearings and opportunity for comment, either determine to promulgate regulations under this subchapter for each waste listed in subparagraph (A) of this paragraph or determine that such regulations are unwarranted. The Administrator shall publish his determination, which shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the Federal Register accompanied by an explanation and justification of the reasons for it.

(c) Petition by State Governor

At any time after the date eighteen months after October 21, 1976, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

(d) Small quantity generator waste

(1) By March 31, 1986, the Administrator shall promulgate standards under sections 6922, 6923, and 6924 of this title for hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but less than one thousand kilograms during a calendar month.

(2) The standards referred to in paragraph (1), including standards applicable to the legitimate use, reuse, recycling, and reclamation of such wastes, may vary from the standards applicable to hazardous waste generated by larger quantity generators, but such standards shall be sufficient to protect human health and the environment.

(3) Not later than two hundred and seventy days after November 8, 1984, any hazardous waste which is part of a total quantity generated by a generator generating greater than one hundred kilograms but less than one thousand kilograms during one calendar month and which is shipped off the premises on which such waste is generated shall be accompanied by a copy of the Environmental Protection Agency Uniform Hazardous Waste Manifest form signed by the generator. This form shall contain the following information:

(A) the name and address of the generator of the waste;

(B) the United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA), if applicable;

(C) the number and type of containers;

(D) the quantity of waste being transported; and

(E) the name and address of the facility designated to receive the waste.

If subparagraph (B) is not applicable, in lieu of the description referred to in such subparagraph (B), the form shall contain the Environmental Protection Agency identification number, or a generic description of the waste, or a description of the waste by hazardous waste characteristic. Additional requirements related to the manifest form shall apply only if determined necessary by the Administrator to protect human health and the environment.

(4) The Administrator's responsibility under this subchapter to protect human health and the environment may require the promulgation of standards under this subchapter for hazardous wastes which are generated by any generator who does not generate more than one hundred kilograms of hazardous waste in a calendar month.

(5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified or listed under this section generated by any generator during any calendar month in a total quantity greater than one hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disposal facility with a permit under section 6925 of this title, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) Standards promulgated as provided in paragraph (1) shall, at a minimum, require that all treatment, storage, or disposal of hazardous wastes generated by generators referred to in paragraph (1) shall occur at a facility with interim status or a permit under this subchapter, except that onsite

storage of hazardous waste generated by a generator generating a total quantity of hazardous waste greater than one hundred kilograms, but less than one thousand kilograms during a calendar month, may occur without the requirement of a permit for up to one hundred and eighty days. Such onsite storage may occur without the requirement of a permit for not more than six thousand kilograms for up to two hundred and seventy days if such generator must ship or haul such waste over two hundred miles.

(7)(A) Nothing in this subsection shall be construed to affect or impair the validity of regulations promulgated by the Secretary of Transportation pursuant to chapter 51 of title 49.

(B) Nothing in this subsection shall be construed to affect, modify, or render invalid any requirements in regulations promulgated prior to January 1, 1983 applicable to any acutely hazardous waste identified or listed under this section which is generated by any generator during any calendar month in a total quantity less than one thousand kilograms.

(8) Effective March 31, 1986, unless the Administrator promulgates standards as provided in paragraph (1) of this subsection prior to such date, hazardous waste generated by any generator in a total quantity greater than one hundred kilograms but less than one thousand kilograms during a calendar month shall be subject to the following requirements until the standards referred to in paragraph (1) of this subsection have become effective:

(A) the notice requirements of paragraph (3) of this subsection shall apply and in addition, the information provided in the form shall include the name of the waste transporters and the name and address of the facility designated to receive the waste;

(B) except in the case of the onsite storage referred to in paragraph (6) of this subsection, the treatment, storage, or disposal of such waste shall occur at a facility with interim status or a permit under this subchapter;

(C) generators of such waste shall file manifest exception reports as required of generators producing greater amounts of hazardous waste per month except that such reports shall be filed by January 31, for any waste shipment occurring in the last half of the preceding calendar year, and by July 31, for any waste shipment occurring in the first half of the calendar year; and

(D) generators of such waste shall retain for three years a copy of the manifest signed by the designated facility that has received the waste.

Nothing in this paragraph shall be construed as a determination of the standards appropriate under paragraph (1).

(9) The last sentence of section 6930(b) of this title shall not apply to regulations promulgated under this subsection.

(e) Specified wastes

(1) Not later than 6 months after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1), additional wastes containing chlorinated dioxins or chlorinated-dibenzofurans. Not later than one year after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) wastes containing remaining halogenated dioxins and halogenated-dibenzofurans.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall make a determination of whether or not to list under subsection (b)(1) the following wastes: Chlorinated Aliphatics, Dioxin, Dimethyl Hydrazine, TDI (toluene diisocyanate), Carbamates, Bromacil, Linuron, Organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes and pigments, inorganic chemical industry wastes, lithium batteries, coke byproducts, paint production wastes, and coal slurry pipeline effluent.

(f) Delisting procedures

(1) When evaluating a petition to exclude a waste generated at a particular facility from listing under this section, the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that

such additional factors could cause the waste to be a hazardous waste. The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying such petition.

(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within twenty-four months after receiving a complete application.

(B) The temporary granting of such a petition prior to November 8, 1984, without the opportunity for public comment and the full consideration of such comments shall not continue for more than twenty-four months after November 8, 1984. If a final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

(g) EP toxicity

Not later than twenty-eight months after November 8, 1984, the Administrator shall examine the deficiencies of the extraction procedure toxicity characteristic as a predictor of the leaching potential of wastes and make changes in the extraction procedure toxicity characteristic, including changes in the leaching media, as are necessary to insure that it accurately predicts the leaching potential of wastes which pose a threat to human health and the environment when mismanaged.

(h) Additional characteristics

Not later than two years after November 8, 1984, the Administrator shall promulgate regulations under this section identifying additional characteristics of hazardous waste, including measures or indicators of toxicity.

(i) Clarification of household waste exclusion

A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subchapter, if—

(1) such facility—

(A) receives and burns only—

(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and

(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(j) Methamphetamine production

Not later than every 24 months, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report setting forth information collected by the Administrator from law enforcement agencies, States, and other relevant stakeholders that identifies the byproducts of the methamphetamine production process and whether the Administrator considers each of the byproducts to be a hazardous waste pursuant to this section and relevant regulations.

(Pub. L. 89–272, title II, §3001, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2806; amended Pub. L. 96–482, §7, Oct. 21, 1980, 94 Stat. 2336; Pub. L. 98–616, title II, §§221(a), 222, 223(a), Nov. 8, 1984, 98 Stat. 3248, 3251, 3252; Pub. L. 104–119, §4(1), Mar. 26, 1996, 110 Stat. 833; Pub. L. 109–177, title VII, §742, Mar. 9, 2006, 120 Stat. 272.)

EDITORIAL NOTES

CODIFICATION

In subsec. (d)(7)(A), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2006—Subsec. (j). Pub. L. 109–177 added subsec. (j).

1996—Subsec. (d)(5). Pub. L. 104–119 made technical amendment to reference in original act which appears in text as reference to this section.

1984—Subsec. (b)(1). Pub. L. 98–616, §222(b), inserted at end "The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratagens) [sic] at levels in excess of levels which endanger human health."

Subsec. (d). Pub. L. 98–616, §221(a), added subsec. (d).

Subsecs. (e) to (h). Pub. L. 98–616, §222(a), added subsecs. (e) to (h).

Subsec. (i). Pub. L. 98–616, §223(a), added subsec. (i).

1980—Subsec. (b). Pub. L. 96–482 designated existing provisions as par. (1) and added pars. (2) and (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATION

Pub. L. 99–499, title I, §124(b), Oct. 17, 1986, 100 Stat. 1689, provided that: "Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921], the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly."

ASH MANAGEMENT AND DISPOSAL

Pub. L. 101–549, title III, §306, Nov. 15, 1990, 104 Stat. 2584, provided that for 2 years after Nov. 15, 1990, ash from solid waste incineration units burning municipal waste would not be regulated by the Administrator of the Environmental Protection Agency pursuant to this section.

SMALL QUANTITY GENERATOR WASTE; INFORM AND EDUCATE; WASTE GENERATORS

Pub. L. 98–616, title II, §221(b), Nov. 8, 1984, 98 Stat. 3249, directed Administrator of Environmental Protection Agency to undertake activities to inform and educate waste generators of their responsibilities under subsec. (d) of this section during the period within thirty months after Nov. 8, 1984, to help assure compliance.

STUDY OF EXISTING MANIFEST SYSTEM FOR HAZARDOUS WASTES AS APPLICABLE TO SMALL QUANTITY GENERATORS; SUBMITTAL TO CONGRESS

Pub. L. 98–616, title II, §221(d), Nov. 8, 1984, 98 Stat. 3250, directed Administrator of Environmental Protection Agency to cause to be studied the existing manifest system for hazardous wastes as it applies to small quantity generators and recommend whether the current system should be retained or whether a new system should be introduced, such study to include an analysis of the cost versus the benefits of the system studied as well as an analysis of the ease of retrieving and collating information and identifying a given substance, with any new proposal to include a list of those standards that are necessary to protect human health and the environment, and with such study to be submitted to Congress not later than Apr. 1, 1987.

ADMINISTRATIVE BURDENS; SMALL QUANTITY GENERATORS; RETENTION OF

CURRENT SYSTEM; REPORT TO CONGRESS

Pub. L. 98–616, title II, §221(e), Nov. 8, 1984, 98 Stat. 3250, directed Administrator of Environmental Protection Agency, in conjunction with Secretary of Transportation, to prepare and submit to Congress, not later than Apr. 1, 1987, a report on the feasibility of easing the administrative burden on small quantity generators, increasing compliance with statutory and regulatory requirements, and simplifying enforcement efforts through a program of licensing hazardous waste transporters to assume the responsibilities of small quantity generators relating to preparation of manifests and associated recordkeeping and reporting requirements, such report to examine the appropriate licensing requirements under such a program including the need for financial assurances by licensed transporters and to make recommendations on provisions and requirements for such a program including the appropriate division of responsibilities between Department of Transportation and Environmental Protection Administration.

EDUCATIONAL INSTITUTIONS; ACCUMULATION, STORAGE AND DISPOSAL OF HAZARDOUS WASTES; STUDY

Pub. L. 98–616, title II, §221(f), Nov. 8, 1984, 98 Stat. 3250, as amended by Pub. L. 107–110, title X, §1076(aa), Jan. 8, 2002, 115 Stat. 2093, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Education, the States, and appropriate educational associations, to conduct a comprehensive study of problems associated with accumulation, storage, and disposal of hazardous wastes from educational institutions, such study to include an investigation of feasibility and availability of environmentally sound methods for treatment, storage, or disposal of hazardous waste from such institutions, taking into account the types and quantities of such waste which are generated by these institutions, and the nonprofit nature of these institutions, and directed Administrator to submit a report to Congress containing the findings of the study not later than Apr. 1, 1987.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *So in original. Probably should be "teratogens)".*

§6922. Standards applicable to generators of hazardous waste

(a) In general

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;

(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

(3) use of appropriate containers for such hazardous waste;

(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subchapter, or pursuant to title I

of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out—

(A) the quantities and nature of hazardous waste identified or listed under this subchapter that he has generated during the year;

(B) the disposition of all hazardous waste reported under subparagraph (A);

(C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(D) the changes in volume and toxicity of waste actually achieved during the year in question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

(b) Waste minimization

Effective September 1, 1985, the manifest required by subsection (a)(5) shall contain a certification by the generator that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(Pub. L. 89–272, title II, §3002, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2806; amended Pub. L. 95–609, §7(f), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, §8, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98–616, title II, §224(a), Nov. 8, 1984, 98 Stat. 3252.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(5), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §224(a)(1), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98–616, §224(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subchapter) at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

"(A) the quantities of hazardous waste identified or listed under this subchapter that he has generated during a particular time period; and

"(B) the disposition of all hazardous waste reported under subparagraph (A)."

Subsec. (b). Pub. L. 98–616, §224(a)(2), added subsec. (b).

1980—Par. (5). Pub. L. 96–482 inserted "and any other reasonable means necessary" and ", and arrives at," after "use of a manifest system" and "disposal in", respectively.

1978—Par. (5). Pub. L. 95–609, §7(f)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Par. (6). Pub. L. 95–609, §7(f)(2), closed the parenthetical after "to this subchapter".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6923. Standards applicable to transporters of hazardous waste

(a) Standards

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;

(2) transportation of such waste only if properly labeled;

(3) compliance with the manifest system referred to in section 6922(5) [1] of this title; and

(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.].

(b) Coordination with regulations of Secretary of Transportation

In case of any hazardous waste identified or listed under this subchapter which is subject to chapter 51 of title 49, the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

(c) Fuel from hazardous waste

Not later than two years after November 8, 1984, and after opportunity for public hearing, the Administrator shall promulgate regulations establishing standards, applicable to transporters of fuel produced (1) from any hazardous waste identified or listed under section 6921 of this title, or (2) from any hazardous waste identified or listed under section 6921 of this title and any other material, as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (4) of subsection (a) as may be appropriate.

(Pub. L. 89–272, title II, §3003, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2807; amended Pub. L. 95–609, §7(g), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98–616, title II, §204(b)(2), Nov. 8, 1984, 98 Stat. 3238.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6922(5) of this title, referred to in subsec. (a)(3), was redesignated section 6922(a)(5) of this title, by Pub. L. 98–616, title II, §224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(4), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

CODIFICATION

In subsec. (b), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act (88 Stat.

2156) [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–616 added subsec. (c).

1978—Subsec. (a)(4). Pub. L. 95–609, §7(g)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (b). Pub. L. 95–609, §7(g)(2), substituted "Administrator under this section" for "Administrator under this subchapter".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *See References in Text note below.*

§6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities

(a) In general

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations. Such standards shall include, but need not be limited to, requirements respecting—

(1) maintaining records of all hazardous wastes identified or listed under this chapter which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 6922(5) [1] of this title;

(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable; and

(7) compliance with the requirements of section 6925 of this title respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of

operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

(b) Salt dome formations, salt bed formations, underground mines and caves

(1) Effective on November 8, 1984, the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as—

(A) the Administrator has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;

(B) the Administrator has promulgated performance and permitting standards for such facilities under this subchapter, and;

(C) a permit has been issued under section 6925(c) of this title for the facility concerned.

(2) Effective on November 8, 1984, the placement of any hazardous waste other than a hazardous waste referred to in paragraph (1) in a salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as a permit has been issued under section 6925(c) of this title for the facility concerned.

(3) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) applies shall affect the prohibition contained in paragraph (1) or (2) of this subsection.

(4) Nothing in this subsection shall apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

(c) Liquids in landfills

(1) Effective 6 months after November 8, 1984, the placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any landfill is prohibited. Prior to such date the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator regarding liquid hazardous waste shall remain in force and effect to the extent such requirements are applicable to the placement of bulk or noncontainerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall promulgate final regulations which—

(A) minimize the disposal of containerized liquid hazardous waste in landfills, and

(B) minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills.

Such regulations shall also prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade or that release liquids when compressed as might occur during routine landfill operations. Prior to the date on which such final regulations take effect, the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator shall remain in force and effect to the extent such requirements are applicable to the disposal of containerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(3) Effective twelve months after November 8, 1984, the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required under section 6925(c) of this title or which is operating pursuant to interim status granted under section 6925(e) of this title is prohibited unless the owner or operator of such landfill demonstrates to the Administrator, or the Administrator determines, that—

(A) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted under section 6925(c) of this title or operating pursuant to interim status under section 6925(e) of this title, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water.

As used in subparagraph (B), the term "underground source of drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act) [42 U.S.C. 300f et seq.].

(4) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) applies shall affect the prohibition contained in paragraph (1) of this subsection.

(d) Prohibitions on land disposal of specified wastes

(1) Effective 32 months after November 8, 1984 (except as provided in subsection (f) with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account—

(A) the long-term uncertainties associated with land disposal,

(B) the goal of managing hazardous waste in an appropriate manner in the first instance, and

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents.

For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m)), unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) Paragraph (1) applies to the following hazardous wastes listed or identified under section 6921 of this title:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) arsenic and/or compounds (as As) 500 mg/l;
(ii) cadmium and/or compounds (as Cd) 100 mg/l;
(iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;
(iv) lead and/or compounds (as Pb) 500 mg/l;
(v) mercury and/or compounds (as Hg) 20 mg/l;
(vi) nickel and/or compounds (as Ni) 134 mg/l;
(vii) selenium and/or compounds (as Se) 100 mg/l; and
(viii) thallium and/or compounds (as Th) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

When necessary to protect human health and the environment, the Administrator shall substitute more stringent concentration levels than the levels specified in subparagraphs (A) through (E).

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(e) Solvents and dioxins

(1) Effective twenty-four months after November 8, 1984 (except as provided in subsection (f)

with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition of one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraph (A) through (C) of subsection (d)(1). For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m)), unless upon application by an interested person it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) The hazardous wastes to which the prohibition under paragraph (1) applies are as follows—

(A) dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 (as referred to in the proposed rule published by the Administrator in the Federal Register for April 4, 1983), and

(B) those hazardous wastes numbered F001, F002, F003, F004, and F005 in regulations promulgated by the Administrator under section 6921 of this title (40 C.F.R. 261.31 (July 1, 1983)), as those regulations are in effect on July 1, 1983.

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(f) Disposal into deep injection wells; specified subsection (d) wastes; solvents and dioxins

(1) Not later than forty-five months after November 8, 1984, the Administrator shall complete a review of the disposal of all hazardous wastes referred to in paragraph (2) of subsection (d) and in paragraph (2) of subsection (e) by underground injection into deep injection wells.

(2) Within forty-five months after November 8, 1984, the Administrator shall make a determination regarding the disposal by underground injection into deep injection wells of the hazardous wastes referred to in paragraph (2) of subsection (d) and the hazardous wastes referred to in paragraph (2) of subsection (e). The Administrator shall promulgate final regulations prohibiting the disposal of such wastes into such wells if it may reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1). In promulgating such regulations, the Administrator shall consider each hazardous waste referred to in paragraph (2) of subsection (d) or in paragraph (2) of subsection (e) which is prohibited from disposal into such wells by any State.

(3) If the Administrator fails to make a determination under paragraph (2) for any hazardous waste referred to in paragraph (2) of subsection (d) or in paragraph (2) of subsection (e) within forty-five months after November 8, 1984, such hazardous waste shall be prohibited from disposal into any deep injection well.

(4) As used in this subsection, the term "deep injection well" means a well used for the underground injection of hazardous waste other than a well to which section 6979a(a) [1] of this title applies.

(g) Additional land disposal prohibition determinations

(1) Not later than twenty-four months after November 8, 1984, the Administrator shall submit a schedule to Congress for—

(A) reviewing all hazardous wastes listed (as of November 8, 1984) under section 6921 of this title other than those wastes which are referred to in subsection (d) or (e); and

(B) taking action under paragraph (5) of this subsection with respect to each such hazardous waste.

(2) The Administrator shall base the schedule on a ranking of such listed wastes considering their intrinsic hazard and their volume such that decisions regarding the land disposal of high volume

hazardous wastes with high intrinsic hazard shall, to the maximum extent possible, be made by the date forty-five months after November 8, 1984. Decisions regarding low volume hazardous wastes with lower intrinsic hazard shall be made by the date sixty-six months after November 8, 1984.

(3) The preparation and submission of the schedule under this subsection shall not be subject to the Paperwork Reduction Act of 1980.[1] No hearing on the record shall be required for purposes of preparation or submission of the schedule. The schedule shall not be subject to judicial review.

(4) The schedule under this subsection shall require that the Administrator shall promulgate regulations in accordance with paragraph (5) or make a determination under paragraph (5)—

(A) for at least one-third of all hazardous wastes referred to in paragraph (1) by the date forty-five months after November 8, 1984;

(B) for at least two-thirds of all such listed wastes by the date fifty-five months after November 8, 1984; and

(C) for all such listed wastes and for all hazardous wastes identified under section 6921 of this title by the date sixty-six months after November 8, 1984.

In the case of any hazardous waste identified or listed under section 6921 of this title after November 8, 1984, the Administrator shall determine whether such waste shall be prohibited from one or more methods of land disposal in accordance with paragraph (5) within six months after the date of such identification or listing.

(5) Not later than the date specified in the schedule published under this subsection, the Administrator shall promulgate final regulations prohibiting one or more methods of land disposal of the hazardous wastes listed on such schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1). For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment (except with respect to a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m)) unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(6)(A) If the Administrator fails (by the date forty-five months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first one-third of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(B) If the Administrator fails (by the date 55 months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first two-thirds of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(C) If the Administrator fails to promulgate regulations, or make a determination under paragraph (5) for any hazardous waste referred to in paragraph (1) within 66 months after November 8, 1984, such hazardous waste shall be prohibited from land disposal.

(7) Solid waste identified as hazardous based solely on one or more characteristics shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) (other than any applicable specific methods of treatment, as provided in paragraph (8)) if the waste—

(A) is treated in a treatment system that subsequently discharges to waters of the United States pursuant to a permit issued under section 1342 of title 33, treated for the purposes of the pretreatment requirements of section 1317 of title 33, or treated in a zero discharge system that, prior to any permanent land disposal, engages in treatment that is equivalent to treatment required under section 1342 of title 33 for discharges to waters of the United States, as determined by the Administrator; and

(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit.

(8) Solid waste that otherwise qualifies under paragraph (7) shall nevertheless be required to meet any applicable specific methods of treatment specified for such waste by the Administrator under subsection (m), including those specified in the rule promulgated by the Administrator June 1, 1990, prior to management in a land-based unit as part of a treatment system specified in paragraph (7)(A). No solid waste may qualify under paragraph (7) that would generate toxic gases, vapors, or fumes due to the presence of cyanide when exposed to pH conditions between 2.0 and 12.5.

(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injection well permitted under section 300h–1 of this title.

(10) Not later than five years after March 26, 1996, the Administrator shall complete a study of hazardous waste managed pursuant to paragraph (7) or (9) to characterize the risks to human health or the environment associated with such management. In conducting this study, the Administrator shall evaluate the extent to which risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such laws or programs. Upon receipt of additional information or upon completion of such study and as necessary to protect human health and the environment, the Administrator may impose additional requirements under existing Federal laws, including subsection (m)(1), or rely on other State or Federal programs or authorities to address such risks. In promulgating any treatment standards pursuant to subsection (m)(1) under the previous sentence, the Administrator shall take into account the extent to which treatment is occurring in land-based units as part of a treatment system specified in paragraph (7)(A).

(11) Nothing in paragraph (7) or (9) shall be interpreted or applied to restrict any inspection or enforcement authority under the provisions of this chapter.

(h) Variance from land disposal prohibitions

(1) A prohibition in regulations under subsection (d), (e), (f), or (g) shall be effective immediately upon promulgation.

(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g) or under regulations under subsection (d), (e), (f), or (g) of this section. Any such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g).

(3) The Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis grant an extension of the effective date which would otherwise apply under subsection (d), (e), (f), or (g) or under paragraph (2) for up to one year, where the applicant demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date. Such extension shall be renewable once for no more than one additional year.

(4) Whenever another effective date (hereinafter referred to as a "variance") is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (o).

(i) Publication of determination

If the Administrator determines that a method of land disposal will be protective of human health and the environment, he shall promptly publish in the Federal Register notice of such determination, together with an explanation of the basis for such determination.

(j) Storage of hazardous waste prohibited from land disposal

In the case of any hazardous waste which is prohibited from one or more methods of land disposal under this section (or under regulations promulgated by the Administrator under any provision of this section) the storage of such hazardous waste is prohibited unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

(k) "Land disposal" defined

For the purposes of this section, the term "land disposal", when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

(l) Ban on dust suppression

The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 6921 of this title (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

(m) Treatment standards for wastes subject to land disposal prohibition

(1) Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) prohibiting one or more methods of land disposal of a particular hazardous waste, and as appropriate thereafter, the Administrator shall, after notice and an opportunity for hearings and after consultation with appropriate Federal and State agencies, promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) and may be disposed of in a land disposal facility which meets the requirements of this subchapter. Any regulation promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g).

(n) Air emissions

Not later than thirty months after November 8, 1984, the Administrator shall promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.

(o) Minimum technological requirements

(1) The regulations under subsection (a) of this section shall be revised from time to time to take into account improvements in the technology of control and measurement. At a minimum, such regulations shall require, and a permit issued pursuant to section 6925(c) of this title after November 8, 1984, by the Administrator or a State shall require—

(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 6925(c) of this title is received after November 8, 1984—

(i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and

(ii) ground water monitoring; and

(B) for each incinerator which receives a permit under section 6925(c) of this title after November 8, 1984, the attainment of the minimum destruction and removal efficiency required by regulations in effect on June 24, 1982.

The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit.

(2) Paragraph (1)(A)(i) shall not apply if the owner or operator demonstrates to the Administrator, and the Administrator finds for such landfill or surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(3) The double-liner requirement set forth in paragraph (1)(A)(i) may be waived by the Administrator for any monofill, if—

(A) such monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand,

(B) such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Extraction Procedure ("EP") toxicity characteristics set forth in regulations under this subchapter, and

(C) such monofill meets the same requirements as are applicable in the case of a waiver under section 6925(j)(2) or (4) of this title.

(4)(A) Not later than thirty months after November 8, 1984, the Administrator shall promulgate standards requiring that new landfill units, surface impoundment units, waste piles, underground tanks and land treatment units for the storage, treatment, or disposal of hazardous waste identified or listed under section 6921 of this title shall be required to utilize approved leak detection systems.

(B) For the purposes of subparagraph (A)—

(i) the term "approved leak detection system" means a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time; and

(ii) the term "new units" means units on which construction commences after the date of promulgation of regulations under this paragraph.

(5)(A) The Administrator shall promulgate regulations or issue guidance documents implementing the requirements of paragraph (1)(A) within two years after November 8, 1984.

(B) Until the effective date of such regulations or guidance documents, the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated [2] and constructed to prevent the migration of any constituent

through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(6) Any permit under section 6925 of this title which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of this chapter.

(7) In addition to the requirements set forth in this subsection, the regulations referred to in paragraph (1) shall specify criteria for the acceptable location of new and existing treatment, storage, or disposal facilities as necessary to protect human health and the environment. Within 18 months after November 8, 1984, the Administrator shall publish guidance criteria identifying areas of vulnerable hydrogeology.

(p) Ground water monitoring

The standards under this section concerning ground water monitoring which are applicable to surface impoundments, waste piles, land treatment units, and landfills shall apply to such a facility whether or not—

(1) the facility is located above the seasonal high water table;

(2) two liners and a leachate collection system have been installed at the facility; or

(3) the owner or operator inspects the liner (or liners) which has been installed at the facility.

This subsection shall not be construed to affect other exemptions or waivers from such standards provided in regulations in effect on November 8, 1984, or as may be provided in revisions to those regulations, to the extent consistent with this subsection. The Administrator is authorized on a case-by-case basis to exempt from ground water monitoring requirements under this section (including subsection (o)) any engineered structure which the Administrator finds does not receive or contain liquid waste (nor waste containing free liquids), is designed and operated to exclude liquid from precipitation or other runoff, utilizes multiple leak detection systems within the outer layer of containment, and provides for continuing operation and maintenance of these leak detection systems during the operating period, closure, and the period required for post-closure monitoring and for which the Administrator concludes on the basis of such findings that there is a reasonable certainty hazardous constituents will not migrate beyond the outer layer of containment prior to the end of the period required for post-closure monitoring.

(q) Hazardous waste used as fuel

(1) Not later than two years after November 8, 1984, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—

(A) standards applicable to the owners and operators of facilities which produce a fuel—

(i) from any hazardous waste identified or listed under section 6921 of this title, or

(ii) from any hazardous waste identified or listed under section 6921 of this title and any other material;

(B) standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title; and

(C) standards applicable to any person who distributes or markets any fuel which is produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title;

as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (7) of subsection (a) as may be appropriate. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. For purposes of this subsection, the term "hazardous waste listed under section 6921 of this title" includes any commercial chemical product which is listed under section

6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel.

(2)(A) This subsection, subsection (r), and subsection (s) shall not apply to petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more characteristics by which a substance would be identified as a hazardous waste under section 6921 of this title.

(B) The Administrator may exempt from the requirements of this subsection, subsection (r), or subsection (s) facilities which burn de minimis quantities of hazardous waste as fuel, as defined by the Administrator, if the wastes are burned at the same facility at which such wastes are generated; the waste is burned to recover useful energy, as determined by the Administrator on the basis of the design and operating characteristics of the facility and the heating value and other characteristics of the waste; and the waste is burned in a type of device determined by the Administrator to be designed and operated at a destruction and removal efficiency sufficient such that protection of human health and environment is assured.

(C)(i) After November 8, 1984, and until standards are promulgated and in effect under paragraph (2) of this subsection, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations (as in effect on November 8, 1984) under this subchapter which are applicable to incinerators.

(ii) Any person who knowingly violates the prohibition contained in clause (i) shall be deemed to have violated section 6928(d)(2) of this title.

(r) Labeling

(1) Notwithstanding any other provision of law, until such time as the Administrator promulgates standards under subsection (q) specifically superceding this requirement, it shall be unlawful for any person who is required to file a notification in accordance with paragraph (1) or (3) of section 6930 of this title to distribute or market any fuel which is produced from any hazardous waste identified or listed under section 6921 of this title, or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title if the invoice or the bill of sale fails—

(A) to bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTES", and

(B) to list the hazardous wastes contained therein.

Beginning ninety days after November 8, 1984, such statement shall be located in a conspicuous place on every such invoice or bill of sale and shall appear in conspicuous and legible type in contrast by typography, layouts, or color with other printed matter on the invoice or bill of sale.

(2) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from petroleum refining waste containing oil if—

(A) such materials are generated and reinserted onsite into the refining process;

(B) contaminants are removed; and

(C) such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from oily materials, resulting from normal petroleum refining, production and transportation practices, if (A) contaminants are removed; and (B) such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(s) Recordkeeping

Not later than fifteen months after November 8, 1984, the Administrator shall promulgate regulations requiring that any person who is required to file a notification in accordance with subparagraph (1), (2), or (3), of section 6930(a) of this title shall maintain such records regarding fuel blending, distribution, or use as may be necessary to protect human health and the environment.

(t) Financial responsibility provisions

(1) Financial responsibility required by subsection (a) of this section may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any State court or any Federal Court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

(u) Continuing releases at permitted facilities

Standards promulgated under this section shall require, and a permit issued after November 8, 1984, by the Administrator or a State shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit. Permits issued under section 6925 of this title shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(v) Corrective action beyond facility boundary

As promptly as practicable after November 8, 1984, the Administrator shall amend the standards under this section regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste listed or identified under section 6921 of this title to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Administrator that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such regulations shall take effect immediately upon promulgation, notwithstanding section 6930(b) of this title, and shall apply to—

(1) all facilities operating under permits issued under subsection (c), and

(2) all landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units, or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending promulgation of such regulations, the Administrator shall issue corrective action orders for facilities referred to in paragraphs (1) and (2), on a case-by-case basis, consistent with the purposes of this subsection.

(w) Underground tanks

Not later than March 1, 1985, the Administrator shall promulgate final permitting standards under this section for underground tanks that cannot be entered for inspection. Within forty-eight months after November 8, 1984, such standards shall be modified, if necessary, to cover at a minimum all requirements and standards described in section 6991b of this title.

(x) Mining and other special wastes

If (1) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium, (2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, or (3) cement kiln dust waste, is subject to regulation under this subchapter, the Administrator is authorized to modify the requirements of subsections (c), (d), (e), (f), (g), (o), and (u) and section 6925(j) of this title, in the case of landfills or surface impoundments receiving such solid waste, to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics, including but not limited to the climate, geology, hydrology and soil chemistry at the site, so long as such modified requirements assure protection of human health and the environment.

(y) Munitions

(1) Not later than 6 months after October 6, 1992, the Administrator shall propose, after consulting with the Secretary of Defense and appropriate State officials, regulations identifying when military munitions become hazardous waste for purposes of this subchapter and providing for the safe transportation and storage of such waste. Not later than 24 months after October 6, 1992, and after notice and opportunity for comment, the Administrator shall promulgate such regulations. Any such regulations shall assure protection of human health and the environment.

(2) For purposes of this subsection, the term "military munitions" includes chemical and conventional munitions.

(Pub. L. 89–272, title II, §3004, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2807; amended Pub. L. 96–482, §9, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98–616, title II, §§201(a), 202(a), 203, 204(b)(1), 205–209, Nov. 8, 1984, 98 Stat. 3226, 3233, 3234, 3236, 3238–3240; Pub. L. 102–386, title I, §107, Oct. 6, 1992, 106 Stat. 1513; Pub. L. 104–119, §§2, 4(2)–(5), Mar. 26, 1996, 110 Stat. 830, 833.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6922(5) of this title, referred to in subsec. (a)(2), was redesignated section 6922(a)(5) of this title, by Pub. L. 98–616, title II, §224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Safe Drinking Water Act, referred to in subsec. (c)(3), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

Section 6979a of this title, referred to in subsec. (f)(4), was in the original a reference to section 7010 of Pub. L. 89–272, which was renumbered section 3020 of Pub. L. 89–272 by Pub. L. 99–339, title II, §201(c), June 19, 1986, 100 Stat. 654, and transferred to section 6939b of this title.

The Paperwork Reduction Act of 1980, referred to in subsec. (g)(3), is Pub. L. 96–511, Dec. 11, 1980, 94

Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Federal Bankruptcy Code, referred to in subsec. (t)(2), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

1996—Subsec. (g)(5). Pub. L. 104–119, §4(3), substituted "subparagraphs (A) through (C)" for "subparagraph (A) through (C)".

Subsec. (g)(7) to (11). Pub. L. 104–119, §2, added pars. (7) to (11).

Subsec. (q)(1)(C). Pub. L. 104–119, §4(2), inserted a semicolon at end of subpar. (C).

Subsec. (r)(2)(C). Pub. L. 104–119, §4(4), substituted "petroleum-derived" for "pertroleum-derived".

Subsec. (r)(3). Pub. L. 104–119, §4(5), inserted "Industrial" after "Standard".

1992—Subsec. (y). Pub. L. 102–386 added subsec. (y).

1984—Subsec. (a). Pub. L. 98–616, §201(a), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98–616, §208, inserted "(including financial responsibility for corrective action)".

Subsecs. (b) to (n). Pub. L. 98–616, §201(a), added subsecs. (b) to (n).

Subsec. (o). Pub. L. 98–616, §202(a), added subsec. (o).

Subsec. (p). Pub. L. 98–616, §203, added subsec. (p).

Subsecs. (q) to (s). Pub. L. 98–616, §204(b)(1), added subsecs. (q) to (s).

Subsec. (t). Pub. L. 98–616, §205, added subsec. (t).

Subsec. (u). Pub. L. 98–616, §206, added subsec. (u).

Subsecs. (v), (w). Pub. L. 98–616, §207, added subsecs. (v) and (w).

Subsec. (x). Pub. L. 98–616, §209, added subsec. (x).

1980—Pub. L. 96–482 required standards regulations to reflect distinction in requirements appropriate for new facilities and for facilities in existence on date of promulgation of the regulations.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] See References in Text note below.

[2] So in original. Probably should be followed by a comma.

§6925. Permits for treatment, storage, or disposal of hazardous waste

(a) Permit requirements

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a

permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.

(b) Requirements of permit application

Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

(1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this subchapter, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

(2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

(c) Permit issuance

(1) Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 6924 of this title, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 6924 of this title, the permit shall specify the time allowed to complete the modifications.

(2)(A)(i) Not later than the date four years after November 8, 1984, in the case of each application under this subsection for a permit for a land disposal facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(ii) Not later than the date five years after November 8, 1984, in the case of each application for a permit under this subsection for an incinerator facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(B) Not later than the date eight years after November 8, 1984, in the case of each application for a permit under this subsection for any facility (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(C) The time periods specified in this paragraph shall also apply in the case of any State which is administering an authorized hazardous waste program under section 6926 of this title. Interim status under subsection (e) shall terminate for each facility referred to in subparagraph (A)(ii) or (B) on the expiration of the five- or eight-year period referred to in subparagraph (A) or (B), whichever is applicable, unless the owner or operator of the facility applies for a final determination regarding the issuance of a permit under this subsection within—

(i) two years after November 8, 1984 (in the case of a facility referred to in subparagraph (A)(ii)), or

(ii) four years after November 8, 1984 (in the case of a facility referred to in subparagraph (B)).

(3) Any permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of this section and section 6924 of this title. Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

(d) Permit revocation

Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) of noncompliance by a facility having a permit under this chapter with the requirements of this section or section 6924 of this title, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) shall revoke such permit.

(e) Interim status

(1) Any person who—

(A) owns or operates a facility required to have a permit under this section which facility—

(i) was in existence on November 19, 1980, or

(ii) is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section,

(B) has complied with the requirements of section 6930(a) of this title, and

(C) has made an application for a permit under this section,

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.

(2) In the case of each land disposal facility which has been granted interim status under this subsection before November 8, 1984, interim status shall terminate on the date twelve months after November 8, 1984, unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) for such facility before the date twelve months after November 8, 1984; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(3) In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section and which is granted interim status under this subsection, interim status shall terminate on the date twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) for such facility before the date twelve months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) Coal mining wastes and reclamation permits

Notwithstanding subsection (a) through (e) of this section, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] shall be deemed to be a permit issued pursuant to this section with respect to the treatment, storage, or disposal of such wastes or overburden. Regulations promulgated by the Administrator under this subchapter shall not be applicable to treatment, storage, or disposal of coal mining wastes and overburden which are covered by such a permit.

(g) Research, development, and demonstration permits

(1) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental

hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under this subchapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits—

(A) shall provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one year (unless renewed as provided in paragraph (4)), and

(B) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(C) shall include such requirements as the Administrator deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial reponsibility,[1] closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the Administrator's general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 6974(b)(2) of this title regarding public participation.

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

(h) Waste minimization

Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(i) Interim status facilities receiving wastes after July 26, 1982

The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 6924 of this title to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) which receives hazardous waste after July 26, 1982.

(j) Interim status surface impoundments

(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on November 8, 1984, and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store, or treat hazardous waste after the date four years after November 8, 1984, unless such surface impoundment is in compliance with the requirements of section 6924(o)(1)(A) of this title which would apply to such impoundment if it were new.

(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than

one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

(3) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) contains treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility subject to a permit issued under section 1342 of title 33 (or which holds such treated waste water after treatment and prior to discharge); (B) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section; and (C)(i) is part of a facility in compliance with section 1311(b)(2) of title 33, or (ii) in the case of a facility for which no effluent guidelines required under section 1314(b)(2) of title 33 are in effect and no permit under section 1342(a)(1) of title 33 implementing section 1311(b)(2) of title 33 has been issued, is part of a facility in compliance with a permit under section 1342 of title 33, which is achieving significant degradation of toxic pollutants and hazardous constituents contained in the untreated waste stream and which has identified those toxic pollutants and hazardous constituents in the untreated waste stream to the appropriate permitting authority.

(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constitutent [2] into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 6924(o)(7) of this title.

(5) The owner or operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after November 8, 1984, for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to such surface impoundment. Such owner or operator shall provide, with such application, evidence pertinent to such decision, including:

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

(B) evidence as to compliance with all applicable ground water monitoring requirements and the information and analysis from such monitoring;

(C) all reasonably ascertainable evidence as to whether such surface impoundment is leaking; and

(D) in the case of applications under paragraph (2) or (3), a certification by a registered professional engineer with academic training and experience in ground water hydrology that—

(i) under paragraph (2), the liner of such surface impoundment is designed, constructed, and operated in accordance with applicable requirements, such surface impoundment is more than one-quarter mile from an underground source of drinking water and there is no evidence such liner is leaking; or

(ii) under paragraph (3), based on analysis of those toxic pollutants and hazardous constituents that are likely to be present in the untreated waste stream, such impoundment satisfies the conditions of paragraph (3).

In the case of any surface impoundment for which the owner or operator fails to apply under this paragraph within the time provided by this paragraph or paragraph (6), such surface impoundment shall comply with paragraph (1) notwithstanding paragraph (2), (3), or (4). Within twelve months after receipt of such application and evidence and not later than thirty-six months after November 8, 1984, and after notice and opportunity to comment, the Administrator (or, if appropriate, the State) shall advise such owner or operator on the applicability of paragraph (1) to such surface impoundment or as to whether and how the requirements of paragraph (1) shall be modified and applied to such surface impoundment.

(6)(A) In any case in which a surface impoundment becomes subject to paragraph (1) after November 8, 1984, due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 6921 of this title, the period for compliance in paragraph (1) shall be four years after the date of such promulgation, the period for demonstrations under paragraph (4) and for submission of evidence under paragraph (5) shall be not later than twenty-four months after the date of such promulgation, and the period for the Administrator (or if appropriate, the State) to advise such owners or operators under paragraph (5) shall be not later than thirty-six months after the date of promulgation.

(B) In any case in which a surface impoundment is initially determined to be excluded from the requirements of paragraph (1) but due to a change in condition (including the existence of a leak) no longer satisfies the provisions of paragraph (2), (3), or (4) and therefore becomes subject to paragraph (1), the period for compliance in paragraph (1) shall be two years after the date of discovery of such change of condition, or in the case of a surface impoundment excluded under paragraph (3) three years after such date of discovery.

(7)(A) The Administrator shall study and report to the Congress on the number, range of size, construction, likelihood of hazardous constituents migrating into ground water, and potential threat to human health and the environment of existing surface impoundments excluded by paragraph (3) from the requirements of paragraph (1). Such report shall address the need, feasibility, and estimated costs of subjecting such existing surface impoundments to the requirements of paragraph (1).

(B) In the case of any existing surface impoundment or class of surface impoundments from which the Administrator (or the State, in the case of a State with an authorized program) determines hazardous constituents are likely to migrate into ground water, the Administrator (or if appropriate, the State) is authorized to impose such requirements as may be necessary to protect human health and the environment, including the requirements of section 6924(o) of this title which would apply to such impoundments if they were new.

(C) In the case of any surface impoundment excluded by paragraph (3) from the requirements of paragraph (1) which is subsequently determined to be leaking, the Administrator (or, if appropriate, the State) shall require compliance with paragraph (1), unless the Administrator (or, if appropriate, the State) determines that such compliance is not necessary to protect human health and the environment.

(8) In the case of any surface impoundment in which the liners and leak detection system have been installed pursuant to the requirements of paragraph (1) and in good faith compliance with section 6924(o) of this title and the Administrator's regulations and guidance documents governing liners and leak detection systems, no liner or leak detection system which is different from that which was so installed pursuant to paragraph (1) shall be required for such unit by the Administrator when issuing the first permit under this section to such facility. Nothing in this paragraph shall preclude the Administrator from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this subsection is leaking.

(9) In the case of any surface impoundment which has been excluded by paragraph (2) on the basis of a liner meeting the definition under paragraph (12)(A)(ii), at the closure of such impoundment the Administrator shall require the owner or operator of such impoundment to remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall be required to comply with appropriate post-closure requirements, including but not limited to ground water monitoring and corrective action.

(10) Any incremental cost attributable to the requirements of this subsection or section 6924(o) of this title shall not be considered by the Administrator (or the State, in the case of a State with an authorized program under section 1342 of title 33)—

(A) in establishing effluent limitations and standards under section 1311, 1314, 1316, 1317, or 1342 of title 33 based on effluent limitations guidelines and standards promulgated any time before twelve months after November 8, 1984; or

(B) in establishing any other effluent limitations to carry out the provisions of section 1311, 1317, or 1342 of title 33 on or before October 1, 1986.

(11)(A) If the Administrator allows a hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsections) to be placed in a surface impoundment (which is operating pursuant to interim status) for storage or treatment, such impoundment shall meet the requirements that are applicable to new surface impoundments under section 6924(o)(1) of this title, unless such impoundment meets the requirements of paragraph (2) or (4).

(B) In the case of any hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsection) the placement or maintenance of such hazardous waste in a surface impoundment for treatment is prohibited as of the effective date of such prohibition unless the treatment residues which are hazardous are, at a minimum, removed for subsequent management within one year of the entry of the waste into the surface impoundment.

(12)(A) For the purposes of paragraph (2)(A) of this subsection, the term "liner" means—

(i) a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility; or

(ii) a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) For the purposes of this subsection, the term "aggressive biological treatment facility" means a system of surface impoundments in which the initial impoundment of the secondary treatment segment of the facility utilizes intense mechanical aeration to enhance biological activity to degrade waste water pollutants and

(i) the hydraulic retention time in such initial impoundment is no longer than 5 days under normal operating conditions, on an annual average basis;

(ii) the hydraulic retention time in such initial impoundment is no longer than thirty days under normal operating conditions, on an annual average basis: *Provided*, That the sludge in such impoundment does not constitute a hazardous waste as identified by the extraction procedure toxicity characteristic in effect on November 8, 1984; or

(iii) such system utilizes activated sludge treatment in the first portion of secondary treatment.

(C) For the purposes of this subsection, the term "underground source or [3] drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.]).

(13) The Administrator may modify the requirements of paragraph (1) in the case of a surface impoundment for which the owner or operator, prior to October 1, 1984, has entered into, and is in compliance with, a consent order, decree, or agreement with the Administrator or a State with an authorized program mandating corrective action with respect to such surface impoundment that provides a degree of protection of human health and the environment which is at a minimum equivalent to that provided by paragraph (1).

(Pub. L. 89–272, title II, §3005, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2808; amended Pub. L. 95–609, §7(h), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, §§10, 11, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98–616, title II, §§211–213(a), (c), 214(a), 215, 224(b), 243(c), Nov. 8, 1984, 98 Stat. 3240–3243, 3253, 3261; Pub. L. 104–119, §4(6), (7), Mar. 26, 1996, 110 Stat. 833.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (f), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, which is classified generally to chapter 25 (§1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section

1201 of Title 30 and Tables.

The Safe Drinking Water Act, referred to in subsec. (j)(12)(C), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–119, §4(6), substituted "polychlorinated" for "polycholorinated".

Subsec. (e)(1)(C). Pub. L. 104–119, §4(7), inserted comma at end of subpar. (C).

1984—Subsec. (a). Pub. L. 98–616, §211, substituted "an existing facility or planning to construct a new" for "a", inserted "and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste", and inserted at end "No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polycholorinated [sic] biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter."

Subsec. (c)(1), (2). Pub. L. 98–616, §213(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(3). Pub. L. 98–616, §212, added par. (3).

Subsec. (e). Pub. L. 98–616, §213(a), designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) thereof as subpars. (A), (B), and (C), respectively, designated existing provisions of previously redesignated subpar. (A) as cl. (i) and added cl. (ii), inserted "This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated." to closing provisions of par. (1), and added pars. (2) and (3).

Subsec. (g). Pub. L. 98–616, §214(a), added subsec. (g).

Subsec. (h). Pub. L. 98–616, §224(b), added subsec. (h).

Subsec. (i). Pub. L. 98–616, §243(c), added subsec. (i).

Subsec. (j). Pub. L. 98–616, §215, added subsec. (j).

1980—Subsec. (e)(1). Pub. L. 96–482, §10, substituted "November 19, 1980" for "October 21, 1976".

Subsec. (f). Pub. L. 96–482, §11, added subsec. (f).

1978—Subsec (a). Pub. L. 95–609 inserted "treatment, storage, or" after "and after such date the".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] So in original. Probably should be "responsibility".

[2] So in original. Probably should be "constituent".

[3] So in original. Probably should be "of".

§6926. Authorized State hazardous waste programs

(a) Federal guidelines

Not later than eighteen months after October 21, 1976, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the Development of State hazardous waste programs.

(b) Authorization of State program

Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce permits deemed to have been issued under section 6935(d)(1) [1] of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

(c) Interim authorization

(1) Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a period ending no later than January 31, 1986.

(2) The Administrator shall, by rule, establish a date for the expiration of interim authorization under this subsection.

(3) Pending interim or final authorization of a State program for any State which reflects the amendments made by the Hazardous and Solid Waste Amendments of 1984, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to such Amendments.

(4) In the case of a State permit program for any State which is authorized under subsection (b) or under this subsection, until such program is amended to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program amendments receive interim or final authorization, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984. The Administrator shall coordinate with States the procedures for issuing such permits.

(d) Effect of State permit

Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(f) Availability of information

No State program may be authorized by the Administrator under this section unless—

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subchapter in such State.

(g) Amendments made by 1984 act

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under this subchapter pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 shall take effect in each State having an interim or finally authorized State program on the same date as such requirement takes effect in other States. The Administrator shall carry out such requirement directly in each such State unless the State program is finally authorized (or is granted interim authorization as provided in paragraph (2)) with respect to such requirement.

(2) Any State which, before November 8, 1984, has an existing hazardous waste program which has been granted interim or final authorization under this section may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in paragraph (1) and may request interim authorization to carry out that requirement under this subchapter. The Administrator shall, if the evidence submitted shows the State requirement to be substantially equivalent to the requirement referred to in paragraph (1), grant an interim authorization to the State to carry out such requirement in lieu of direct administration in the State by the Administrator of such requirement.

(h) State programs for used oil

In the case of used oil which is not listed or identified under this subchapter as a hazardous waste but which is regulated under section 6935 of this title, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subchapter.

(Pub. L. 89–272, title II, §3006, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2809; amended Pub. L. 95–609, §7(i), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98–616, title II, §§225, 226(a), 227, 228, 241(b)(2), Nov. 8, 1984, 98 Stat. 3254, 3255, 3260; Pub. L. 99–499, title II, §205(j), Oct. 17, 1986, 100 Stat. 1703.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89–272, which was renumbered section 3014(d)(1) of Pub. L. 89–272 by Pub. L. 98–616 and is classified to section 6935(d)(1) of this title.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsecs. (c)(3), (4) and (g), is Pub. L. 98–616, Nov. 8, 1984, 98 Stat. 3221, which amended this chapter. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (h). Pub. L. 99–499 added subsec. (h).

1984—Subsec. (b). Pub. L. 98–616, §§225, 241(b)(2), inserted "(and to enforce permits deemed to have been issued under section 6935(d)(1) of this title)", and inserted provision at end that in authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

Subsec. (c)(1). Pub. L. 98–616, §227(1), (2), designated existing provisions as par. (1) and substituted "period ending no later than January 31, 1986" for "twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 6922 through 6925 of this title".

Subsec. (c)(2) to (4). Pub. L. 98–616, §227(3), added pars. (2) to (4).

Subsec. (f). Pub. L. 98–616, §226(a), added subsec. (f).
Subsec. (g). Pub. L. 98–616, §228, added subsec. (g).
1978—Subsec. (c). Pub. L. 95–609 substituted "of" for "required for" wherever appearing and "may submit" for "submit".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–616, title II, §226(b), Nov. 8, 1984, 98 Stat. 3254, provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to State programs authorized under section 3006 [this section] before, on, or after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [Nov. 8, 1984]."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *See References in Text note below.*

§6927. Inspections

(a) Access entry

For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, such officers, employees or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) Availability to public

(1) Any records, reports, or information (including records, reports, or information obtained by representatives of the Environmental Protection Agency) obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee or

representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this chapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this chapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(c) Federal facility inspections

The Administrator shall undertake on an annual basis a thorough inspection of each facility for the treatment, storage, or disposal of hazardous waste which is owned or operated by a department, agency, or instrumentality of the United States to enforce its compliance with this subchapter and the regulations promulgated thereunder. Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility's compliance with the State hazardous waste program. The records of such inspections shall be available to the public as provided in subsection (b). The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992.

(d) State-operated facilities

The Administrator shall annually undertake a thorough inspection of every facility for the treatment, storage, or disposal of hazardous waste which is operated by a State or local government for which a permit is required under section 6925 of this title. The records of such inspection shall be available to the public as provided in subsection (b).

(e) Mandatory inspections

(1) The Administrator (or the State in the case of a State having an authorized hazardous waste program under this subchapter) shall commence a program to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a permit is required under section 6925 of this title no less often than every two years as to its compliance with this subchapter (and the regulations promulgated under this subchapter). Such inspections shall commence not later than twelve months after November 8, 1984. The Administrator shall, after notice and opportunity for public comment, promulgate regulations governing the minimum frequency and manner of such inspections, including the manner in which records of such inspections shall be maintained and the manner in which reports of such inspections shall be filed. The Administrator may distinguish between classes and categories of facilities commensurate with the risks posed by each class or category.

(2) Not later than six months after November 8, 1984, the Administrator shall submit to the Congress a report on the potential for inspections of hazardous waste treatment, storage, or disposal facilities by nongovernmental inspectors as a supplement to inspections conducted by officers, employees, or representatives of the Environmental Protection Agency or States having authorized hazardous waste programs or operating under a cooperative agreement with the Administrator. Such report shall be prepared in cooperation with the States, insurance companies offering environmental impairment insurance, independent companies providing inspection services, and other such groups as appropriate. Such report shall contain recommendations on provisions and requirements for a program of private inspections to supplement governmental inspections.

(Pub. L. 89–272, title II, §3007, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2810; amended Pub. L. 95–609, §7(j), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, §12, Oct. 21, 1980, 94 Stat. 2339; Pub. L. 98–616, title II, §§229–231, title V, §502(a), Nov. 8, 1984, 98 Stat. 3255, 3256, 3276; Pub. L. 102–386, title I, §104, Oct. 6, 1992, 106 Stat. 1507.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–386 in first sentence substituted "The Administrator shall undertake" for "Beginning twelve months after November 8, 1984, the Administrator shall, or in the case of a State with an authorized hazardous waste program the State may, undertake" and "department, agency, or instrumentality of the United States" for "Federal agency", inserted after first sentence "Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility's compliance with the State hazardous waste program.", and inserted at end "The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992."

1984—Subsec. (b)(1). Pub. L. 98–616, §502(a), modified directory language for amendment by sec. 12(b)(4) of Pub. L. 96–482.

Subsec. (c). Pub. L. 98–616, §229, added subsec. (c).

Subsec. (d). Pub. L. 98–616, §230, added subsec. (d).

Subsec. (e). Pub. L. 98–616, §231, added subsec. (e).

1980—Subsec. (a). Pub. L. 96–482, §12(a), substituted "chapter" for "subchapter", "any officer, employee or representative" for "any officer or employee", "duly designated officer, employee or representative" for "duly designated officer employee", "such officers, employees or representatives" for "such officers or employees", "furnish information relating to such wastes and permit" for "furnish or permit", and "officer, employee or representative obtains" for "officer or employee obtains", struck out "maintained by any person" after "establishment or other place", substituted "officer, employee or representative obtains" for "officer or employee obtains", and inserted "or has handled" after "otherwise handles" and "or have been" after "where hazardous wastes are".

Subsec. (b)(1). Pub. L. 96–482, §12(b)(1)–(3), designated existing provisions as par. (1), inserted "or any officer, employee or representative thereof" before "has access under this section" and substituted "such information or particular portion thereof shall be considered" for "the Administrator (or the State, as the case may be) shall consider such information or portion thereof".

Pub. L. 96–482, §12(b)(4), as modified by Pub. L. 98–616, §502(a), inserted "(including records, reports, or information obtained by representatives of the Environmental Protection Agency)" after "information".

Subsec. (b)(2) to (4). Pub. L. 96–482, §12(b)(3), added pars. (2) to (4).

1978—Subsec. (a)(1). Pub. L. 95–609 substituted "disposed of, or transported from" for "or disposed of".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska

Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6928. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 6926 of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Public hearing

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Violation of compliance orders

If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

(d) Criminal penalties

Any person who—

(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.],

(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter—

(A) without a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; or

(B) in knowing violation of any material condition or requirement of such permit; or

(C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

(3) knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(4) knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter (whether such activity took place before or takes place after November 8, 1984) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(5) knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest;

(6) knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement; or

(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under this subchapter—

(A) in knowing violation of any material condition or requirement of a permit under this subchapter; or

(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this chapter;

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(e) Knowing endangerment

Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste identified or listed under this subchapter or used oil not identified or listed as a hazardous waste under this subchapter in violation of paragraph (1), (2), (3), (4), (5), (6), or (7) of subsection (d) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment for not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than $1,000,000.

(f) Special rules

For the purposes of subsection (e)—

(1) A person's state of mind is knowing with respect to—

(A) his conduct, if he is aware of the nature of his conduct;

(B) an existing circumstance, if he is aware or believes that the circumstance exists; or

(C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

(A) the person is responsible only for actual awareness or actual belief that he possessed; and

(B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from

relevant information.

(3) It is an affirmative defense to a prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence.

(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subsection (e) and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(5) The term "organization" means a legal entity, other than a government, established, or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(6) The term "serious bodily injury" means—

(A) bodily injury which involves a substantial risk of death;

(B) unconsciousness;

(C) extreme physical pain;

(D) protracted and obvious disfigurement; or

(E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(g) Civil penalty

Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

(h) Interim status corrective action orders

(1) Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

(2) Any order issued under this subsection may include a suspension or revocation of authorization to operate under section 6925(e) of this title, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Administrator may assess, and such person shall be liable to the United States for, a civil penalty in an amount not to exceed $25,000 for each day of noncompliance with the order.

(Pub. L. 89–272, title II, §3008, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2811; amended Pub. L. 95–609, §7(k), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, §13, Oct. 21, 1980, 94 Stat. 2339; Pub. L. 98–616, title II, §§232, 233, 245(c), title IV, §403(d)(1)–(3), Nov. 8, 1984, 98 Stat. 3256, 3257, 3264, 3272; Pub. L. 99–499, title II, §205(i), Oct. 17, 1986, 100 Stat. 1703.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (d)(1), (2)(A), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1986—Subsec. (d)(4). Pub. L. 99–499, §205(i)(1), inserted "or any used oil not identified or listed as a hazardous waste under this subchapter".

Subsec. (d)(5). Pub. L. 99–499, §205(i)(1), (2), inserted "or any used oil not identified or listed as a hazardous waste under this subchapter" and struck out "; or" after "accompanied by a manifest;".

Subsec. (d)(6). Pub. L. 99–499, §205(i)(3), inserted at end "; or".

Subsec. (d)(7). Pub. L. 99–499, §205(i)(4), added par. (7).

Subsec. (e). Pub. L. 99–499, §205(i)(5), inserted "or used oil not identified or listed as a hazardous waste under this subchapter" and substituted "(5), (6), or (7)" for "(5), or (6)".

1984—Subsec. (a)(1). Pub. L. 98–616, §403(d)(1), in amending par. (1) generally, expanded authority of Administrator by empowering him to determine that a person "has violated" a requirement of this subchapter, and to assess a civil penalty for a past or current violation.

Subsec. (a)(3). Pub. L. 98–616, §403(d)(2), in amending par. (3) generally, substituted provision that any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation, and provision that any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter, and that in assessing such a penalty, the Administrator take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, for provision that if such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator, whether issued by the Administrator or the State.

Subsec. (b). Pub. L. 98–616, §233(b), inserted "issued under this section".

Subsec. (c). Pub. L. 98–616, §403(d)(3), substituted provisions relating to penalties for violation of compliance orders for former provisions which set forth requirements for compliance orders.

Subsec. (d). Pub. L. 98–616, §232(a)(3), amended closing provisions generally. Prior to amendment, closing provisions read as follows: "shall, upon conviction, be subject to a fine of not more than $25,000 ($50,000 in the case of a violation of paragraph (1) or (2)) for each day of violation, or to imprisonment not to exceed one year (two years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both."

Subsec. (d)(1). Pub. L. 98–616, §232(a)(1), inserted "or causes to be transported" and substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in case of a State program)".

Subsec. (d)(2). Pub. L. 98–616, §232(a)(2)(A), struck out "either" after "subchapter" in provision preceding subpar. (A).

Subsec. (d)(2)(A). Pub. L. 98–616, §232(a)(2)(B), (c), substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in the case of a State program)" and struck out "having obtained" before "a permit under".

Subsec. (d)(2)(C). Pub. L. 98–616, §232(a)(2)(C), added subpar. (C).

Subsec. (d)(3) to (5). Pub. L. 98–616, §232(a)(3), in amending pars. (3) and (4) generally, expanded par. (3) by providing criminal penalties for one who knowingly omits material information from documents required to be filed, maintained or used under this subchapter, expanded par. (4) by providing criminal penalties for one who knowingly fails to file required material under this subchapter, and added par. (5).

Subsec. (d)(6). Pub. L. 98–616, §245(c), added par. (6).

Subsec. (e). Pub. L. 98–616, §232(b), in amending subsec. (e) generally, struck out provisions referring to violations of interim status standards and omission of material information from permit applications, struck out provision requiring proof of "unjustifiable and inexcusable disregard for human life" or "extreme indifference to human life" for conviction under this subsection, and inserted provision increasing maximum prison sentence to fifteen years for violation of subsec. (d)(1) through (6) of this section by one who knowingly places another person in imminent danger of death or serious bodily injury, replacing former provision calling for maximum imprisonment of two years, or five years in cases evidencing extreme indifference to human life.

Subsec. (h). Pub. L. 98–616, §233(a), added subsec. (h).

1980—Subsec. (a)(1). Pub. L. 96–482, §13(1), (2), struck out "the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification" before "the Administrator may issue" and substituted "compliance immediately or within a specified time period" for "compliance within a specified time period".

Subsec. (a)(2). Pub. L. 96–482, §13(2), struck out "thirty days" after "violation has occurred".

Subsec. (b). Pub. L. 96–482, §13(3), substituted "order shall become final unless, no later than thirty days after the order is served" for "order or any suspension or revocation of a permit shall become final unless, no later than thirty days after the order or notice of the suspension or revocation is served".

Subsec. (c). Pub. L. 96–482, §13(4), authorized orders for suspension or revocation of permits.

Subsec. (d). Pub. L. 96–482, §13(5), in par. (2), designated existing provisions as subpar. (A) and added subpar. (B), in par. (3), inserted provision requiring the statement or representation to be material, added par. (4), and in provisions following par. (4), inserted provision authorizing a fine of $50,000 and a two year imprisonment for violation of par. (1) or (2).

Subsecs. (e) to (g). Pub. L. 96–482, §13(5), added subsecs. (e) to (g).

1978—Subsec. (d)(1). Pub. L. 95–609, §7(k)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (d)(2). Pub. L. 95–609, §7(k)(2), inserted provisions relating to treatment or storage of hazardous wastes and relating to title I of the Marine Protection, Research, and Sanctuaries Act.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6929. Retention of State authority

Upon the effective date of regulations under this subchapter no State or political subdivision may impose any requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subchapter is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect. Nothing in this chapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations. Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.

(Pub. L. 89–272, title II, §3009, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96–482, §14, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98–616, title II, §213(b), Nov. 8, 1984, 98 Stat. 3242.)

EDITORIAL NOTES

AMENDMENTS

1984—Pub. L. 98–616 inserted "Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State."

1980—Pub. L. 96–482 prohibited construction of this chapter as barring a State from imposing more

stringent requirements than provided in Federal regulations.

§6930. Effective date

(a) Preliminary notification

Not later than ninety days after promulgation of regulations under section 6921 of this title identifying by its characteristics or listing any substance as hazardous waste subject to this subchapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not later than fifteen months after November 8, 1984—

(1) the owner or operator of any facility which produces a fuel (A) from any hazardous waste identified or listed under section 6921 of this title, (B) from such hazardous waste identified or listed under section 6921 of this title and any other material, (C) from used oil, or (D) from used oil and any other material;

(2) the owner or operator of any facility (other than a single- or two-family residence) which burns for purposes of energy recovery any fuel produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title; and

(3) any person who distributes or markets any fuel which is produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title [1]

shall file with the Administrator (and with the State in the case of a State with an authorized hazardous waste program) a notification stating the location and general description of the facility, together with a description of the identified or listed hazardous waste involved and, in the case of a facility referred to in paragraph (1) or (2), a description of the production or energy recovery activity carried out at the facility and such other information as the Administrator deems necessary. For purposes of the preceding provisions, the term "hazardous waste listed under section 6921 of this title" also includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel. Notification shall not be required under the second sentence of this subsection in the case of facilities (such as residential boilers) where the Administrator determines that such notification is not necessary in order for the Administrator to obtain sufficient information respecting current practices of facilities using hazardous waste for energy recovery. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. Nothing in this subsection shall affect regulatory determinations under section 6935 of this title. In revising any regulation under section 6921 of this title identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter, the Administrator may require any person referred to in the preceding provisions to file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) the notification described in the preceding provisions. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

(b) Effective date of regulation

The regulations under this subchapter respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof). At the time a regulation is promulgated,

the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for:

(1) a regulation with which the Administrator finds the regulated community does not need six months to come into compliance;

(2) a regulation which responds to an emergency situation; or

(3) other good cause found and published with the regulation.

(Pub. L. 89–272, title II, §3010, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96–482, §15, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98–616, title II, §§204(a), 234, Nov. 8, 1984, 98 Stat. 3235, 3258.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §204(a), inserted provisions after first sentence relating to burning and blending of hazardous wastes and substituted "the preceding provisions" for "the preceding sentence" in three places.

Subsec. (b). Pub. L. 98–616, §234, inserted provision that at the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for a regulation with which the Administrator finds the regulated community does not need six months to come into compliance, a regulation which responds to an emergency situation, or other good cause found and published with the regulation.

1980—Subsec. (a). Pub. L. 96–482 struck out "or revision" after "after promulgation or revision of regulations" and inserted provision for filing of notification when revising any regulation identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *So in original. Probably should be followed by a semicolon.*

§6931. Authorization of assistance to States

(a) Authorization of appropriations

There is authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979 [1] $20,000,000 for fiscal year 1980, $35,000,000 for fiscal year 1981, $40,000,000 for the fiscal year 1982, $55,000,000 for the fiscal year 1985, $60,000,000 for the fiscal year 1986, $60,000,000 for the fiscal year 1987, and $60,000,000 for the fiscal year 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

(b) Allocation

Amounts authorized to be appropriated under subsection (a) shall be allocated among the States on the basis of regulations promulgated by the Administrator, after consultation with the States, which take into account, the extent to which hazardous waste is generated, transported, treated, stored, and disposed of within such State, the extent of exposure of human beings and the environment within such State to such waste, and such other factors as the Administrator deems appropriate.

(c) Activities included

State hazardous waste programs for which grants may be made under subsection (a) may include (but shall not be limited to) planning for hazardous waste treatment, storage and disposal facilities, and the development and execution of programs to protect health and the environment from inactive facilities which may contain hazardous waste.

(Pub. L. 89–272, title II, §3011, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96–482, §§16, 31(b), Oct. 21, 1980, 94 Stat. 2342, 2352; Pub. L. 98–616, §2(b), Nov. 8, 1984, 98 Stat. 3222.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616 substituted "$40,000,000 for fiscal year 1982, $55,000,000 for fiscal year 1985, $60,000,000 for fiscal year 1986, $60,000,000 for fiscal year 1987, and $60,000,000 for fiscal year 1988" for "and $40,000,000 for fiscal year 1982".

1980—Subsec. (a). Pub. L. 96–482, §31(b), authorized appropriation of $20,000,000, $35,000,000, and $40,000,000 for fiscal years 1980, 1981, and 1982, respectively.

Subsec. (c). Pub. L. 96–482, §16, added subsec. (c).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *So in original. Probably should be followed by a comma.*

§6932. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 89–272, title II, §3012, as added Pub. L. 96–463, §7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89–272 by Pub. L. 98–616, title V, §502(g)(1), Nov. 8, 1984, 98 Stat. 3277, and was transferred to section 6935 of this title.

§6933. Hazardous waste site inventory

(a) State inventory programs

Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory describing the location of each site within such State at which hazardous waste has at any time been stored or disposed of. Such inventory shall contain—

(1) a description of the location of the sites at which any such storage or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage or disposal;

(2) such information relating to the amount, nature, and toxicity of the hazardous waste at each such site as may be practicable to obtain and as may be necessary to determine the extent of any

health hazard which may be associated with such site;

(3) the name and address, or corporate headquarters of, the owner of each such site, determined as of the date of preparation of the inventory;

(4) an identification of the types or techniques of waste treatment or disposal which have been used at each such site; and

(5) information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraphs (1) through (5) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 6927 of this title for purposes of this section in the same manner and to the same extent as provided in such section in the case of States having an authorized hazardous waste program, and any State may by order require any person to submit such information as may be necessary to compile the data referred to in paragraphs (1) through (5).

(b) Environmental Protection Agency program

If the Administrator determines that any State program under subsection (a) is not adequately providing information respecting the sites in such State referred to in subsection (a), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program in such State. In any such case—

(1) the Administrator shall have the authorities provided with respect to State programs under subsection (a);

(2) the funds allocated under subsection (c) for grants to States under this section may be used by the Administrator for carrying out such program in such State; and

(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

(c) Grants

(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the States for purposes of carrying out such a program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before October 21, 1980, to reimburse such State for all, or any portion of, the costs incurred by such State in conducting such program.

(2) There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1985 through 1988.

(d) No impediment to immediate remedial action

Nothing in this section shall be construed to provide that the Administrator or any State should, pending completion of the inventory required under this section, postpone undertaking any enforcement or remedial action with respect to any site at which hazardous waste has been treated, stored, or disposed of.

(Pub. L. 89–272, title II, §3012, as added Pub. L. 96–482, §17(a), Oct. 21, 1980, 94 Stat. 2342; amended Pub. L. 98–616, §2(c), Nov. 8, 1984, 98 Stat. 3222.)

EDITORIAL NOTES

CODIFICATION

Another section 3012 of Pub. L. 89–272 as added by Pub. L. 96–463, §7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89–272, and is classified to section 6935 of this title.

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98–616 substituted "$25,000,000 for each of the fiscal years 1985 through 1988" for "$20,000,000".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6934. Monitoring, analysis, and testing

(a) Authority of Administrator

If the Administrator determines, upon receipt of any information, that—

(1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

(2) the release of any such waste from such facility or site

may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis, and reporting with respect to such facility or site as the Administrator deems reasonable to ascertain the nature and extent of such hazard.

(b) Previous owners and operators

In the case of any facility or site not in operation at the time a determination is made under subsection (a) with respect to the facility or site, if the Administrator finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a).

(c) Proposal

An order under subsection (a) or (b) shall require the person to whom such order is issued to submit to the Administrator within 30 days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The Administrator may, after providing such person with an opportunity to confer with the Administrator respecting such proposal, require such person to carry out such monitoring, testing, analysis, and reporting in accordance with such proposal, and such modifications in such proposal as the Administrator deems reasonable to ascertain the nature and extent of the hazard.

(d) Monitoring, etc., carried out by Administrator

(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in

subsection (a) or (b) who is able to conduct such monitoring, testing, analysis, or reporting, he may—

(A) conduct monitoring, testing, or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or

(B) authorize a State or local authority or other person to carry out any such action,

and require, by order, the owner or operator referred to in subsection (a) or (b) to reimburse the Administrator or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the Administrator which confirms the results of an order issued under subsection (a) or (b).

(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in section 6927 of this title.

(e) Enforcement

The Administrator may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the United States district court in which the defendant is located, resides, or is doing business. Such court shall have jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed $5,000 for each day during which such failure or refusal occurs.

(Pub. L. 89–272, title II, §3013, as added Pub. L. 96–482, §17(a), Oct. 21, 1980, 94 Stat. 2344.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6935. Restrictions on recycled oil

(a) In general

Not later than one year after October 15, 1980, the Administrator shall promulgate regulations establishing such performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.

(b) Identification or listing of used oil as hazardous waste

Not later than twelve months after November 8, 1984, the Administrator shall propose whether to list or identify used automobile and truck crankcase oil as hazardous waste under section 6921 of this title. Not later than twenty-four months after November 8, 1984, the Administrator shall make a final determination whether to list or identify used automobile and truck crankcase oil and other used oil as hazardous wastes under section 6921 of this title.

(c) Used oil which is recycled

(1) With respect to generators and transporters of used oil identified or listed as a hazardous waste under section 6921 of this title, the standards promulgated under section [1] 6921(d), 6922, and 6923 of this title shall not apply to such used oil if such used oil is recycled.

(2)(A) In the case of used oil which is exempt under paragraph (1), not later than twenty-four

months after November 8, 1984, the Administrator shall promulgate such standards under this subsection regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment. In promulgating such regulations with respect to generators, the Administrator shall take into account the effect of such regulations on environmentally acceptable types of used oil recycling and the effect of such regulations on small quantity generators and generators which are small businesses (as defined by the Administrator).

(B) The regulations promulgated under this subsection shall provide that no generator of used oil which is exempt under paragraph (1) from the standards promulgated under section [1] 6921(d), 6922, and 6923 of this title shall be subject to any manifest requirement or any associated recordkeeping and reporting requirement with respect to such used oil if such generator—

(i) either—

(I) enters into an agreement or other arrangement (including an agreement or arrangement with an independent transporter or with an agent of the recycler) for delivery of such used oil to a recycling facility which has a permit under section 6925(c) of this title (or for which a valid permit is deemed to be in effect under subsection (d)), or

(II) recycles such used oil at one or more facilities of the generator which has such a permit under section 6925 of this title (or for which a valid permit is deemed to have been issued under subsection (d) of this section);

(ii) such used oil is not mixed by the generator with other types of hazardous wastes; and

(iii) the generator maintains such records relating to such used oil, including records of agreements or other arrangements for delivery of such used oil to any recycling facility referred to in clause (i)(I), as the Administrator deems necessary to protect human health and the environment.

(3) The regulations under this subsection regarding the transportation of used oil which is exempt from the standards promulgated under section [1] 6921(d), 6922, and 6923 of this title under paragraph (1) shall require the transporters of such used oil to deliver such used oil to a facility which has a valid permit under section 6925 of this title or which is deemed to have a valid permit under subsection (d) of this section. The Administrator shall also establish other standards for such transporters as may be necessary to protect human health and the environment.

(d) Permits

(1) The owner or operator of a facility which recycles used oil which is exempt under subsection (c)(1), shall be deemed to have a permit under this subsection for all such treatment or recycling (and any associated tank or container storage) if such owner and operator comply with standards promulgated by the Administrator under section 6924 of this title; except that the Administrator may require such owners and operators to obtain an individual permit under section 6925(c) of this title if he determines that an individual permit is necessary to protect human health and the environment.

(2) Notwithstanding any other provision of law, any generator who recycles used oil which is exempt under subsection (c)(1) shall not be required to obtain a permit under section 6925(c) of this title with respect to such used oil until the Administrator has promulgated standards under section 6924 of this title regarding the recycling of such used oil.

(Pub. L. 89–272, title II, §3014, formerly §3012, as added Pub. L. 96–463, §7(a), Oct. 15, 1980, 94 Stat. 2057, and renumbered and amended Pub. L. 98–616, title II, §§241(a), 242, title V, §502(g)(1), Nov. 8, 1984, 98 Stat. 3258, 3260, 3277.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 6932 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §§241(a), 242, designated existing provisions as subsec. (a) and inserted ", consistent with the protection of human health and the environment" at end.

Subsecs. (b) to (d). Pub. L. 98–616, §241(a), added subsecs. (b) to (d).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *So in original. Probably should be "sections".*

§6936. Expansion during interim status

(a) Waste piles

The owner or operator of a waste pile qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the same requirements for liners and leachate collection systems or equivalent protection provided in regulations promulgated by the Administrator under section 6924 of this title before October 1, 1982, or revised under section 6924(o) of this title (relating to minimum technological requirements), for new facilities receiving individual permits under subsection (c) of section 6925 of this title, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under section 6925 of this title, and with respect to waste received beginning six months after November 8, 1984.

(b) Landfills and surface impoundments

(1) The owner or operator of a landfill or surface impoundment qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the requirements of section 6924(o) of this title (relating to minimum technological requirements), with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under this section, and with respect to waste received beginning 6 months after November 8, 1984.

(2) The owner or operator of each unit referred to in paragraph (1) shall notify the Administrator (or the State, if appropriate) at least sixty days prior to receiving waste. The Administrator (or the State) shall require the filing, within six months of receipt of such notice, of an application for a final determination regarding the issuance of a permit for each facility submitting such notice.

(3) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of this section and in good faith compliance with the Administrator's regulations and guidance documents governing liners and leachate collection systems, no liner or leachate collection system which is different from that which was so installed pursuant to this section shall be required for such unit by the Administrator when issuing the first permit under section 6925 of this title to such facility, except that the Administrator shall not be precluded from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this section is leaking. The Administrator may, under section 6924 of this title, amend the requirements for liners and leachate collection systems required under this section as may be necessary to provide additional protection for human health and the environment.

(Pub. L. 89–272, title II, §3015, as added Pub. L. 98–616, title II, §243(a), Nov. 8, 1984, 98 Stat. 3260.)

§6937. Inventory of Federal agency hazardous waste facilities

(a) Program requirement; submission; availability; contents

Each Federal agency shall undertake a continuing program to compile, publish, and submit to the Administrator (and to the State in the case of sites in States having an authorized hazardous waste program) an inventory of each site which the Federal agency owns or operates or has owned or operated at which hazardous waste is stored, treated, or disposed of or has been disposed of at any time. The inventory shall be submitted every two years beginning January 31, 1986. Such inventory shall be available to the public as provided in section 6927(b) of this title. Information previously submitted by a Federal agency under section 9603 of this title, or under section 6925 or 6930 of this title, or under this section need not be resubmitted except that the agency shall update any previous submission to reflect the latest available data and information. The inventory shall include each of the following:

(1) A description of the location of each site at which any such treatment, storage, or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage, treatment, or disposal, and where hazardous waste has been disposed, a description of hydrogeology of the site and the location of withdrawal wells and surface water within one mile of the site.

(2) Such information relating to the amount, nature, and toxicity of the hazardous waste in each site as may be necessary to determine the extent of any health hazard which may be associated with any site.

(3) Information on the known nature and extent of environmental contamination at each site, including a description of the monitoring data obtained.

(4) Information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated, stored, or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

(5) A list of sites at which hazardous waste has been disposed and environmental monitoring data has not been obtained, and the reasons for the lack of monitoring data at each site.

(6) A description of response actions undertaken or contemplated at contaminated sites.

(7) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at each site.

(8) The name and address and responsible Federal agency for each site, determined as of the date of preparation of the inventory.

(b) Environmental Protection Agency program

If the Administrator determines that any Federal agency under subsection (a) is not adequately providing information respecting the sites referred to in subsection (a), the Administrator shall notify the chief official of such agency. If within ninety days following such notification, the Federal agency has not undertaken a program to adequately provide such information, the Administrator shall carry out the inventory program for such agency.

(Pub. L. 89–272, title II, §3016, as added Pub. L. 98–616, title II, §244, Nov. 8, 1984, 98 Stat. 3261.)

§6938. Export of hazardous wastes

(a) In general

Beginning twenty-four months after November 8, 1984, no person shall export any hazardous waste identified or listed under this subchapter unless [1]

(1)(A) such person has provided the notification required in subsection (c) of this section,

(B) the government of the receiving country has consented to accept such hazardous waste,

(C) a copy of the receiving country's written consent is attached to the manifest accompanying each waste shipment, and

(D) the shipment conforms with the terms of the consent of the government of the receiving country required pursuant to subsection (e), or

(2) the United States and the government of the receiving country have entered into an agreement as provided for in subsection (f) and the shipment conforms with the terms of such agreement.

(b) Regulations

Not later than twelve months after November 8, 1984, the Administrator shall promulgate the regulations necessary to implement this section. Such regulations shall become effective one hundred and eighty days after promulgation.

(c) Notification

Any person who intends to export a hazardous waste identified or listed under this subchapter beginning twelve months after November 8, 1984, shall, before such hazardous waste is scheduled to leave the United States, provide notification to the Administrator. Such notification shall contain the following information:

(1) the name and address of the exporter;

(2) the types and estimated quantities of hazardous waste to be exported;

(3) the estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;

(4) the ports of entry;

(5) a description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) the name and address of the ultimate treatment, storage or disposal facility.

(d) Procedures for requesting consent of receiving country

Within thirty days of the Administrator's receipt of a complete notification under this section, the Secretary of State, acting on behalf of the Administrator, shall—

(1) forward a copy of the notification to the government of the receiving country;

(2) advise the government that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the hazardous waste;

(3) request the government to provide the Secretary with a written consent or objection to the terms of the notification; and

(4) forward to the government of the receiving country a description of the Federal regulations which would apply to the treatment, storage, and disposal of the hazardous waste in the United States.

(e) Conveyance of written consent to exporter

Within thirty days of receipt by the Secretary of State of the receiving country's written consent or objection (or any subsequent communication withdrawing a prior consent or objection), the Administrator shall forward such a consent, objection, or other communication to the exporter.

(f) International agreements

Where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, only the requirements of subsections (a)(2) and (g) shall apply.

(g) Reports

After November 8, 1984, any person who exports any hazardous waste identified or listed under section 6921 of this title shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(h) Other standards

Nothing in this section shall preclude the Administrator from establishing other standards for the

export of hazardous wastes under section 6922 of this title or section 6923 of this title.

(Pub. L. 89–272, title II, §3017, as added Pub. L. 98–616, title II, §245(a), Nov. 8, 1984, 98 Stat. 3262.)

[1] *So in original. Probably should be followed by a dash.*

§6939. Domestic sewage

(a) Report

The Administrator shall, not later than 15 months after November 8, 1984, submit a report to the Congress concerning those substances identified or listed under section 6921 of this title which are not regulated under this subchapter by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size and number of generators which dispose of such substances in this manner, the types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

(b) Revisions of regulations

Within eighteen months after submitting the report specified in subsection (a), the Administrator shall revise existing regulations and promulgate such additional regulations pursuant to this subchapter (or any other authority of the Administrator, including section 1317 of title 33) as are necessary to assure that substances identified or listed under section 6921 of this title which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.

(c) Report on wastewater lagoons

The Administrator shall, within thirty-six months after November 8, 1984, submit a report to Congress concerning wastewater lagoons at publicly owned treatment works and their effect on groundwater quality. Such report shall include—

(1) the number and size of such lagoons;

(2) the types and quantities of waste contained in such lagoons;

(3) the extent to which such waste has been or may be released from such lagoons and contaminate ground water; and

(4) available alternatives for preventing or controlling such releases.

The Administrator may utilize the authority of sections 6927 and 6934 of this title for the purpose of completing such report.

(d) Application of sections 6927 and 6930

The provisions of sections 6927 and 6930 of this title shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste.

(Pub. L. 89–272, title II, §3018, as added Pub. L. 98–616, title II, §246(a), Nov. 8, 1984, 98 Stat. 3264.)

§6939a. Exposure information and health assessments

(a) Exposure information

Beginning on the date nine months after November 8, 1984, each application for a final determination regarding a permit under section 6925(c) of this title for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or

operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(1) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(2) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (1); and

(3) the potential magnitude and nature of the human exposure resulting from such releases.

The owner or operator of a landfill or surface impoundment for which an application for such a final determination under section 6925(c) of this title has been submitted prior to November 8, 1984, shall submit the information required by this subsection to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after November 8, 1984.

(b) Health assessments

(1) The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by subsection (a), together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 9604(i) of this title.

(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the concurrence of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator of such Agency shall conduct such health assessment.

(c) Members of the public

Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility, or as to the risks or health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic Substances and Disease Registry, the Administrator, or the State (in the case of a State with an authorized program).

(d) Priority

In determining the order in which to conduct health assessments under this subsection, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous constituents, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subsection (f).

(e) Periodic reports

The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out under this section. Such assessments or other activities shall be reported after appropriate peer review.

(f) "Health assessments" defined

For the purposes of this section, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities subject to this section, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available

recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

(g) Cost recovery

In any case in which a health assessment performed under this section discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 9607 of this title from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such release.

(Pub. L. 89–272, title II, §3019, as added Pub. L. 98–616, title II, §247(a), Nov. 8, 1984, 98 Stat. 3265.)

§6939b. Interim control of hazardous waste injection

(a) Underground source of drinking water

No hazardous waste may be disposed of by underground injection—

(1) into a formation which contains (within one-quarter mile of the well used for such underground injection) an underground source of drinking water; or

(2) above such a formation.

The prohibitions established under this section shall take effect 6 months after November 8, 1984, except in the case of any State in which identical or more stringent prohibitions are in effect before such date under the Safe Drinking Water Act [42 U.S.C. 300f et seq.].

(b) Actions under Comprehensive Environmental Response, Compensation, and Liability Act

Subsection (a) shall not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn, if—

(1) such injection is—

(A) a response action taken under section 9604 or 9606 of this title, or

(B) part of corrective action required under this chapter [1]

intended to clean up such contamination;

(2) such contaminated ground water is treated to substantially reduce hazardous constituents prior to such injection; and

(3) such response action or corrective action will, upon completion, be sufficient to protect human health and the environment.

(c) Enforcement

In addition to enforcement under the provisions of this chapter, the prohibitions established under paragraphs (1) and (2) of subsection (a) shall be enforceable under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] in any State—

(1) which has adopted identical or more stringent prohibitions under part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.] and which has assumed primary enforcement responsibility under that Act for enforcement of such prohibitions; or

(2) in which the Administrator has adopted identical or more stringent prohibitions under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and is exercising primary enforcement responsibility under that Act for enforcement of such prohibitions.

(d) Definitions

The terms "primary enforcement responsibility", "underground source of drinking water", "formation" and "well" have the same meanings as provided in regulations of the Administrator under the Safe Drinking Water Act [42 U.S.C. 300f et seq.]. The term "Safe Drinking Water Act" means title XIV of the Public Health Service Act.

(Pub. L. 89–272, title II, §3020, formerly §7010, as added Pub. L. 98–616, title IV, §405(a), Nov. 8, 1984, 98 Stat. 3273; renumbered §3020, and amended Pub. L. 99–339, title II, §201(c), June 19, 1986, 100 Stat. 654.)

EDITORIAL NOTES

REFERENCES IN TEXT

Title XIV of the Public Health Service Act, referred to in subsec. (d), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, known as the Safe Drinking Water Act, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. Part C of the Act is classified generally to part C (§300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 6979a of this title, prior to renumbering by Pub. L. 99–339.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–339, §201(c)(1), substituted "enforcement under the provisions of this chapter" for "enforcement under sections 6972 and 6973 of this title".

[1] So in original. Probably should be followed by a comma.

§6939c. Mixed waste inventory reports and plan

(a) Mixed waste inventory reports

(1) Requirement

Not later than 180 days after October 6, 1992, the Secretary of Energy shall submit to the Administrator and to the Governor of each State in which the Department of Energy stores or generates mixed wastes the following reports:

(A) A report containing a national inventory of all such mixed wastes, regardless of the time they were generated, on a State-by-State basis.

(B) A report containing a national inventory of mixed waste treatment capacities and technologies.

(2) Inventory of wastes

The report required by paragraph (1)(A) shall include the following:

(A) A description of each type of mixed waste at each Department of Energy facility in each State, including, at a minimum, the name of the waste stream.

(B) The amount of each type of mixed waste currently stored at each Department of Energy facility in each State, set forth separately by mixed waste that is subject to the land disposal prohibition requirements of section 6924 of this title and mixed waste that is not subject to such prohibition requirements.

(C) An estimate of the amount of each type of mixed waste the Department expects to generate in the next 5 years at each Department of Energy facility in each State.

(D) A description of any waste minimization actions the Department has implemented at each Department of Energy facility in each State for each mixed waste stream.

(E) The EPA hazardous waste code for each type of mixed waste containing waste that has been characterized at each Department of Energy facility in each State.

(F) An inventory of each type of waste that has not been characterized by sampling and

analysis at each Department of Energy facility in each State.

(G) The basis for the Department's determination of the applicable hazardous waste code for each type of mixed waste at each Department of Energy facility and a description of whether the determination is based on sampling and analysis conducted on the waste or on the basis of process knowledge.

(H) A description of the source of each type of mixed waste at each Department of Energy facility in each State.

(I) The land disposal prohibition treatment technology or technologies specified for the hazardous waste component of each type of mixed waste at each Department of Energy facility in each State.

(J) A statement of whether and how the radionuclide content of the waste alters or affects use of the technologies described in subparagraph (I).

(3) Inventory of treatment capacities and technologies

The report required by paragraph (1)(B) shall include the following:

(A) An estimate of the available treatment capacity for each waste described in the report required by paragraph (1)(A) for which treatment technologies exist.

(B) A description, including the capacity, number and location, of each treatment unit considered in calculating the estimate under subparagraph (A).

(C) A description, including the capacity, number and location, of any existing treatment unit that was not considered in calculating the estimate under subparagraph (A) but that could, alone or in conjunction with other treatment units, be used to treat any of the wastes described in the report required by paragraph (1)(A) to meet the requirements of regulations promulgated pursuant to section 6924(m) of this title.

(D) For each unit listed in subparagraph (C), a statement of the reasons why the unit was not included in calculating the estimate under subparagraph (A).

(E) A description, including the capacity, number, location, and estimated date of availability, of each treatment unit currently proposed to increase the treatment capacities estimated under subparagraph (A).

(F) For each waste described in the report required by paragraph (1)(A) for which the Department has determined no treatment technology exists, information sufficient to support such determination and a description of the technological approaches the Department anticipates will need to be developed to treat the waste.

(4) Comments and revisions

Not later than 90 days after the date of the submission of the reports by the Secretary of Energy under paragraph (1), the Administrator and each State which received the reports shall submit any comments they may have concerning the reports to the Department of Energy. The Secretary of Energy shall consider and publish the comments prior to publication of the final report.

(5) Requests for additional information

Nothing in this subsection limits or restricts the authority of States or the Administrator to request additional information from the Secretary of Energy.

(b) Plan for development of treatment capacities and technologies

(1) Plan requirement

(A)(i) For each facility at which the Department of Energy generates or stores mixed wastes, except any facility subject to a permit, agreement, or order described in clause (ii), the Secretary of Energy shall develop and submit, as provided in paragraph (2), a plan for developing treatment capacities and technologies to treat all of the facility's mixed wastes, regardless of the time they were generated, to the standards promulgated pursuant to section 6924(m) of this title.

(ii) Clause (i) shall not apply with respect to any facility subject to any permit establishing a schedule for treatment of such wastes, or any existing agreement or administrative or judicial order governing the treatment of such wastes, to which the State is a party.

(B) Each plan shall contain the following:

(i) For mixed wastes for which treatment technologies exist, a schedule for submitting all applicable permit applications, entering into contracts, initiating construction, conducting systems testing, commencing operations, and processing backlogged and currently generated mixed wastes.

(ii) For mixed wastes for which no treatment technologies exist, a schedule for identifying and developing such technologies, identifying the funding requirements for the identification and development of such technologies, submitting treatability study exemptions, and submitting research and development permit applications.

(iii) For all cases where the Department proposes radionuclide separation of mixed wastes, or materials derived from mixed wastes, it shall provide an estimate of the volume of waste generated by each case of radionuclide separation, the volume of waste that would exist or be generated without radionuclide separation, the estimated costs of waste treatment and disposal if radionuclide separation is used compared to the estimated costs if it is not used, and the assumptions underlying such waste volume and cost estimates.

(C) A plan required under this subsection may provide for centralized, regional, or on-site treatment of mixed wastes, or any combination thereof.

(2) Review and approval of plan

(A) For each facility that is located in a State (i) with authority under State law to prohibit land disposal of mixed waste until the waste has been treated and (ii) with both authority under State law to regulate the hazardous components of mixed waste and authorization from the Environmental Protection Agency under section 6926 of this title to regulate the hazardous components of mixed waste, the Secretary of Energy shall submit the plan required under paragraph (1) to the appropriate State regulatory officials for their review and approval, modification, or disapproval. In reviewing the plan, the State shall consider the need for regional treatment facilities. The State shall consult with the Administrator and any other State in which a facility affected by the plan is located and consider public comments in making its determination on the plan. The State shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(B) For each facility located in a State that does not have the authority described in subparagraph (A), the Secretary shall submit the plan required under paragraph (1) to the Administrator of the Environmental Protection Agency for review and approval, modification, or disapproval. A copy of the plan also shall be provided by the Secretary to the State in which such facility is located. In reviewing the plan, the Administrator shall consider the need for regional treatment facilities. The Administrator shall consult with the State or States in which any facility affected by the plan is located and consider public comments in making a determination on the plan. The Administrator shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(C) Upon the approval of a plan under this paragraph by the Administrator or a State, the Administrator shall issue an order under section 6928(a) of this title, or the State shall issue an order under appropriate State authority, requiring compliance with the approved plan.

(3) Public participation

Upon submission of a plan by the Secretary of Energy to the Administrator or a State, and before approval of the plan by the Administrator or a State, the Administrator or State shall publish a notice of the availability of the submitted plan and make such submitted plan available to the public on request.

(4) Revisions of plan

If any revisions of an approved plan are proposed by the Secretary of Energy or required by the Administrator or a State, the provisions of paragraphs (2) and (3) shall apply to the revisions in the same manner as they apply to the original plan.

(5) Waiver of plan requirement

(A) A State may waive the requirement for the Secretary of Energy to develop and submit a plan under this subsection for a facility located in the State if the State (i) enters into an agreement with the Secretary of Energy that addresses compliance at that facility with section 6924(j) of this title with respect to mixed waste, and (ii) issues an order requiring compliance with such agreement and which is in effect.

(B) Any violation of an agreement or order referred to in subparagraph (A) is subject to the waiver of sovereign immunity contained in section 6961(a) of this title.

(c) Schedule and progress reports

(1) Schedule

Not later than 6 months after October 6, 1992, the Secretary of Energy shall publish in the Federal Register a schedule for submitting the plans required under subsection (b).

(2) Progress reports

(A) Not later than the deadlines specified in subparagraph (B), the Secretary of Energy shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a progress report containing the following:

(i) An identification, by facility, of the plans that have been submitted to States or the Administrator of the Environmental Protection Agency pursuant to subsection (b).

(ii) The status of State and Environmental Protection Agency review and approval of each such plan.

(iii) The number of orders requiring compliance with such plans that are in effect.

(iv) For the first 2 reports required under this paragraph, an identification of the plans required under such subsection (b) that the Secretary expects to submit in the 12-month period following submission of the report.

(B) The Secretary of Energy shall submit a report under subparagraph (A) not later than 12 months after October 6, 1992, 24 months after October 6, 1992, and 36 months after October 6, 1992.

(Pub. L. 89–272, title II, §3021, as added Pub. L. 102–386, title I, §105(a)(1), Oct. 6, 1992, 106 Stat. 1508.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

GAO REPORT

Pub. L. 102–386, title I, §105(c), Oct. 6, 1992, 106 Stat. 1512, provided that not later than 18 months after Oct. 6, 1992, the Comptroller General would submit to Congress a report, containing certain specified data, on the Department of Energy's progress in complying with subsec. (b) of this section.

§6939d. Public vessels

(a) Waste generated on public vessels

Any hazardous waste generated on a public vessel shall not be subject to the storage, manifest, inspection, or recordkeeping requirements of this chapter until such waste is transferred to a shore

facility, unless—

(1) the waste is stored on the public vessel for more than 90 days after the public vessel is placed in reserve or is otherwise no longer in service; or

(2) the waste is transferred to another public vessel within the territorial waters of the United States and is stored on such vessel or another public vessel for more than 90 days after the date of transfer.

(b) Computation of storage period

For purposes of subsection (a), the 90-day period begins on the earlier of—

(1) the date on which the public vessel on which the waste was generated is placed in reserve or is otherwise no longer in service; or

(2) the date on which the waste is transferred from the public vessel on which the waste was generated to another public vessel within the territorial waters of the United States;

and continues, without interruption, as long as the waste is stored on the original public vessel (if in reserve or not in service) or another public vessel.

(c) Definitions

For purposes of this section:

(1) The term "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a foreign nation, except when the vessel is engaged in commerce.

(2) The terms "in reserve" and "in service" have the meanings applicable to those terms under section 8663 and sections 8674 through 8678 of title 10 and regulations prescribed under those sections.

(d) Relationship to other law

Nothing in this section shall be construed as altering or otherwise affecting the provisions of section 8681 of title 10.

(Pub. L. 89–272, title II, §3022, as added Pub. L. 102–386, title I, §106(a), Oct. 6, 1992, 106 Stat. 1513; amended Pub. L. 115–232, div. A, title VIII, §809(n)(2), Aug. 13, 2018, 132 Stat. 1844.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (c)(2). Pub. L. 115–232, §809(n)(2)(A), substituted "section 8663 and sections 8674 through 8678 of title 10" for "section 7293 and sections 7304 through 7308 of title 10".

Subsec. (d). Pub. L. 115–232, §809(n)(2)(B), substituted "section 8681 of title 10" for "section 7311 of title 10".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of Title 10, Armed Forces.

§6939e. Federally owned treatment works

(a) In general

For purposes of section 6903(27) of this title, the phrase "but does not include solid or dissolved material in domestic sewage" shall apply to any solid or dissolved material introduced by a source into a federally owned treatment works if—

(1) such solid or dissolved material is subject to a pretreatment standard under section 1317 of

title 33, and the source is in compliance with such standard;

(2) for a solid or dissolved material for which a pretreatment standard has not been promulgated pursuant to section 1317 of title 33, the Administrator has promulgated a schedule for establishing such a pretreatment standard which would be applicable to such solid or dissolved material not later than 7 years after October 6, 1992, such standard is promulgated on or before the date established in the schedule, and after the effective date of such standard the source is in compliance with such standard;

(3) such solid or dissolved material is not covered by paragraph (1) or (2) and is not prohibited from land disposal under subsections [1] (d), (e), (f), or (g) of section 6924 of this title because such material has been treated in accordance with section 6924(m) of this title; or

(4) notwithstanding paragraphs [1] (1), (2), or (3), such solid or dissolved material is generated by a household or person which generates less than 100 kilograms of hazardous waste per month unless such solid or dissolved material would otherwise be an acutely hazardous waste and subject to standards, regulations, or other requirements under this chapter notwithstanding the quantity generated.

(b) Prohibition

It is unlawful to introduce into a federally owned treatment works any pollutant that is a hazardous waste.

(c) Enforcement

(1) Actions taken to enforce this section shall not require closure of a treatment works if the hazardous waste is removed or decontaminated and such removal or decontamination is adequate, in the discretion of the Administrator or, in the case of an authorized State, of the State, to protect human health and the environment.

(2) Nothing in this subsection shall be construed to prevent the Administrator or an authorized State from ordering the closure of a treatment works if the Administrator or State determines such closure is necessary for protection of human health and the environment.

(3) Nothing in this subsection shall be construed to affect any other enforcement authorities available to the Administrator or a State under this subchapter.

(d) "Federally owned treatment works" defined

For purposes of this section, the term "federally owned treatment works" means a facility that is owned and operated by a department, agency, or instrumentality of the Federal Government treating wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 1342 of title 33.

(e) Savings clause

Nothing in this section shall be construed as affecting any agreement, permit, or administrative or judicial order, or any condition or requirement contained in such an agreement, permit, or order, that is in existence on October 6, 1992, and that requires corrective action or closure at a federally owned treatment works or solid waste management unit or facility related to such a treatment works.

(Pub. L. 89–272, title II, §3023, as added Pub. L. 102–386, title I, §108(a), Oct. 6, 1992, 106 Stat. 1514.)

[1] So in original. Probably should be singular.

§6939f. Long-term storage

(a) Designation of facility

(1) In general

Not later than January 1, 2010, the Secretary of Energy (referred to in this section as the

"Secretary") shall designate a facility or facilities of the Department of Energy, which shall not include the Y–12 National Security Complex or any other portion or facility of the Oak Ridge Reservation of the Department of Energy, for the purpose of long-term management and storage of elemental mercury generated within the United States.

(2) Operation of facility

Not later than January 1, 2019, the facility designated in paragraph (1) shall be operational and shall accept custody, for the purpose of long-term management and storage, of elemental mercury generated within the United States and delivered to such facility.

(b) Fees

(1) In general

(A) Assessment and collection

After consultation with persons who are likely to deliver elemental mercury to a designated facility for long-term management and storage under the program prescribed in subsection (a), and with other interested persons, the Secretary shall assess and collect a fee at the time of delivery for providing such management and storage, based on the pro rata cost of long-term management and storage of elemental mercury delivered to the facility.

(B) Amount

The amount of the fees described in subparagraph (A)—

(i) shall be made publicly available not later than October 1, 2018;

(ii) may be adjusted annually;

(iii) shall be set in an amount sufficient to cover the costs described in paragraph (2), subject to clause (iv); and

(iv) for generators temporarily accumulating elemental mercury in a facility subject to subparagraphs (B) and (D)(iv) of subsection (g)(2) if the facility designated in subsection (a) is not operational by January 1, 2019, shall be adjusted to subtract the cost of the temporary accumulation during the period in which the facility designated under subsection (a) is not operational.

(C) Conveyance of title and permitting

If the facility designated in subsection (a) is not operational by January 1, 2020, the Secretary—

(i) shall immediately accept the conveyance of title to all elemental mercury that has accumulated in facilities in accordance with subsection (g)(2)(D), before January 1, 2020, and deliver the accumulated mercury to the facility designated under subsection (a) on the date on which the facility becomes operational;

(ii) shall pay any applicable Federal permitting costs, including the costs for permits issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)); and

(iii) shall store, or pay the cost of storage of, until the time at which a facility designated in subsection (a) is operational, accumulated mercury to which the Secretary has title under this subparagraph in a facility that has been issued a permit under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)).

(2) Costs

The costs referred to in paragraph (1)(B)(iii) are the costs to the Department of Energy of providing such management and storage, including facility operation and maintenance, security, monitoring, reporting, personnel, administration, inspections, training, fire suppression, closure, and other costs required for compliance with applicable law. Such costs shall not include costs associated with land acquisition or permitting of a designated facility under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] or other applicable law. Building design and building

construction costs shall only be included to the extent that the Secretary finds that the management and storage of elemental mercury accepted under the program under this section cannot be accomplished without construction of a new building or buildings.

(c) Report

Not later than 60 days after the end of each Federal fiscal year, the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on all of the costs incurred in the previous fiscal year associated with the long-term management and storage of elemental mercury. Such report shall set forth separately the costs associated with activities taken under this section.

(d) Management standards for a facility

(1) Guidance

Not later than October 1, 2009, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and all appropriate State agencies in affected States, shall make available, including to potential users of the long-term management and storage program established under subsection (a), guidance that establishes procedures and standards for the receipt, management, and long-term storage of elemental mercury at a designated facility or facilities, including requirements to ensure appropriate use of flasks or other suitable shipping containers. Such procedures and standards shall be protective of human health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. In addition to such procedures and standards, elemental mercury managed and stored under this section at a designated facility shall be subject to the requirements of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], including the requirements of subtitle C of that Act [42 U.S.C. 6921 et seq.], except as provided in subsection (g)(2) of this section. A designated facility is authorized to operate under interim status pursuant to section 3005(e) of the Solid Waste Disposal Act [42 U.S.C. 6925(e)] until a final decision on a permit application is made pursuant to section 3005(c) of the Solid Waste Disposal Act [42 U.S.C. 6925(c)]. Not later than January 1, 2020, the Administrator of the Environmental Protection Agency (or an authorized State) shall issue a final decision on the permit application.

(2) Training

The Secretary shall conduct operational training and emergency training for all staff that have responsibilities related to elemental mercury management, transfer, storage, monitoring, or response.

(3) Equipment

The Secretary shall ensure that each designated facility has all equipment necessary for routine operations, emergencies, monitoring, checking inventory, loading, and storing elemental mercury at the facility.

(4) Fire detection and suppression systems

The Secretary shall—

(A) ensure the installation of fire detection systems at each designated facility, including smoke detectors and heat detectors; and

(B) ensure the installation of a permanent fire suppression system, unless the Secretary determines that a permanent fire suppression system is not necessary to protect human health and the environment.

(e) Indemnification of persons delivering elemental mercury

(1) In general

(A) Except as provided in subparagraph (B) and subject to paragraph (2), the Secretary shall hold harmless, defend, and indemnify in full any person who delivers elemental mercury to a designated facility under the program established under subsection (a) from and against any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal

injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of elemental mercury as a result of acts or omissions occurring after such mercury is delivered to a designated facility described in subsection (a).

(B) To the extent that a person described in subparagraph (A) contributed to any such release or threatened release, subparagraph (A) shall not apply.

(2) Conditions

No indemnification may be afforded under this subsection unless the person seeking indemnification—

(A) notifies the Secretary in writing within 30 days after receiving written notice of the claim for which indemnification is sought;

(B) furnishes to the Secretary copies of pertinent papers the person receives;

(C) furnishes evidence or proof of any claim, loss, or damage covered by this subsection; and

(D) provides, upon request by the Secretary, access to the records and personnel of the person for purposes of defending or settling the claim or action.

(3) Authority of Secretary

(A) In any case in which the Secretary determines that the Department of Energy may be required to make indemnification payments to a person under this subsection for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage referred to in paragraph (1)(A), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

(B) In any case described in subparagraph (A), if the person to whom the Department of Energy may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this subsection.

(f) Terms, conditions, and procedures

The Secretary is authorized to establish such terms, conditions, and procedures as are necessary to carry out this section.

(g) Effect on other law

(1) In general

Except as provided in paragraph (2), nothing in this section changes or affects any Federal, State, or local law or the obligation of any person to comply with such law.

(2) Exception

(A) Elemental mercury that the Secretary is storing on a long-term basis shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)). For the purposes of section 3004(j) of the Solid Waste Disposal Act, a generator accumulating elemental mercury destined for a facility designated by the Secretary under subsection (a) for 90 days or less shall be deemed to be accumulating the mercury to facilitate proper treatment, recovery, or disposal.

(B) Elemental mercury may be stored at a facility with respect to which any permit has been issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) if—

(i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the owner or operator of the permitted facility;

(ii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will ship the mercury to the designated facility when the Secretary is able to accept the mercury; and

(iii) the owner or operator of the permitted facility certifies in writing to the Secretary that it

will not sell, or otherwise place into commerce, the mercury.

(C) Subparagraph (B) shall not apply to mercury with respect to which the owner or operator of the permitted facility fails to comply with a certification provided under clause (ii) or (iii) of that subparagraph.

(D) A generator producing elemental mercury incidentally from the beneficiation or processing of ore or related pollution control activities may accumulate the mercury produced onsite that is destined for a facility designated by the Secretary under subsection (a) for more than 90 days without a permit issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of that Act (42 U.S.C. 6924(j)), if—

(i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the generator;

(ii) the generator certifies in writing to the Secretary that the generator will ship the mercury to a designated facility when the Secretary is able to accept the mercury;

(iii) the generator certifies in writing to the Secretary that the generator is storing only mercury the generator has produced or recovered onsite and will not sell, or otherwise place into commerce, the mercury; and

(iv) the generator has obtained an identification number under section 262.12 of title 40, Code of Federal Regulations, and complies with the requirements described in paragraphs (1) through (4) of section 262.34(a) of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).

(E) MANAGEMENT STANDARDS FOR TEMPORARY STORAGE.—Not later than January 1, 2017, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and State agencies in affected States, shall develop and make available guidance that establishes procedures and standards for the management and short-term storage of elemental mercury at a generator covered under subparagraph (D), including requirements to ensure appropriate use of flasks or other suitable containers. Such procedures and standards shall be protective of health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. A generator may accumulate mercury in accordance with subparagraph (D) immediately upon enactment of this subparagraph, and notwithstanding that guidance called for by this paragraph has not been developed or made available.

(h) Study

Not later than July 1, 2014, the Secretary shall transmit to the Congress the results of a study, conducted in consultation with the Administrator of the Environmental Protection Agency, that—

(1) determines the impact of the long-term storage program under this section on mercury recycling; and

(2) includes proposals, if necessary, to mitigate any negative impact identified under paragraph (1).

(Pub. L. 110–414, §5, Oct. 14, 2008, 122 Stat. 4344; Pub. L. 114–182, title I, §10(c), (d), June 22, 2016, 130 Stat. 478, 480.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (b)(2) and (d)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to this chapter. Subtitle C of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mercury Export Ban Act of 2008, and not as part of the Solid Waste Disposal Act which comprises this chapter.

AMENDMENTS

2016—Subsec. (a)(2). Pub. L. 114–182, §10(c)(1), substituted "2019" for "2013".

Subsec. (b)(1)(A). Pub. L. 114–182, §10(c)(2)(A)(ii), designated first sentence of par. (1) as subpar. (A) and inserted heading. Former subpar. (A) redesignated cl. (i) of subpar. (B).

Subsec. (b)(1)(B). Pub. L. 114–182, §10(c)(2)(A)(i), (iii), (iv), designated second sentence of par. (1) as subpar. (B), inserted heading, substituted "The amount of the fees described in subparagraph (A)" for "The amount of such fees" in introductory provisions, redesignated former subpars. (A) to (C) of par. (1) as cls. (i) to (iii), respectively, of subpar. (B) and realigned margins, substituted "publicly available not later than October 1, 2018" for "publically available not later than October 1, 2012" in cl. (i) and ", subject to clause (iv); and" for period at end of cl. (iii), and added cl. (iv).

Subsec. (b)(1)(C). Pub. L. 114–182, §10(c)(2)(A)(v), added subpar. (C). Former subpar. (C) redesignated cl. (iii) of subpar. (B).

Subsec. (b)(2). Pub. L. 114–182, §10(c)(2)(B), substituted "paragraph (1)(B)(iii)" for "paragraph (1)(C)" in first sentence.

Subsec. (d)(1). Pub. L. 114–182, §10(d), struck out "in existence on or before January 1, 2013," after "facility" in fourth sentence and substituted "January 1, 2020" for "January 1, 2015" in last sentence.

Subsec. (g)(2)(C). Pub. L. 114–182, §10(c)(3)(A), (B), redesignated concluding provisions of subpar. (B) as (C), substituted "Subparagraph (B)" for "This subparagraph", and inserted "of that subparagraph" before period at end.

Subsec. (g)(2)(D), (E). Pub. L. 114–182, §10(c)(3)(C), added subpars. (D) and (E).

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEPOSIT OF FEES

Pub. L. 116–94, div. C, title III, §309, Dec. 20, 2019, 133 Stat. 2681, provided that: "Beginning in fiscal year 2021 and for each fiscal year thereafter, fees collected pursuant to subsection (b)(1) of section 6939f of title 42, United States Code, shall be deposited in 'Department of Energy—Energy Programs—Non-Defense Environmental Cleanup' as discretionary offsetting collections."

§6939g. Hazardous waste electronic manifest system

(a) Definitions

In this section:

(1) Board

The term "Board" means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).

(2) Fund

The term "Fund" means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).

(3) Person

The term "person" includes an individual, corporation (including a Government corporation), company, association, firm, partnership, society, joint stock company, trust, municipality, commission, Federal agency, State, political subdivision of a State, or interstate body.

(4) System

The term "system" means the hazardous waste electronic manifest system established under subsection (b).

(5) User

The term "user" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other

person that—

(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and

(B)(i) elects to use the system to complete and transmit an electronic manifest format; or

(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such regulations as the Administrator may promulgate to require such a submission.

(b) Establishment

Not later than 3 years after October 5, 2012, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

(c) User fees

(1) In general

In accordance with paragraph (4), the Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation.

(2) Collection of fees

The Administrator shall—

(A) collect the fees described in paragraph (1) from the users in advance of, or as reimbursement for, the provision by the Administrator of system-related services; and

(B) deposit the fees in the Fund.

(3) Fee structure

(A) In general

The Administrator, in consultation with information technology vendors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including—

(i) contractor costs relating to—

(I) materials and supplies;

(II) contracting and consulting;

(III) overhead;

(IV) information technology (including costs of hardware, software, and related services);

(V) information management;

(VI) collection of service fees;

(VII) reporting and accounting; and

(VIII) project management; and

(ii) costs of employment of direct and indirect Government personnel dedicated to establishing, managing, and maintaining the system.

(B) Adjustments in fee amount

(i) In general

The Administrator, in consultation with the Board, shall increase or decrease the amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will—

(I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient and not more than reasonably necessary to cover current and projected system-related costs (including any necessary system upgrades); and

(II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

(ii) Exception for initial period of operation

The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed $2,000,000, during the 3-year period beginning on the date on which the system enters operation.

(iii) Timing of adjustments

Adjustments to service fees described in clause (i) shall be made—

(I) initially, at the time at which initial development costs of the system have been recovered by the Administrator such that the service fee may be reduced to reflect the elimination of the system development component of the fee; and

(II) periodically thereafter, upon receipt and acceptance of the findings of any annual accounting or auditing report under subsection (d)(3), if the report discloses a significant disparity for a fiscal year between the funds collected from service fees under this subsection for the fiscal year and expenditures made for the fiscal year to provide system-related services.

(4) Crediting and availability of fees

Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

(d) Hazardous Waste Electronic Manifest System Fund

(1) Establishment

There is established in the Treasury of the United States a revolving fund, to be known as the "Hazardous Waste Electronic Manifest System Fund", consisting of such amounts as are deposited in the Fund under subsection (c)(2)(B).

(2) Expenditures from Fund

(A) In general

Only to the extent provided in advance in appropriations Acts, on request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator amounts appropriated to pay costs incurred in developing, operating, maintaining, and upgrading the system under subsection (c).

(B) Use of funds by Administrator

Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator subject to appropriations Acts for use in accordance with this section without fiscal year limitation.

(C) Oversight of funds

The Administrator shall carry out all necessary measures to ensure that amounts in the Fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting, and overseeing the system.

(3) Accounting and auditing

(A) Accounting

For each 2-fiscal-year period, the Administrator shall prepare and submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives a report that includes—

(i) an accounting of the fees paid to the Administrator under subsection (c) and disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with—

(I) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

(II) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act; and

(ii) an accounting describing actual expenditures from the Fund for the period covered by the report for costs described in subsection (c)(1).

(B) Auditing

(i) In general

For the purpose of section 3515(c) of title 31, the Fund shall be considered a component of an Executive agency.

(ii) Components of audit

The annual audit required in accordance with sections 3515(b) and 3521 of title 31 of the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

(I) the fees collected and disbursed under this section;

(II) the reasonableness of the fee structure in place as of the date of the audit to meet current and projected costs of the system;

(III) the level of use of the system by users; and

(IV) the success to date of the system in operating on a self-sustaining basis and improving the efficiency of tracking waste shipments and transmitting waste shipment data.

(iii) Federal responsibility

The Inspector General of the Environmental Protection Agency shall—

(I) conduct the annual audit described in clause (ii); and

(II) submit to the Administrator a report that describes the findings and recommendations of the Inspector General resulting from the audit.

(e) Contracts

(1) Authority to enter into contracts funded by service fees

After consultation with the Secretary of Transportation, the Administrator may enter into 1 or more information technology contracts with entities determined to be appropriate by the Administrator (referred to in this subsection as "contractors") for the provision of system-related services.

(2) Term of contract

A contract awarded under this subsection shall have a term of not more than 10 years.

(3) Achievement of goals

The Administrator shall ensure, to the maximum extent practicable, that a contract awarded under this subsection—

(A) is performance-based;

(B) identifies objective outcomes; and

(C) contains performance standards that may be used to measure achievement and goals to evaluate the success of a contractor in performing under the contract and the right of the contractor to payment for services under the contract, taking into consideration that a primary measure of successful performance shall be the development of a hazardous waste electronic manifest system that—

(i) meets the needs of the user community (including States that rely on data contained in manifests);

(ii) attracts sufficient user participation and service fee revenues to ensure the viability of the system;

(iii) decreases the administrative burden on the user community; and

(iv) provides the waste receipt data applicable to the biennial reports required by section 6922(a)(6) of this title.

(4) Payment structure

Each contract awarded under this subsection shall include a provision that specifies—

(A) the service fee structure of the contractor that will form the basis for payments to the contractor; and

(B) the fixed-share ratio of monthly service fee revenues from which the Administrator shall reimburse the contractor for system-related development, operation, and maintenance costs.

(5) Cancellation and termination

(A) In general

If the Administrator determines that sufficient funds are not made available for the continuation in a subsequent fiscal year of a contract entered into under this subsection, the Administrator may cancel or terminate the contract.

(B) Negotiation of amounts

The amount payable in the event of cancellation or termination of a contract entered into under this subsection shall be negotiated with the contractor at the time at which the contract is awarded.

(6) No effect on ownership

Regardless of whether the Administrator enters into a contract under this subsection, the system shall be owned by the Federal Government.

(f) Hazardous Waste Electronic Manifest System Advisory Board

(1) Establishment

Not later than 3 years after October 5, 2012, the Administrator shall establish a board to be known as the "Hazardous Waste Electronic Manifest System Advisory Board".

(2) Composition

The Board shall be composed of 9 members, of which—

(A) 1 member shall be the Administrator (or a designee), who shall serve as Chairperson of the Board; and

(B) 8 members shall be individuals appointed by the Administrator—

(i) at least 2 of whom shall have expertise in information technology;

(ii) at least 3 of whom shall have experience in using or represent users of the manifest system to track the transportation of hazardous waste under this subchapter (or an equivalent State program); and

(iii) at least 3 of whom shall be a State representative responsible for processing those manifests.

(3) Duties

The Board shall meet annually to discuss, evaluate the effectiveness of, and provide recommendations to the Administrator relating to, the system.

(g) Regulations

(1) Promulgation

(A) In general

Not later than 1 year after October 5, 2012, after consultation with the Secretary of Transportation, the Administrator shall promulgate regulations to carry out this section.

(B) Inclusions

The regulations promulgated pursuant to subparagraph (A) may include such requirements as

the Administrator determines to be necessary to facilitate the transition from the use of paper manifests to the use of electronic manifests, or to accommodate the processing of data from paper manifests in the electronic manifest system, including a requirement that users of paper manifests submit to the system copies of the paper manifests for data processing purposes.

(C) Requirements

The regulations promulgated pursuant to subparagraph (A) shall ensure that each electronic manifest provides, to the same extent as paper manifests under applicable Federal and State law, for—

(i) the ability to track and maintain legal accountability of—

(I) the person that certifies that the information provided in the manifest is accurately described; and

(II) the person that acknowledges receipt of the manifest;

(ii) if the manifest is electronically submitted, State authority to access paper printout copies of the manifest from the system; and

(iii) access to all publicly available information contained in the manifest.

(2) Effective date of regulations

Any regulation promulgated by the Administrator under paragraph (1) and in accordance with section 6923 of this title relating to electronic manifesting of hazardous waste shall take effect in each State as of the effective date specified in the regulation.

(3) Administration

The Administrator shall carry out regulations promulgated under this subsection in each State unless the State program is fully authorized to carry out such regulations in lieu of the Administrator.

(h) Requirement of compliance with respect to certain States

In any case in which the State in which waste is generated, or the State in which waste will be transported to a designated facility, requires that the waste be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the State in which the facility is located—

(1) complete the facility portion of the applicable manifest;

(2) sign and date the facility certification; and

(3) submit to the system a final copy of the manifest for data processing purposes.

(i) Authorization for start-up activities

There are authorized to be appropriated $2,000,000 for each of fiscal years 2013 through 2015 for start-up activities to carry out this section, to be offset by collection of user fees under subsection (c) such that all such appropriated funds are offset by fees as provided in subsection (c).

(Pub. L. 89–272, title II, §3024, as added Pub. L. 112–195, §2(a), Oct. 5, 2012, 126 Stat. 1452.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Chief Financial Officers Act of 1990, referred to in subsec. (d)(3)(A)(i)(I), is Pub. L. 101–576, Nov. 15, 1990, 104 Stat. 2838. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 501 of Title 31, Money and Finance, and Tables.

The Government Management Reform Act of 1994, referred to in (d)(3)(A)(i)(II), is Pub. L. 103–356, Oct. 13, 1994, 108 Stat. 3410. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 3301 of Title 31, Money and Finance, and Tables.

SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

§6941. Objectives of subchapter

The objectives of this subchapter are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources including energy and materials which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89–272, title II, §4001, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2813; amended Pub. L. 96–482, §32(b), Oct. 21, 1980, 94 Stat. 2353; Pub. L. 98–616, title III, §301(a), title V, §501(f)(1), Nov. 8, 1984, 98 Stat. 3267, 3276.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Pub. L. 98–616, §501(f)(1), inserted ", including those needs created by thorough implementation of section 6962(h) of this title,".

Pub. L. 98–616, §301(a), inserted at end "In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process."

1980—Pub. L. 96–482 included as an objective in the disposal of solid waste the utilization of energy and materials recoverable from solid waste.

§6941a. Energy and materials conservation and recovery; Congressional findings

The Congress finds that—

(1) significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;

(2) solid waste contains valuable energy and material resources which can be recovered and used thereby conserving increasingly scarce and expensive fossil fuels and virgin materials;

(3) the recovery of energy and materials from municipal waste, and the conservation of energy and materials contributing to such waste streams, can have the effect of reducing the volume of the municipal waste stream and the burden of disposing of increasing volumes of solid waste;

(4) the technology to conserve resources exists and is commercially feasible to apply;

(5) the technology to recover energy and materials from solid waste is of demonstrated commercial feasibility; and

(6) various communities throughout the nation have different needs and different potentials for conserving resources and for utilizing techniques for the recovery of energy and materials from waste, and Federal assistance in planning and implementing such energy and materials conservation and recovery programs should be available to all such communities on an equitable basis in relation to their needs and potential.

(Pub. L. 96–482, §32(a), Oct. 21, 1980, 94 Stat. 2353.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Solid Waste Disposal Act Amendments of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6942. Federal guidelines for plans

(a) Guidelines for identification of regions

For purposes of encouraging and facilitating the development of regional planning for solid waste management, the Administrator, within one hundred and eighty days after October 21, 1976, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider—

(1) the size and location of areas which should be included,

(2) the volume of solid waste which should be included, and

(3) the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan.

(b) Guidelines for State plans

Not later than eighteen months after October 21, 1976, and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this chapter referred to as "State plans"). The guidelines shall contain methods for achieving the objectives specified in section 6941 of this title. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

(c) Considerations for State plan guidelines

The guidelines promulgated under subsection (b) shall consider—

(1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;

(2) characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into account the nature of the material to be disposed;

(3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;

(4) population density, distribution, and projected growth;

(5) geographic, geologic, climatic, and hydrologic characteristics;

(6) the type and location of transportation;

(7) the profile of industries;

(8) the constituents and generation rates of waste;

(9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;

(10) types of resource recovery facilities and resource conservation systems which are appropriate; and

(11) available new and additional markets for recovered material and energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

(Pub. L. 89–272, title II, §4002, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2813; amended Pub. L. 96–482, §32(c), Oct. 21, 1980, 94 Stat. 2353.)

EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (c)(11). Pub. L. 96–482 required State plan guidelines to consider energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6943. Requirements for approval of plans

(a) Minimum requirements

In order to be approved under section 6947 of this title, each State plan must comply with the following minimum requirements—

(1) The plan shall identify (in accordance with section 6946(b) of this title) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.

(2) The plan shall, in accordance with sections 6944(b) and 6945(a) of this title, prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaning of section 6944(a) of this title) or otherwise disposed of in an environmentally sound manner.

(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 6945 of this title.

(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

(5) The plan shall provide that no State or local government within the State shall be prohibited under State or local law from negotiating and entering into long-term contracts for the supply of solid waste to resource recovery facilities, from entering into long-term contracts for the operation of such facilities, or from securing long-term markets for material and energy recovered from such facilities or for conserving materials or energy by reducing the volume of waste.

(6) The plan shall provide for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

(b) Discretionary plan provisions relating to recycled oil

Any State plan submitted under this subchapter may include, at the option of the State, provisions to carry out each of the following:

(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and

local government.

(2) Encouragement of persons contracting with the State to use recycled oil to the maximum extent feasible, consistent with protection of the public health and the environment.

(3) Informing the public of the uses of recycled oil.

(4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate, of manifests) to assure that used oil is collected, transported, treated, stored, reused, and disposed of, in a manner which does not present a hazard to the public health or the environment.

Any plan submitted under this chapter before October 15, 1980, may be amended, at the option of the State, at any time after such date to include any provision referred to in this subsection.

(c) Energy and materials conservation and recovery feasibility planning and assistance

(1) A State which has a plan approved under this subchapter or which has submitted a plan for such approval shall be eligible for assistance under section 6948(a)(3) of this title if the Administrator determines that under such plan the State will—

(A) analyze and determine the economic and technical feasibility of facilities and programs to conserve resources which contribute to the waste stream or to recover energy and materials from municipal waste;

(B) analyze the legal, institutional, and economic impediments to the development of systems and facilities for conservation of energy or materials which contribute to the waste stream or for the recovery of energy and materials from municipal waste and make recommendations to appropriate governmental authorities for overcoming such impediments;

(C) assist municipalities within the State in developing plans, programs, and projects to conserve resources or recover energy and materials from municipal waste; and

(D) coordinate the resource conservation and recovery planning under subparagraph (C).

(2) The analysis referred to in paragraph (1)(A) shall include—

(A) the evaluation of, and establishment of priorities among, market opportunities for industrial and commercial users of all types (including public utilities and industrial parks) to utilize energy and materials recovered from municipal waste;

(B) comparisons of the relative costs of energy recovered from municipal waste in relation to the costs of energy derived from fossil fuels and other sources;

(C) studies of the transportation and storage problems and other problems associated with the development of energy and materials recovery technology, including curbside source separation;

(D) the evaluation and establishment of priorities among ways of conserving energy or materials which contribute to the waste stream;

(E) comparison of the relative total costs between conserving resources and disposing of or recovering such waste; and

(F) studies of impediments to resource conservation or recovery, including business practices, transportation requirements, or storage difficulties.

Such studies and analyses shall also include studies of other sources of solid waste from which energy and materials may be recovered or minimized.

(d) Size of waste-to-energy facilities

Notwithstanding any of the above requirements, it is the intention of this chapter and the planning process developed pursuant to this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89–272, title II, §4003, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2814; amended Pub. L. 96–463, §5(b), Oct. 15, 1980, 94 Stat. 2056; Pub. L. 96–482, §§18, 32(d), Oct. 21, 1980, 94 Stat. 2345, 2353; Pub. L. 98–616, title III, §301(b), title V, §502(h), Nov. 8, 1984, 98 Stat. 3267, 3277.)

EDITORIAL NOTES

CODIFICATION

Another section 5(b) of Pub. L. 96–463 amended section 6948 of this title.

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98–616, §502(h), redesignated the subsec. (b) entitled energy and materials conservation and recovery feasibility planning and assistance, as subsec. (c).

Subsec. (d). Pub. L. 98–616, §301(b), added subsec. (d).

1980—Subsec. (a). Pub. L. 96–463, §5(b), and Pub. L. 96–482, §32(d)(2), designated existing provisions as subsec. (a).

Subsec. (a)(2). Pub. L. 96–482, §18(a), substituted reference to sections 6944(b) and 6945(a) of this title for reference to section 6945(c) of this title.

Subsec. (a)(5). Pub. L. 96–482, §§18(b), 32(d)(1), substituted "State or local government" for "local government" and required State plan recognition of right to enter into long-term contracts for operation of resource recovery facilities and to secure long-term markets for material and energy recovered from such facilities, and required State plan recognition of right to negotiate long-term contracts and to negotiate and enter into such contracts for conserving materials or energy by reducing the volume of waste.

Subsec. (b). Pub. L. 96–463, §5(b), added subsec. (b) relating to discretionary plan provisions for recycled oil.

Pub. L. 96–482, §32(d)(2), added subsec. (b) relating to energy and materials conservation and recovery feasibility planning and assistance.

§6944. Criteria for sanitary landfills; sanitary landfills required for all disposal

(a) Criteria for sanitary landfills

Not later than one year after October 21, 1976, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(b) Disposal required to be in sanitary landfills, etc.

For purposes of complying with section 6943(2) [1] of this title each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 6943(2) [1] of this title.

(c) Effective date

The prohibition contained in subsection (b) shall take effect on the date six months after the date of promulgation of regulations under subsection (a).

(Pub. L. 89–272, title II, §4004, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2815; amended Pub. L. 98–616, title III, §302(b), Nov. 8, 1984, 98 Stat. 3268.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6943(2) of this title, referred to in subsec. (b), was redesignated section 6943(a)(2) of this title by Pub. L. 96–463, §5(b), Oct. 15, 1980, 94 Stat. 2056, and Pub. L. 96–482, §32(d)(2), Oct. 21, 1980, 94 Stat. 2353.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–616 struck out "or on the date of approval of the State plan, whichever is later" at end.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *See References in Text note below.*

§6945. Upgrading of open dumps

(a) Closing or upgrading of existing open dumps

Upon promulgation of criteria under section 6907(a)(3) of this title, any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping. For purposes of complying with section 6943(a)(2) and 6943(a)(3) of this title, each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of criteria under section 6907(a)(3) of this title).

(b) Inventory

To assist the States in complying with section 6943(a)(3) of this title, not later than one year after promulgation of regulations under section 6944 of this title, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this chapter.

(c) Control of hazardous disposal

(1)(A) Not later than 36 months after November 8, 1984, each State shall adopt and implement a permit program or other system of prior approval and conditions to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the applicable criteria promulgated under section 6944(a) and 6907(a)(3) of this title.

(B) Not later than eighteen months after the promulgation of revised criteria under subsection [1] 6944(a) of this title (as required by section 6949a(c) of this title), each State shall adopt and implement a permit program or other system or [2] prior approval and conditions, to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the criteria revised under section 6944(a) of this title.

(C) The Administrator shall determine whether each State has developed an adequate program under this paragraph. The Administrator may make such a determination in conjunction with approval, disapproval or partial approval of a State plan under section 6947 of this title.

(2)(A) In any State that the Administrator determines has not adopted an adequate program for such facilities under paragraph (1)(B) by the date provided in such paragraph, the Administrator may use the authorities available under sections 6927 and 6928 of this title to enforce the prohibition contained in subsection (a) of this section with respect to such facilities.

(B) For purposes of this paragraph, the term "requirement of this subchapter" in section 6928 of this title shall be deemed to include criteria promulgated by the Administrator under sections 6907(a)(3) and 6944(a) of this title, and the term "hazardous wastes" in section 6927 of this title shall be deemed to include solid waste at facilities that may handle hazardous household wastes or hazardous wastes from small quantity generators.

(d) State programs for control of coal combustion residuals

(1) Approval by Administrator

(A) In general

Each State may submit to the Administrator, in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State that, after approval by the Administrator, will operate in lieu of regulation of coal combustion residuals units in the State by—

(i) application of part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title); or

(ii) implementation by the Administrator of a permit program under paragraph (2)(B).

(B) Requirement

Not later than 180 days after the date on which a State submits the evidence described in subparagraph (A), the Administrator, after public notice and an opportunity for public comment, shall approve, in whole or in part, a permit program or other system of prior approval and conditions submitted under subparagraph (A) if the Administrator determines that the program or other system requires each coal combustion residuals unit located in the State to achieve compliance with—

(i) the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title); or

(ii) such other State criteria that the Administrator, after consultation with the State, determines to be at least as protective as the criteria described in clause (i).

(C) Permit requirements

The Administrator shall approve under subparagraph (B)(ii) a State permit program or other system of prior approval and conditions that allows a State to include technical standards for individual permits or conditions of approval that differ from the criteria under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title) if, based on site-specific conditions, the Administrator determines that the technical standards established pursuant to a State permit program or other system are at least as protective as the criteria under that part.

(D) Program review and notification

(i) Program review

The Administrator shall review a State permit program or other system of prior approval and conditions that is approved under subparagraph (B)—

(I) from time to time, as the Administrator determines necessary, but not less frequently than once every 12 years;

(II) not later than 3 years after the date on which the Administrator revises the applicable

criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title);

(III) not later than 1 year after the date of a significant release (as defined by the Administrator), that was not authorized at the time the release occurred, from a coal combustion residuals unit located in the State; and

(IV) on request of any other State that asserts that the soil, groundwater, or surface water of the State is or is likely to be adversely affected by a release or potential release from a coal combustion residuals unit located in the State for which the program or other system was approved.

(ii) Notification and opportunity for a public hearing

The Administrator shall provide to a State notice of deficiencies with respect to the permit program or other system of prior approval and conditions of the State that is approved under subparagraph (B), and an opportunity for a public hearing, if the Administrator determines that—

(I) a revision or correction to the permit program or other system of prior approval and conditions of the State is necessary to ensure that the permit program or other system of prior approval and conditions continues to ensure that each coal combustion residuals unit located in the State achieves compliance with the criteria described in clauses (i) and (ii) of subparagraph (B);

(II) the State has not implemented an adequate permit program or other system of prior approval and conditions that requires each coal combustion residuals unit located in the State to achieve compliance with the criteria described in subparagraph (B); or

(III) the State has, at any time, approved or failed to revoke a permit for a coal combustion residuals unit, a release from which adversely affects or is likely to adversely affect the soil, groundwater, or surface water of another State.

(E) Withdrawal

(i) In general

The Administrator shall withdraw approval of a State permit program or other system of prior approval and conditions if, after the Administrator provides notice and an opportunity for a public hearing to the relevant State under subparagraph (D)(ii), the Administrator determines that the State has not corrected the deficiencies identified by the Administrator under subparagraph (D)(ii).

(ii) Reinstatement of State approval

Any withdrawal of approval under clause (i) shall cease to be effective on the date on which the Administrator makes a determination that the State has corrected the deficiencies identified by the Administrator under subparagraph (D)(ii).

(2) Nonparticipating states

(A) Definition of nonparticipating State

In this paragraph, the term "nonparticipating State" means a State—

(i) for which the Administrator has not approved a State permit program or other system of prior approval and conditions under paragraph (1)(B);

(ii) the Governor of which has not submitted to the Administrator for approval evidence to operate a State permit program or other system of prior approval and conditions under paragraph (1)(A);

(iii) the Governor of which provides notice to the Administrator that, not fewer than 90 days after the date on which the Governor provides the notice to the Administrator, the State will relinquish an approval under paragraph (1)(B) to operate a permit program or other system of prior approval and conditions; or

(iv) for which the Administrator has withdrawn approval for a permit program or other

system of prior approval and conditions under paragraph (1)(E).

(B) Implementation of permit program

In the case of a nonparticipating State and subject to the availability of appropriations specifically provided in an appropriations Act to carry out a program in a nonparticipating State, the Administrator shall implement a permit program to require each coal combustion residuals unit located in the nonparticipating State to achieve compliance with applicable criteria established by the Administrator under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title).

(3) Applicability of criteria

The applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title), shall apply to each coal combustion residuals unit in a State unless—

(A) a permit under a State permit program or other system of prior approval and conditions approved by the Administrator under paragraph (1)(B) is in effect for the coal combustion residuals unit; or

(B) a permit issued by the Administrator in a State in which the Administrator is implementing a permit program under paragraph (2)(B) is in effect for the coal combustion residuals unit.

(4) Prohibition on open dumping

(A) In general

The Administrator may use the authority provided by sections 6927 and 6928 of this title to enforce the prohibition on open dumping under subsection (a) with respect to a coal combustion residuals unit—

(i) in a nonparticipating State (as defined in paragraph (2)); and

(ii) located in a State that is approved to operate a permit program or other system of prior approval and conditions under paragraph (1)(B), in accordance with subparagraph (B) of this paragraph.

(B) Federal enforcement in an approved State

(i) In general

In the case of a coal combustion residuals unit located in a State that is approved to operate a permit program or other system of prior approval and conditions under paragraph (1)(B), the Administrator may commence an administrative or judicial enforcement action under section 6928 of this title if—

(I) the State requests that the Administrator provide assistance in the performance of an enforcement action; or

(II) after consideration of any other administrative or judicial enforcement action involving the coal combustion residuals unit, the Administrator determines that an enforcement action is likely to be necessary to ensure that the coal combustion residuals unit is operating in accordance with the criteria established under the permit program or other system of prior approval and conditions.

(ii) Notification

In the case of an enforcement action by the Administrator under clause (i)(II), before issuing an order or commencing a civil action, the Administrator shall notify the State in which the coal combustion residuals unit is located.

(iii) Annual report to Congress

(I) In general

Subject to subclause (II), not later than December 31, 2017, and December 31 of each year thereafter, the Administrator shall submit to the Committee on Environment and

Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes any enforcement action commenced under clause (i), including a description of the basis for the enforcement action.

(II) Applicability

Subclause (I) shall not apply for any calendar year during which the Administrator does not commence an enforcement action under clause (i).

(5) Indian country

The Administrator shall establish and carry out a permit program, in accordance with this subsection, for coal combustion residuals units in Indian country (as defined in section 1151 of title 18) to require each coal combustion residuals unit located in Indian country to achieve compliance with the applicable criteria established by the Administrator under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title).

(6) Treatment of coal combustion residuals units

A coal combustion residuals unit shall be considered to be a sanitary landfill for purposes of this chapter, including subsection (a), only if the coal combustion residuals unit is operating in accordance with—

(A) the requirements of a permit issued by—

(i) the State in accordance with a program or system approved under paragraph (1)(B); or

(ii) the Administrator pursuant to paragraph (2)(B) or paragraph (5); or

(B) the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title).

(7) Effect of subsection

Nothing in this subsection affects any authority, regulatory determination, other law, or legal obligation in effect on the day before December 16, 2016.

(Pub. L. 89–272, title II, §4005, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2815; amended Pub. L. 96–482, §19(a), (b), Oct. 21, 1980, 94 Stat. 2345; Pub. L. 98–616, title III, §302(c), title IV, §403(c), title V, §502(c), Nov. 8, 1984, 98 Stat. 3268, 3272, 3276; Pub. L. 114–322, title II, §2301, Dec. 16, 2016, 130 Stat. 1736.)

EDITORIAL NOTES

CODIFICATION

Another section 19(b) of Pub. L. 96–482 amended section 6946 of this title.

AMENDMENTS

2016—Subsec. (d). Pub. L. 114–322 added subsec. (d).

1984—Subsec. (a). Pub. L. 98–616, §403(c), inserted after first sentence "The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping."

Pub. L. 98–616, §502(c), inserted a closing parenthesis before the period at end.

Subsec. (c). Pub. L. 98–616, §302(c), added subsec. (c).

1980—Subsec. (a). Pub. L. 96–482, §19(a), (b)(1), struck out subsec. (a) which defined "open dump", which is covered in section 6903(14) of this title, redesignated subsec. (c) as (a) and substituted "Upon promulgation of criteria under section 6907(a)(3) of this title, any" for "Any", "section 6943(a)(2) and 6943(a)(3) of this title" for "section 6943(2) of this title", and "criteria under section 6907(a)(3) of this title" for "the inventory under subsection (b)".

Amendment by section 19(b)(1) of Pub. L. 96–482, directing that following reference to "4003(2)", which had been editorially translated as section 6943(2) of this title, the phrase "and 4003(3)" be inserted, was executed by translating "4003(2) and 4003(3)" as section 6943(a)(2) and 6943(a)(3) of this title, in view of the

designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96–463 and also by section 32(d)(2) of Pub. L. 96–482.

Subsec. (b). Pub. L. 96–482, §19(b)(2), inserted introductory phrase "To assist the States in complying with section 6943(a)(3) of this title". Amendment referring to section "4003(3)" was executed by translating "4003(3)" as section 6943(a)(3) of this title, in view of the designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96–463 and also by section 32(d)(2) of Pub. L. 96–482.

Subsec. (c). Pub. L. 96–482, §19(a), redesignated subsec. (c) as (a).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] So in original. Probably should be "section".

[2] So in original. Probably should be "of".

§6946. Procedure for development and implementation of State plan

(a) Identification of regions

Within one hundred and eighty days after publication of guidelines under section 6942(a) of this title (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

(b) Identification of State and local agencies and responsibilities

(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a), for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 6943 of this title, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste management activities will, under such State plan, be planned for and carried out by the State and which such management activities will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multi-functional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on October 21, 1976, the Governor shall identify such authority for purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 1288 of title 33 shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

(2) If planning and implementation agencies are not identified and designated or established as required under paragraph (1) for any affected area, the governor shall, before the date two hundred and seventy days after promulgation of regulations under subsection (a), establish or designate a State agency to develop and implement the State plan for such area.

(c) Interstate regions

(1) In the case of any region which, pursuant to the guidelines published by the Administrator under section 6942(a) of this title (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a).

(2) Within one hundred and eighty days after an interstate region is identified by agreement under paragraph (1), appropriate elected officials of general purpose units of local government within such region shall jointly establish or designate an agency to develop a plan for such region. If no such agency is established or designated within such period by such officials, the Governors of the respective States may, by agreement, establish or designate for such purpose a single representative organization including elected officials of general purpose units of local government within such region.

(3) Implementation of interstate regional solid waste management plans shall be conducted by units of local government for any portion of a region within their jurisdiction, or by multijurisdictional agencies or authorities designated in accordance with State law, including those designated by agreement by such units of local government for such purpose. If no such unit, agency, or authority is so designated, the respective Governors shall designate or establish a single interstate agency to implement such plan.

(4) For purposes of this subchapter, so much of an interstate regional plan as is carried out within a particular State shall be deemed part of the State plan for such State.

(Pub. L. 89–272, title II, §4006, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2816; amended Pub. L. 96–482, §19(b), Oct. 21, 1980, 94 Stat. 2345.)

EDITORIAL NOTES

CODIFICATION

Another section 19(b) of Pub. L. 96–482 amended section 6945 of this title.

AMENDMENTS

1980—Subsec. (b)(1)(B). Pub. L. 96–482 substituted "management activities" for "functions" in two places.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6947. Approval of State plan; Federal assistance

(a) Plan approval

The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

(1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section 6943(a) of this title; and

(2) it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines—

(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 6943(a) of this title with which the State plan is not in compliance;

(B) that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subchapter; or

(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 6943 of this title (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

(b) Eligibility of States for Federal financial assistance

(1) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 6946 of this title within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subchapter.

(2) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that the State plan continues to be eligible for approval under subsection (a) and is being implemented by the State.

(3) Upon withdrawal of approval of a State plan under subsection (a), the Administrator shall withhold Federal financial and technical assistance under this subchapter (other than such technical assistance as may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

(c) Existing activities

Nothing in this subchapter shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the Administrator under this subchapter.

(Pub. L. 89–272, title II, §4007, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2817; amended Pub. L. 95–609, §7(l), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 104–119, §4(8), Mar. 26, 1996, 110 Stat. 833.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (a)(1), (2)(A). Pub. L. 104–119 substituted "section 6943(a) of this title" for "section 6943 of this title".

1978—Subsec. (c). Pub. L. 95–609 substituted "(c)" for "(C)" in subsection designation.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6948. Federal assistance

(a) Authorization of Federal financial assistance

(1) There are authorized to be appropriated $30,000,000 for fiscal year 1978, $40,000,000 for fiscal year 1979, $20,000,000 for fiscal year 1980, $15,000,000 for fiscal year 1981, $20,000,000 for the fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subchapter (other than the provisions of such plans referred to in section 6943(b) [1] of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery).

(2)(A) The Administrator is authorized to provide financial assistance to States, counties, municipalities, and intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance shall include assistance for facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies; but such assistance shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Agencies assisted under this subsection shall consider existing solid waste management and hazardous waste management services and facilities as well as facilities proposed for construction.

(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 6945 of this title and subchapter III of this chapter and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 6907 of this title. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program. Applicants for technical and financial assistance under this section shall not preclude or foreclose consideration of programs for the recovery of recyclable materials through source separation or other resource recovery techniques.

(C) There are authorized to be appropriated $15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section. There are authorized to be appropriated $10,000,000 for fiscal year 1980, $10,000,000 for fiscal year 1981, $10,000,000 for fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of this paragraph.

(D) There are authorized—

(i) to be made available $15,000,000 out of funds appropriated for fiscal year 1985, and

(ii) to be appropriated for each of the fiscal years 1986 though [2] 1988, $20,000,000 [3]

for grants to States (and where appropriate to regional, local, and interstate agencies) to implement programs requiring compliance by solid waste management facilities with the criteria promulgated under section 6944(a) of this title and section 6907(a)(3) of this title and with the provisions of section 6945 of this title. To the extent practicable, such programs shall require such compliance not later than thirty-six months after November 8, 1984.

(3)(A) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, $4,000,000 for purposes of making grants to States to carry out section 6943(b) [1] of this title. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(B) Assistance provided by the Administrator under this paragraph shall be used only for the purposes specified in section 6943(b) [1] of this title. Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(C) Where appropriate, any State receiving assistance under this paragraph may make all or any part of such assistance available to municipalities within the State to carry out the activities specified in section 6943(b)(1)(A) and (B) [1] of this title.

(b) State allotment

The sums appropriated in any fiscal year under subsection (a)(1) shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per centum of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such programs.

(c) Distribution of Federal financial assistance within the State

The Federal assistance allotted to the States under subsection (b) shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 6946(b) of this title.

(d) Technical assistance

(1) The Administrator may provide technical assistance to State and local governments for purposes of developing and implementing State plans. Technical assistance respecting resource recovery and conservation may be provided through resource recovery and conservation panels, established in the Environmental Protection Agency under subchapter II, to assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan.

(2) In carrying out this subsection, the Administrator may, upon request, provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil. Such impediments may include laws, regulations, and policies, including State procurement policies, which are not favorable to the recycling of used oil.

(3) In carrying out this subsection, the Administrator is authorized to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies upon request, to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recovery energy and materials from municipal waste or to conserve energy or materials which contribute to the waste stream. Such impediments may include—

(A) laws, regulations, and policies, including State and local procurement policies, which are not favorable to resource conservation and recovery policies, systems, and facilities;

(B) impediments to the financing of facilities to conserve or recover energy and materials from municipal waste through the exercise of State and local authority to issue revenue bonds and the use of State and local credit assistance; and

(C) impediments to institutional arrangements necessary to undertake projects for the conservation or recovery of energy and materials from municipal waste, including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project, to conserve resources, to implement the project, and to undertake related activities.

(e) Special communities

(1) The Administrator, in cooperation with State and local officials, shall identify local governments within the United States (A) having a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved

end-use recreation plan, and (B) which are located over an aquifer which is the source of drinking water for any person or public water system and which has serious environmental problems resulting from the disposal of such solid waste, including possible methane migration.

(2) There is authorized to be appropriated to the Administrator $2,500,000 for the fiscal year 1980 and $1,500,000 for each of the fiscal years 1981 and 1982 to make grants to be used for containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1). Not more than one community in any State shall be eligible for grants under this paragraph and not more than one project in any State shall be eligible for such grants. No unit of local government shall be eligible for grants under this paragraph with respect to any site which exceeds 65 acres in size.

(f) Assistance to States for discretionary program for recycled oil

(1) The Administrator may make grants to States, which have a State plan approved under section 6947 of this title, or which have submitted a State plan for approval under such section, if such plan includes the discretionary provisions described in section 6943(b) of this title. Grants under this subsection shall be for purposes of assisting the State in carrying out such discretionary provisions. No grant under this subsection may be used for construction or for the acquisition of land or equipment.

(2) Grants under this subsection shall be allotted among the States in the same manner as provided in the first sentence of subsection (b).

(3) No grant may be made under this subsection unless an application therefor is submitted to, and approved by, the Administrator. The application shall be in such form, be submitted in such manner, and contain such information as the Administrator may require.

(4) For purposes of making grants under this subsection, there are authorized to be appropriated $5,000,000 for fiscal year 1982, $5,000,000 for fiscal year 1983, and $5,000,000 for each of the fiscal years 1985 through 1988.

(g) Assistance to municipalities for energy and materials conservation and recovery planning activities

(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 6943(b)(1) [1] of this title. Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted under this subchapter or any other appropriate planning carried out by the State.

(2) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, $8,000,000 for purposes of making grants to municipalities under this subsection. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(3) Assistance provided by the Administrator under this subsection shall be used only for the purposes specified in paragraph (1). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(Pub. L. 89–272, title II, §4008, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2818; amended Pub. L. 96–463, §§5(b), 6, Oct. 15, 1980, 94 Stat. 2057; Pub. L. 96–482, §§20, 31(c), (d), 32(e), (f), Oct. 21, 1980, 94 Stat. 2345, 2352, 2354, 2355; Pub. L. 98–616, §2(d)–(g), (k), title V, §502(d), (e), Nov. 8, 1984, 98 Stat. 3222, 3223, 3276.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6943(b) of this title, referred to in subsecs. (a)(1), (3) and (g)(1), was redesignated section 6943(c) of this title by Pub. L. 98–616, title V, §502(h), Nov. 8, 1984, 98 Stat. 3277.

CODIFICATION

Section 2(d)–(g) of Pub. L. 98–616, cited as a credit to this section, appears to contain typographical error

in that the text of subsec. (f)(1) of section 2007 of the Solid Waste Disposal Act (as added by section 2(i) of Pub. L. 98–616) is also shown as the text of subsec. "(f)(1)" of such section 2. Subsec. (f) of section 2, as set out in the Conference Report (H. Rept. 98–1133) to accompany H.R. 2867 (which became Pub. L. 98–616) read:

"(f) Section 4008(e)(2) of the Solid Waste Disposal Act (relating to special communities) is amended by striking out 'and $1,500,000 for each of the fiscal years 1981 and 1982' and substituting ', $1,500,000 for each of the fiscal years 1981 and 1982, and $500,000 for each of the fiscal years 1985 through 1988'."

Another section 5(b) of Pub. L. 96–463 amended section 6943 of this title.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–616, §2(d), authorized appropriation of $10,000,000 for each of fiscal years 1985 through 1988.

Subsec. (a)(2)(C). Pub. L. 98–616, §2(e), authorized appropriation of $10,000,000 for each of fiscal years 1985 through 1988.

Subsec. (a)(2)(D). Pub. L. 98–616, §2(k), added subpar. (D).

Subsec. (d)(2), (3). Pub. L. 98–616, §502(d), redesignated second par. (2), relating to recovery of energy and materials from municipal waste, as par. (3).

Subsec. (f). Pub. L. 98–616, §502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

Subsec. (f)(4). Pub. L. 98–616, §2(g), authorized appropriation of $5,000,000 for each of fiscal years 1985 through 1988.

Subsec. (g). Pub. L. 98–616, §502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

1980—Subsec. (a)(1). Pub. L. 96–482, §31(c), authorized appropriations of $20,000,000, $15,000,000, and $20,000,000 for fiscal years, 1980, 1981, and 1982, respectively, and substituted provision making appropriation available for financial assistance to States, and local, regional, and interstate authorities for development and implementation of plans approved by the Administrator, except plans referred to in section 6943(b) of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery for provision making appropriations available to State for development and implementation of State plans.

Subsec. (a)(2)(B). Pub. L. 96–482, §32(e)(1), provided that applicants for technical and financial assistance shall not preclude or foreclose consideration of programs for recovery of recyclable materials through source separation or other resource recovery techniques.

Subsec. (a)(2)(C). Pub. L. 96–482, §31(d), authorized appropriation of $10,000,000 for each fiscal year 1980, 1981, and 1982.

Subsec. (a)(3). Pub. L. 96–482, §32(e)(2), added par. (3).

Subsec. (d). Pub. L. 96–463, §6, and Pub. L. 96–482, §32(f), designated existing provisions as par. (1).

Subsec. (d)(2). Pub. L. 96–463, §6, added par. (2) authorizing the Administrator to provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil.

Pub. L. 96–482, §32(f), added par. (2) authorizing the Administrator to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recover energy and materials from municipal waste.

Subsec. (e)(1). Pub. L. 96–482, §20(1)–(5), substituted in provision preceding cl. (A) "identify local governments" for "identify communities", struck out cl. (A), which required the Administrator to identify populations of less than twenty-five thousand persons, redesignated cls. (B) and (C) as (A) and (B), respectively, in cl. (A) as so redesignated, substituted "a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan" for "solid waste disposal facilities in which more than 75 per centum of the solid waste of is from areas outside the jurisdiction of the communities" in cl. (B) as so redesignated, substituted "which are located over an aquifer which is the source of drinking water for any person or public water system and which has" for "which have" and inserted ", including possible methane migration" after "such solid waste".

Subsec. (e)(2). Pub. L. 96–482, §20(6)–(8), substituted appropriations authorization of $2,500,000; $1,500,000; and $1,500,000 for fiscal years 1980, 1981, and 1982, for prior authorization of $2,500,000 for fiscal years 1978 and 1979, substituted provision for grants for "containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1)" for such grants for "the conversion, improvement, or

consolidation of existing solid waste disposal facilities, or for the construction of new solid waste disposal facilities, or for both, within communities identified under paragraph (1)", and prohibited grants to units of local government when site exceeds 65 acres in size.

Subsec. (e)(3). Pub. L. 96–482, §20(9), struck out par. (3) which required that grants to States be made only when the projects are consistent with applicable and approved State plan and will assist in carrying out such plan.

Subsec. (f). Pub. L. 96–463, §5(b), added subsec. (f) relating to assistance to States for discretionary program for recycled oil.

Pub. L. 96–482, §32(e)(3), added subsec. (f) relating to assistance to municipalities for energy and materials conservation and recovery planning activities.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] See References in Text note below.

[2] So in original. Probably should be "through".

[3] So in original. Probably should be followed by a comma.

§6949. Rural communities assistance

(a) In general

The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 6945 of this title or restrictions on open burning or other requirements arising under the Clean Air Act [42 U.S.C. 7401 et seq.] or the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]. Such assistance shall only be available—

(1) to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;

(2) where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 6945 of this title; and

(3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

(b) Allotment

The Administrator shall allot the sums appropriated to carry out this section in any fiscal year among the States in accordance with regulations promulgated by him on the basis of the average of the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States, the ratio which the population of counties in each State having less than twenty persons per square mile bears to the total population of such counties in all the States, and the ratio which the population of such low-density counties in each State having 33 per centum or more of all families with incomes not in excess of 125 per centum of the poverty level bears to the total population of such counties in all the States.

(c) Limit

The amount of any grant under this section shall not exceed 75 per centum of the costs of the project. No assistance under this section shall be available for the acquisition of land or interests in land.

(d) Authorization of appropriations

There are authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section. There are authorized to be appropriated $10,000,000 for the fiscal year 1980 and $15,000,000 for each of the fiscal years 1981 and 1982 to carry out this section.

(e) Additional appropriations

(1) In general

There are authorized to be appropriated to carry out this section for the Denali Commission to provide assistance to municipalities in the State of Alaska $1,500,000 for each of fiscal years 2008 through 2012.

(2) Administration

For the purpose of carrying out this subsection, the Denali Commission shall—

(A) be considered a State; and

(B) comply with all other requirements and limitations of this section.

(Pub. L. 89–272, title II, §4009, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2819; amended Pub. L. 96–482, §31(e), Oct. 21, 1980, 94 Stat. 2353; Pub. L. 110–234, title VI, §6009(b), May 22, 2008, 122 Stat. 1163; Pub. L. 110–246, §4(a), title VI, §6009(b), June 18, 2008, 122 Stat. 1664, 1924.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short title note set out under section 1251 of title 33 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–246, §6009(b), added subsec. (e).

1980—Subsec. (d). Pub. L. 96–482 authorized appropriation of $10,000,000, $15,000,000, and $15,000,000 for fiscal years 1980, 1981, 1982, respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection

Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6949a. Adequacy of certain guidelines and criteria

(a) Study

The Administrator shall conduct a study of the extent to which the guidelines and criteria under this chapter (other than guidelines and criteria for facilities to which subchapter III applies) which are applicable to solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments, are adequate to protect human health and the environment from ground water contamination. Such study shall include a detailed assessment of the degree to which the criteria under section 6907(a) of this title and the criteria under section 6944 of this title regarding monitoring, prevention of contamination, and remedial action are adequate to protect ground water and shall also include recommendation with respect to any additional enforcement authorities which the Administrator, in consultation with the Attorney General, deems necessary for such purposes.

(b) Report

Not later than thirty-six months after November 8, 1984, the Administrator shall submit a report to the Congress setting forth the results of the study required under this section, together with any recommendations made by the Administrator on the basis of such study.

(c) Revisions of guidelines and criteria

(1) In general

Not later than March 31, 1988, the Administrator shall promulgate revisions of the criteria promulgated under paragraph (1) of section 6944(a) of this title and under section 6907(a)(3) of this title for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 6921(d) of this title. The criteria shall be those necessary to protect human health and the environment and may take into account the practicable capability of such facilities. At a minimum such revisions for facilities potentially receiving such wastes should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate.

(2) Additional revisions

Subject to paragraph (3), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

(B) the municipal solid waste landfill unit or expansion serves—

(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

(3) Protection of ground water resources

(A) Monitoring requirement

A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and

ensure compliance with a State ground water protection plan, where applicable.

(B) Methods

If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

(C) Corrective action

If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

(4) No-migration exemption

(A) In general

Ground water monitoring requirements may be suspended by the Director of an approved State for a landfill operator if the operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period.

(B) Certification

A demonstration under subparagraph (A) shall be certified by a qualified ground-water scientist and approved by the Director of an approved State.

(C) Guidance

Not later than 6 months after March 26, 1996, the Administrator shall issue a guidance document to facilitate small community use of the no migration [1] exemption under this paragraph.

(5) Alaska Native villages

Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 1602 of title 43) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.

(6) Further revisions of guidelines and criteria

Recognizing the unique circumstances of small communities, the Administrator shall, not later than two years after March 26, 1996, promulgate revisions to the guidelines and criteria promulgated under this subchapter to provide additional flexibility to approved States to allow landfills that receive 20 tons or less of municipal solid waste per day, based on an annual average, to use alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance: *Provided,* That such alternative requirements take into account climatic and hydrogeologic conditions and are protective of human health and environment.

(Pub. L. 89–272, title II, §4010, as added Pub. L. 98–616, title III, §302(a)(1), Nov. 8, 1984, 98 Stat. 3267; amended Pub. L. 104–119, §3(a), Mar. 26, 1996, 110 Stat. 831.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–119 designated existing provisions as par. (1), inserted heading, and added pars. (2) to (6).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REINSTATEMENT OF REGULATORY EXEMPTION

Pub. L. 104–119, §3(b), Mar. 26, 1996, 110 Stat. 833, provided that: "It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act [42 U.S.C. 6949a(c)(2)], as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991."

[1] *So in original. Probably should be "no-migration".*

SUBCHAPTER V—DUTIES OF SECRETARY OF COMMERCE IN RESOURCE AND RECOVERY

§6951. Functions

The Secretary of Commerce shall encourage greater commercialization of proven resource recovery technology by providing—

(1) accurate specifications for recovered materials;

(2) stimulation of development of markets for recovered materials;

(3) promotion of proven technology; and

(4) a forum for the exchange of technical and economic data relating to resource recovery facilities.

(Pub. L. 89–272, title II, §5001, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2820.)

§6952. Development of specifications for secondary materials

The Secretary of Commerce, acting through the National Institute of Standards and Technology, and in conjunction with national standards-setting organizations in resource recovery, shall, after public hearings, and not later than two years after September 1, 1979, publish guidelines for the development of specifications for the classification of materials recovered from waste which were destined for disposal. The specifications shall pertain to the physical and chemical properties and characteristics of such materials with regard to their use in replacing virgin materials in various industrial, commercial, and governmental uses. In establishing such guidelines the Secretary shall also, to the extent feasible, provide such information as may be necessary to assist Federal agencies with procurement of items containing recovered materials. The Secretary shall continue to cooperate with national standards-setting organizations, as may be necessary, to encourage the publication, promulgation and updating of standards for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.

(Pub. L. 89–272, title II, §5002, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2820; amended Pub. L. 96–482, §21(a), Oct. 21, 1980, 94 Stat. 2346; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

1980—Pub. L. 96–482 substituted "September 1, 1979" for "October 21, 1976".

§6953. Development of markets for recovered materials

The Secretary of Commerce shall within two years after September 1, 1979, take such actions as may be necessary to—

(1) identify the geographical location of existing or potential markets for recovered materials;

(2) identify the economic and technical barriers to the use of recovered materials; and

(3) encourage the development of new uses for recovered materials.

(Pub. L. 89–272, title II, §5003, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2821; amended Pub. L. 96–482, §21(b), Oct. 21, 1980, 94 Stat. 2346.)

EDITORIAL NOTES

AMENDMENTS

1980—Pub. L. 96–482 substituted "September 1, 1979" for "October 21, 1976".

§6954. Technology promotion

The Secretary of Commerce is authorized to evaluate the commercial feasibility of resource recovery facilities and to publish the results of such evaluation, and to develop a data base for purposes of assisting persons in choosing such a system.

(Pub. L. 89–272, title II, §5004, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2821.)

§6955. Marketing policies, establishment; nondiscrimination requirement

In establishing any policies which may affect the development of new markets for recovered materials and in making any determination concerning whether or not to impose monitoring or other controls on any marketing or transfer of recovered materials, the Secretary of Commerce may consider whether to establish the same or similar policies or impose the same or similar monitoring or other controls on virgin materials.

(Pub. L. 89–272, title II, §5005, as added Pub. L. 96–482, §21(c)(1), Oct. 21, 1980, 94 Stat. 2346.)

§6956. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce $5,000,000 for each of fiscal years 1980, 1981, and 1982 and $1,500,000 for each of the fiscal years 1985 through 1988 to carry out the purposes of this subchapter.

(Pub. L. 89–272, title II, §5006, as added Pub. L. 96–482, §31(f)(1), Oct. 21, 1980, 94 Stat. 2353; amended Pub. L. 98–616, §2(h), Nov. 8, 1984, 98 Stat. 3223.)

EDITORIAL NOTES

AMENDMENTS

1984—Pub. L. 98–616 authorized appropriation of $1,500,000 for each of fiscal years 1985 through 1988.

SUBCHAPTER VI—FEDERAL RESPONSIBILITIES

§6961. Application of Federal, State, and local law to Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local solid waste or hazardous waste regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State solid or hazardous waste law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative enforcement actions

(1) The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this chapter. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against another person. Any voluntary resolution or settlement of such an action shall be set forth in a consent order.

(2) No administrative order issued to such a department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on October 6, 1992, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(Pub. L. 89–272, title II, §6001, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2821; amended Pub. L. 95–609, §7(m), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 102–386, title I, §102(a), (b), Oct. 6, 1992, 106 Stat. 1505, 1506.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–386 designated existing provisions as subsec. (a), inserted heading, inserted in first sentence "and management" before "in the same manner", inserted second to fourth, sixth, and seventh sentences specifying Federal, State, interstate, and local substantive and procedural requirements, waiving sovereign immunity, determining reasonable service charges, and providing no agent, employee, or officer of the United States be personally liable for a civil penalty for an act or omission within the scope of official duties but be subject to criminal sanction, with no department, agency, or instrumentality of the executive, legislative, or judicial branch subject to such sanction, and added subsecs. (b) and (c).

1978—Pub. L. 95–609 inserted "or management" after "disposal" in cl. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–386, title I, §102(c), Oct. 6, 1992, 106 Stat. 1506, provided that:

"(1) IN GENERAL.—Except as otherwise provided in paragraphs (2) and (3), the amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this Act [Oct. 6, 1992].

"(2) DELAYED EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—Until the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act [subsec. (a) of this section] with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall not apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act [42 U.S.C. 6924(j)] involving storage of mixed waste that is not subject to an existing agreement, permit, or administrative or judicial order, so long as such waste is managed in compliance with all other applicable requirements.

"(3) EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—(A) Except as provided in subparagraph (B), after the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act involving storage of mixed waste.

"(B) With respect to the Department of Energy, the waiver of sovereign immunity referred to in subparagraph (A) shall not apply after the date that is 3 years after the date of the enactment of this Act for violations of section 3004(j) of such Act involving storage of mixed waste, so long as the Department of Energy is in compliance with both—

"(i) a plan that has been submitted and approved pursuant to section 3021(b) of the Solid Waste Disposal Act [42 U.S.C. 6939c(b)] and which is in effect; and

"(ii) an order requiring compliance with such plan which has been issued pursuant to such section 3021(b) and which is in effect.

"(4) APPLICATION OF WAIVER TO AGREEMENTS AND ORDERS.—The waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act (as added by the amendments made by subsection (a)) shall take effect on the date of the enactment of this Act with respect to any agreement, permit, or administrative or judicial order existing on such date of enactment (and any subsequent

modifications to such an agreement, permit, or order), including, without limitation, any provision of an agreement, permit, or order that addresses compliance with section 3004(j) of such Act with respect to mixed waste.

"(5) AGREEMENT OR ORDER.—Except as provided in paragraph (4), nothing in this Act [see Short Title of 1992 Amendment note set out under section 6901 of this title] shall be construed to alter, modify, or change in any manner any agreement, permit, or administrative or judicial order, including, without limitation, any provision of an agreement, permit, or order—

"(i) that addresses compliance with section 3004(j) of the Solid Waste Disposal Act with respect to mixed waste;

"(ii) that is in effect on the date of enactment of this Act; and

"(iii) to which a department, agency, or instrumentality of the executive branch of the Federal Government is a party."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 20 of House Document No. 103–7.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12780

Ex. Ord. No. 12780, Oct. 31, 1991, 56 F.R. 56289, which required Federal agencies to promote cost-effective waste reduction and recycling of reusable materials and established a Council on Federal Recycling and Procurement Policy, was revoked by Ex. Ord. No. 12873, §901, Oct. 20, 1993, 58 F.R. 54911, formerly set out below.

EXECUTIVE ORDER NO. 12873

Ex. Ord. No. 12873, Oct. 20, 1993, 58 F.R. 54911, as amended by Ex. Ord. No. 12995, Mar. 25, 1996, 61 F.R. 13645, which directed Executive agencies to incorporate waste prevention and recycling in daily operations and work and to acquire and use environmentally preferable products and services and which created a Federal Environmental Executive and established high-level Environmental Executive positions within each agency, was revoked by Ex. Ord. No. 13101, §901, Sept. 14, 1998, 63 F.R. 49651, formerly set out below.

EXECUTIVE ORDER NO. 13101

Ex. Ord. No. 13101, Sept. 14, 1998, 63 F.R. 49643, which directed executive agencies to incorporate waste prevention and recycling policies in their daily operations and created a Steering Committee, a Federal Environmental Executive, a Task Force, and Agency Environmental Executive positions responsible for ensuring the implementation of this order, was revoked by Ex. Ord. No. 13423, §11(a)(i), Jan. 24, 2007, 72 F.R. 3923, formerly set out in a note under section 4321 of this title.

§6962. Federal procurement

(a) Application of section

Except as provided in subsection (b), a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

(b) Procurement subject to other law

Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6964 of this title (as promulgated before October 21, 1976, under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) Requirements

(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the National Institute of Standards and Technology in any case in which such material is covered by such guidelines.

(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(3)(A) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors:

(i) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and

(ii) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.

(B) Clause (ii) of subparagraph (A) applies only to a contract in an amount greater than $100,000.

(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

(1) as expeditiously as possible but in any event no later than eighteen months after November 8, 1984, eliminate from such specifications—

(A) any exclusion of recovered materials and

(B) any requirement that items be manufactured from virgin materials; and

(2) within one year after the date of publication of applicable guidelines under subsection (e), or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item.

(e) Guidelines

The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the National Institute of Standards and Technology), and the Director of the Government Publishing Office, shall prepare, review not less frequently than once every 5 years, and, if appropriate, revise, in consultation with recyclers and manufacturers of products containing recycled content, not later than 2 years after the completion of the initial review after November 15, 2021, and thereafter, as appropriate, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1); and

(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of

recovered materials used,

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

(A) the availability of such items;

(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;

(C) the economic and technological feasibility of producing and using such items; and

(D) other uses for such recovered materials.

(f) Procurement of services

A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

(g) Executive Office

The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d).

(h) "Recovered materials" defined

As used in this section, in the case of paper products, the term "recovered materials" includes—

(1) postconsumer materials such as—

(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) manufacturing, forest residues, and other wastes such as—

(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

(E) fibers recovered from waste water which otherwise would enter the waste stream.

(i) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection (e), each procuring agency shall develop an affirmative procurement program which will assure that

items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—

(A) a recovered materials preference program;

(B) an agency promotion program to promote the preference program adopted under subparagraph (A);

(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and

(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1).

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A) through (C), a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1)). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1)) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C).

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.

(j) Consultation and provision of information by Administrator

The Administrator shall—

(1) consult with each procuring agency, including contractors of the procuring agency, to clarify the responsibilities of the procuring agency under this section; and

(2) provide to each procuring agency information on the requirements under this section and the responsibilities of the procuring agency under this section.

(k) Reports

The Administrator, in consultation with the Administrator of General Services, shall submit to Congress an annual report describing—

(1) the quantity of federally procured recycled products listed in the guidelines under subsection (e); and

(2) with respect to the products described in paragraph (1), the percentage of recycled material in each product.

(Pub. L. 89–272, title II, §6002, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2822; amended Pub. L. 95–609, §7(n), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96–482, §22, Oct. 21, 1980, 94 Stat. 2346; Pub. L. 97–375, title I, §102, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–616, title V, §501(a)–(e), Nov. 8, 1984, 98 Stat. 3274–3276; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–393, title VI, §630, Oct. 6, 1992, 106 Stat. 1773; Pub. L. 103–355, title

I, §1554(1), title IV, §4104(e), Oct. 13, 1994, 108 Stat. 3300, 3342; Pub. L. 113–235, div. H, title I, §1301(d), Dec. 16, 2014, 128 Stat. 2537; Pub. L. 117–58, div. G, title IV, §70402(c), Nov. 15, 2021, 135 Stat. 1265.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 102–393, title VI, §630, Oct. 6, 1990, 106 Stat. 1773, which directed that this title be amended by adding a new section 6962j, relating to a preference for recycled toner cartridges, and which had been executed by adding the provisions of purported new section as subsec. (j) of this section, to reflect the probable intent of Congress, was repealed by Pub. L. 103–355, title I, §1554(1), Oct. 13, 1994, 108 Stat. 3300. Similar provisions were contained in Pub. L. 103–123, title IV, §401, Oct. 28, 1993, 107 Stat. 1238, prior to repeal by Pub. L. 103–355, title I, §1554(2), Oct. 13, 1994, 108 Stat. 3300.

AMENDMENTS

2021—Subsec. (e). Pub. L. 117–58, §70402(c)(1), which directed substitution of "review not less frequently than once every 5 years, and, if appropriate, revise, in consultation with recyclers and manufacturers of products containing recycled content, not later than 2 years after the completion of the initial review after November 15, 2021, and thereafter, as appropriate" for "and from time to time, revise" in introductory provisions, was executed by making the substitution for "and from time to time revise" to reflect the probable intent of Congress.

Subsecs. (j), (k). Pub. L. 117–58, §70402(c)(2), added subsecs. (j) and (k).

1994—Subsec. (c)(3). Pub. L. 103–355, §4104(e), designated existing provisions as subpar. (A), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (j). Pub. L. 103–355, §1554(1), struck out subsec. (j). See Codification note above.

1992—Subsec. (j). Pub. L. 102–393 added subsec. (j). See Codification note above.

1988—Subsecs. (c)(1)(C), (e). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "Bureau of Standards".

1984—Subsec. (c)(1). Pub. L. 98–616, §501(c), inserted "(and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) practicable)".

Subsec. (d)(1). Pub. L. 98–616, §501(e), substituted "eighteen months after November 8, 1984" for "five years after October 21, 1976".

Subsec. (e). Pub. L. 98–616, §501(b)(2), substituted "for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985" for "for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, including construction materials, by September 30, 1982." in provisions following par. (2).

Subsec. (e)(1). Pub. L. 98–616, §501(b)(1), inserted ", and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1)".

Subsec. (g). Pub. L. 98–616, §501(d), substituted "the requirements of" for "the policy expressed in" and inserted ", and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d)".

Subsecs. (h), (i). Pub. L. 98–616, §501(a), added subsecs. (h) and (i).

1982—Subsec. (g). Pub. L. 97–375 struck out provision requiring the Office of Procurement Policy to report annually to Congress on actions taken by Federal agencies and the progress made in the implementation of the policy expressed in this section.

1980—Subsec. (c)(1). Pub. L. 96–482, §22(1), (2), in provision preceding subpar. (A), substituted "After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any item designated in such guidelines shall procure such" for "After two years after October 21, 1976, each procuring agency shall procure", and in subpar. (C), "subparagraph (B)" for "clause (B)".

Subsec. (c)(2). Pub. L. 96–482, §22(3), substituted "energy or fuels derived from solid waste" for "recovered material and recovered-material-derived fuel".

Subsec. (c)(3). Pub. L. 96–482, §22(4), substituted subpars. (A) and (B) for provision requiring certification of the percentage of the total material utilized for the performance of the contract which is recovered materials.

Subsec. (d). Pub. L. 96–482, §22(5), in par. (1), substituted provision requiring Federal agencies to

eliminate from specifications as expeditiously as possible, but in no event later than 5 years after Oct. 21, 1976, any exclusion of recovered materials and any requirement that items be manufactured from virgin materials for provision that Federal agencies in reviewing specifications, ascertain whether those specifications violate prohibitions in par. (2)(A) to (C), with such review undertaken not later than 18 months after Oct. 21, 1976, and in par. (2), substituted provision that Federal agencies act within 1 year from publication of applicable guidelines under subsec. (e) of this section for provision that in drafting or revising specifications after Oct. 21, 1976, any exclusion of recovered materials be eliminated and specifications not require the item to be manufactured from virgin materials.

Subsec. (e). Pub. L. 96–482, §22(6), designated provision relating to requirements of guidelines as cl. (2) and subpars. (A) and (C), added cl. (1), subpars. (B) and (C), and provision preceding subpar. (A), and struck out provision requiring information on source of supply.

1978—Subsec. (c). Pub. L. 95–609, §7(n)(1), (2), redesignated subpar. (1)(A) as par. (1), subpars. (1)(B) and (C) as pars. (2) and (3), respectively, and cls. (i) to (iii) of former subpar. (1)(A) as subpars. (A) to (C), respectively, of par. (1), and in par. (3), as so redesignated, inserted "After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section," before "contracting".

Subsec. (e). Pub. L. 95–609, §7(n)(3), inserted provision dealing with certification by vendors of the materials used.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Director of the Government Publishing Office" substituted for "Public Printer" in subsec. (e) on authority of section 1301(d) of Pub. L. 113–235, set out as a note under section 301 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 8752 of Title 10, Armed Forces.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6963. Cooperation with Environmental Protection Agency

(a) General rule

All Federal agencies shall assist the Administrator in carrying out his functions under this chapter and shall promptly make available all requested information concerning past or present Agency waste management practices and past or present Agency owned, leased, or operated solid or hazardous waste facilities. This information shall be provided in such format as may be determined by the Administrator.

(b) Information relating to energy and materials conservation and recovery

The Administrator shall collect, maintain, and disseminate information concerning the market potential of energy and materials recovered from solid waste, including materials obtained through source separation, and information concerning the savings potential of conserving resources contributing to the waste stream. The Administrator shall identify the regions in which the increased substitution of such energy for energy derived from fossil fuels and other sources is most likely to be feasible, and provide information on the technical and economic aspects of developing integrated

resource conservation or recovery systems which provide for the recovery of source-separated materials to be recycled or the conservation of resources. The Administrator shall utilize the authorities of subsection (a) in carrying out this subsection.

(Pub. L. 89–272, title II, §6003, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2823; amended Pub. L. 96–482, §32(g), Oct. 21, 1980, 94 Stat. 2355.)

EDITORIAL NOTES

AMENDMENTS

1980—Pub. L. 96–482 designated existing provision as subsec. (a), substituted provision that information be provided in a format determined by the Administrator for provision that information be furnished on a reimbursable basis, and added subsec. (b).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6964. Applicability of solid waste disposal guidelines to Executive agencies

(a) Compliance

(1) If—

(A) an Executive agency (as defined in section 105 of title 5) or any unit of the legislative branch of the Federal Government has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste management activities, or

(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste management activities,

then such agency shall insure compliance with the guidelines recommended under section 6907 of this title and the purposes of this chapter in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each Executive agency or any unit of the legislative branch of the Federal Government which conducts any activity—

(A) which generates solid waste, and

(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this chapter in conducting such activity.

(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this chapter in the disposal of such waste.

(4) The President or the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the Federal Government shall prescribe regulations to carry out this subsection.

(b) Licenses and permits

Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Administrator to insure compliance with

guidelines recommended under section 6907 of this title and the purposes of this chapter.

(Pub. L. 89–272, title II, §6004, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2823; amended Pub. L. 95–609, §7(o), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96–482, §23, Oct. 21, 1980, 94 Stat. 2347; Pub. L. 104–186, title II, §222(2), Aug. 20, 1996, 110 Stat. 1751.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254e of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–186 substituted "House Oversight" for "House Administration".

1980—Subsec. (a)(1)(A). Pub. L. 96–482, §23(1), inserted reference to any unit of the legislative branch of the Federal Government.

Subsec. (a)(2). Pub. L. 96–482, §23(2), required any unit of the legislative branch of the Federal Government to insure compliance with solid waste disposal guidelines.

Subsec. (a)(4). Pub. L. 96–482, §23(3), required House Committee on House Administration and Senate Committee on Rules and Administration with regard to any unit of the legislative branch of the Federal Government to prescribe implementing regulations.

1978—Subsec. (a)(1). Pub. L. 95–609, §7(o)(1), (2), substituted "management" for "disposal" in two places.

Subsec. (b). Pub. L. 95–609, §7(o)(3), substituted "Administrator" for "Secretary".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6965. Chief Financial Officer report

The Chief Financial Officer of each affected agency shall submit to Congress an annual report containing, to the extent practicable, a detailed description of the compliance activities undertaken by the agency for mixed waste streams, and an accounting of the fines and penalties imposed on the agency for violations involving mixed waste.

(Pub. L. 102–386, title I, §110, Oct. 6, 1992, 106 Stat. 1516.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6966. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:

(1) Agency head

The term "agency head" means—

(A) the Secretary of Transportation; and

(B) the head of any other Federal agency that, on a regular basis, procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term "cement or concrete project" means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out, in whole or in part, using Federal funds.

(3) Recovered mineral component

The term "recovered mineral component" means—

(A) ground granulated blast furnace slag, excluding lead slag;

(B) coal combustion fly ash; and

(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general

Not later than 1 year after August 8, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 8, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1), an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Federal procurement requirements

The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—

(A) quantify—

(i) the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of procurement requirements; and

(ii) the energy savings and environmental benefits associated with the substitution;

(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from the law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report

Not later than 30 months after August 8, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements

Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the date on which the report under subsection (c)(3) is submitted, take additional actions under this chapter to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects—

(1) to realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) to eliminate barriers identified under subsection (c)(2)(B).

(e) Effect of section

Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for implementing those requirements).

(Pub. L. 89–272, title II, §6005, as added Pub. L. 109–58, title I, §108(a), Aug. 8, 2005, 119 Stat. 612.)

EDITORIAL NOTES

CODIFICATION

Another section 6005 of Pub. L. 89–272 is classified to section 6966a of this title.

§6966a. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:

(1) Agency head

The term "agency head" means—

(A) the Secretary of Transportation; and

(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term "cement or concrete project" means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out in whole or in part using Federal funds.

(3) Recovered mineral component

The term "recovered mineral component" means—

(A) ground granulated blast furnace slag other than lead slag;

(B) coal combustion fly ash;

(C) blast furnace slag aggregate other than lead slag aggregate;

(D) silica fume; and

(E) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general

Not later than 1 year after August 10, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 10, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Conformance

The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—

(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report

Not later than 30 months after August 10, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements

Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under this chapter to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) eliminate barriers identified under subsection (c).

(e) Effect of section

Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for implementing those requirements).

(Pub. L. 89–272, title II, §6005, as added Pub. L. 109–59, title VI, §6017(a), Aug. 10, 2005, 119 Stat. 1888.)

EDITORIAL NOTES

CODIFICATION

Another section 6005 of Pub. L. 89–272 is classified to section 6966 of this title.

§6966b. Use of granular mine tailings

(a) Mine tailings

(1) In general

Not later than 180 days after August 10, 2005, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as "chat", for—

(A) cement or concrete projects; and

(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

(2) Requirements

In establishing criteria under paragraph (1), the Administrator shall consider—

(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

(3) Public participation

In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

(4) Applicability of criteria

On the establishment of the criteria under paragraph (1), any use of the granular mine tailings

described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

(b) Effect of sections

Nothing in this section or section 6966a of this title affects any requirement of any law (including a regulation) in effect on August 10, 2005.

(Pub. L. 89–272, title II, §6006, as added Pub. L. 109–59, title VI, §6018(a), Aug. 10, 2005, 119 Stat. 1890.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6966a of this title, referred to in subsec. (b), was in the original "section 6005" meaning section 6005 of Pub. L. 89–272, which was translated as meaning the section 6005 of Pub. L. 89–272 as added by section 6017(a) of Pub. L. 109–59, to reflect the probable intent of Congress.

§6966c. Best practices for battery recycling and labeling guidelines

(a) Definitions

In this section:

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Battery

The term "battery" means a device that—

(A) consists of 1 or more electrochemical cells that are electrically connected; and

(B) is designed to store and deliver electric energy.

(3) Recycling

The term "recycling" means the series of activities—

(A) during which recyclable materials are processed into specification-grade commodities, and consumed as raw-material feedstock, in lieu of virgin materials, in the manufacturing of new products;

(B) that may include collection, processing, and brokering; and

(C) that result in subsequent consumption by a materials manufacturer, including for the manufacturing of new products.

(b) Best practices for collection of batteries to be recycled

(1) In general

The Administrator shall develop best practices that may be implemented by State, Tribal, and local governments with respect to the collection of batteries to be recycled in a manner that—

(A) to the maximum extent practicable, is technically and economically feasible for State, Tribal, and local governments;

(B) is environmentally sound and safe for waste management workers; and

(C) optimizes the value and use of material derived from recycling of batteries.

(2) Consultation

The Administrator shall develop the best practices described in paragraph (1) in coordination with State, Tribal, and local governments and relevant nongovernmental and private sector entities.

(3) Report

Not later than 2 years after November 15, 2021, the Administrator shall submit to Congress a report describing the best practices developed under paragraph (1).

(4) Authorization of appropriations

There is authorized to be appropriated to the Administrator to carry out this subsection $10,000,000 for fiscal year 2022, to remain available until September 30, 2026.

(c) Voluntary labeling guidelines

(1) In general

There is established within the Environmental Protection Agency a program (referred to in this subsection as the "program") to promote battery recycling through the development of—

(A) voluntary labeling guidelines for batteries; and

(B) other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries.

(2) Purposes

The purposes of the program are to improve battery collection and reduce battery waste, including by—

(A) identifying battery collection locations and increasing accessibility to those locations;

(B) promoting consumer education about battery collection and recycling; and

(C) reducing safety concerns relating to the improper disposal of batteries.

(3) Other standards and law

The Administrator shall make every reasonable effort to ensure that voluntary labeling guidelines and other forms of communication materials developed under the program are consistent with—

(A) international battery labeling standards; and

(B) the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14301 et seq.).

(4) Authorization of appropriations

There is authorized to be appropriated to the Administrator to carry out this subsection $15,000,000 for fiscal year 2022, to remain available until September 30, 2026.

(Pub. L. 117–58, div. G, title IV, §70401, Nov. 15, 2021, 135 Stat. 1261.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Mercury-Containing and Rechargeable Battery Management Act, referred to in subsec. (c)(3)(B), is Pub. L. 104–142, May 13, 1996, 110 Stat. 1329, which is classified generally to chapter 137 (§14301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14301 of this title and Tables.

CODIFICATION

Section was enacted as part of the Infrastructure Investment and Jobs Act, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6966d. Consumer recycling education and outreach grant program; Federal procurement

(a) Definition of Administrator

In this section, the term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) Consumer recycling education and outreach grant program

(1) In general

The Administrator shall establish a program (referred to in this subsection as the "grant program") to award competitive grants to eligible entities to improve the effectiveness of residential and community recycling programs through public education and outreach.

(2) Criteria

The Administrator shall award grants under the grant program for projects that, by using one or more eligible activities described in paragraph (5)—

(A) inform the public about residential or community recycling programs;

(B) provide information about the recycled materials that are accepted as part of a residential or community recycling program that provides for the separate collection of residential solid waste from recycled material; and

(C) increase collection rates and decrease contamination in residential and community recycling programs.

(3) Eligible entities

(A) In general

An entity that is eligible to receive a grant under the grant program is—

(i) a State;

(ii) a unit of local government;

(iii) an Indian Tribe (as defined in section 5304 of title 25);

(iv) a Native Hawaiian organization (as defined in section 7517 of title 20);

(v) the Department of Hawaiian Home Lands;

(vi) the Office of Hawaiian Affairs;

(vii) a nonprofit organization; or

(viii) a public-private partnership.

(B) Coordination of activities

2 or more entities described in subparagraph (A) may receive a grant under the grant program to coordinate the provision of information to residents that may access 2 or more residential recycling programs, including programs that accept different recycled materials, to provide to the residents information regarding differences among those residential recycling programs.

(4) Requirement

(A) In general

To receive a grant under the grant program, an eligible entity shall demonstrate to the Administrator that the grant funds will be used to encourage the collection of recycled materials that are sold to an existing or developing market.

(B) Business plans and financial data

(i) In general

An eligible entity may make a demonstration under subparagraph (A) through the submission to the Administrator of appropriate business plans and financial data.

(ii) Confidentiality

The Administrator shall treat any business plans or financial data received under clause (i) as confidential information.

(5) Eligible activities

An eligible entity that receives a grant under the grant program may use the grant funds for activities including—

(A) public service announcements;

(B) a door-to-door education and outreach campaign;

(C) social media and digital outreach;

(D) an advertising campaign on recycling awareness;

(E) the development and dissemination of—

(i) a toolkit for a municipal and commercial recycling program;
(ii) information on the importance of quality in the recycling stream;
(iii) information on the economic and environmental benefits of recycling; and
(iv) information on what happens to materials after the materials are placed into a residential or community recycling program;

(F) businesses recycling outreach;
(G) bin, cart, and other receptacle labeling and signs; and
(H) such other activities that the Administrator determines are appropriate to carry out the purposes of this subsection.

(6) Prohibition on use of funds

No funds may be awarded under the grant program for a residential recycling program that—
(A) does not provide for the separate collection of residential solid waste (as defined in section 246.101 of title 40, Code of Federal Regulations (as in effect on November 15, 2021)) from recycled material (as defined in that section), unless the funds are used to promote a transition to a system that separately collects recycled materials; or
(B) promotes the establishment of, or conversion to, a residential collection system that does not provide for the separate collection of residential solid waste from recycled material (as those terms are defined under subparagraph (A)).

(7) Model recycling program toolkit

(A) In general

In carrying out the grant program, the Administrator, in consultation with other relevant Federal agencies, States, Indian Tribes, units of local government, nonprofit organizations, and the private sector, shall develop a model recycling program toolkit for States, Indian Tribes, and units of local government that includes, at a minimum—
(i) a standardized set of terms and examples that may be used to describe materials that are accepted by a residential recycling program;
(ii) information that the Administrator determines can be widely applied across residential recycling programs, taking into consideration the differences in recycled materials accepted by residential recycling programs;
(iii) educational principles on best practices for the collection and processing of recycled materials;
(iv) a community self-assessment guide to identify gaps in existing recycling programs;
(v) training modules that enable States and nonprofit organizations to provide technical assistance to units of local government;
(vi) access to consumer educational materials that States, Indian Tribes, and units of local government can adapt and use in recycling programs; and
(vii) a guide to measure the effectiveness of a grant received under the grant program, including standardized measurements for recycling rates and decreases in contamination.

(B) Requirement

In developing the standardized set of terms and examples under subparagraph (A)(i), the Administrator may not establish any requirements for—
(i) what materials shall be accepted by a residential recycling program; or
(ii) the labeling of products.

(8) School curriculum

The Administrator shall provide assistance to the educational community, including nonprofit organizations, such as an organization the science, technology, engineering, and mathematics program of which incorporates recycling, to promote the introduction of recycling principles and best practices into public school curricula.

(9) Reports

(A) To the Administrator

Not earlier than 180 days, and not later than 2 years, after the date on which a grant under the grant program is awarded to an eligible entity, the eligible entity shall submit to the Administrator a report describing, by using the guide developed under paragraph (7)(A)(vii)—

(i) the change in volume of recycled material collected through the activities funded with the grant;

(ii) the change in participation rate of the recycling program funded with the grant;

(iii) the reduction of contamination in the recycling stream as a result of the activities funded with the grant; and

(iv) such other information as the Administrator determines to be appropriate.

(B) To Congress

The Administrator shall submit to Congress an annual report describing—

(i) the effectiveness of residential recycling programs awarded funds under the grant program, including statistics comparing the quantity and quality of recycled materials collected by those programs, as described in the reports submitted to the Administrator under subparagraph (A); and

(ii) recommendations on additional actions to improve residential recycling.

(c) Omitted

(d) Authorization of appropriations

(1) In general

There is authorized to be appropriated to the Administrator to carry out this section and the amendments made by this section $15,000,000 for each of fiscal years 2022 through 2026.

(2) Requirement

Of the amount made available under paragraph (1) for a fiscal year, not less than 20 percent shall be allocated to—

(A) low-income communities;

(B) rural communities; and

(C) communities identified as Native American pursuant to section 3001(9) of title 25.

(Pub. L. 117–58, div. G, title IV, §70402, Nov. 15, 2021, 135 Stat. 1262.)

EDITORIAL NOTES

REFERENCES IN TEXT

The amendments made by this section, referred to in subsec. (d)(1), means the amendments made by section 70402(c) of Pub. L. 117–58, which amended section 6962 of this title. See Codification note below.

CODIFICATION

Section is comprised of section 70402 of Pub. L. 117–58. Subsec. (c) of section 70402 of Pub. L. 117–58 amended section 6962 of this title.

Section was enacted as part of the Infrastructure Investment and Jobs Act, and not as part of the Solid Waste Disposal Act which comprises this chapter.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§6971. Employee protection

(a) General

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated

against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter or of any applicable implementation plan.

(b) Remedy

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this chapter.

(c) Costs

Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Exception

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Employment shifts and loss

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this chapter and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to

require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this chapter or any applicable implementation plan.

(f) Occupational safety and health

In order to assist the Secretary of Labor and the Director of the National Institute for Occupational Safety and Health in carrying out their duties under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], the Administrator shall—

(1) provide the following information, as such information becomes available, to the Secretary and the Director:

(A) the identity of any hazardous waste generation, treatment, storage, disposal facility or site where cleanup is planned or underway;

(B) information identifying the hazards to which persons working at a hazardous waste generation, treatment, storage, disposal facility or site or otherwise handling hazardous waste may be exposed, the nature and extent of the exposure, and methods to protect workers from such hazards; and

(C) incidents of worker injury or harm at a hazardous waste generation, treatment, storage or disposal facility or site; and

(2) notify the Secretary and the Director of the Administrator's receipt of notifications under section 6930 or reports under sections 6922, 6923, and 6924 of this title and make such notifications and reports available to the Secretary and the Director.

(Pub. L. 89–272, title II, §7001, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2824; amended Pub. L. 96–482, §24, Oct. 21, 1980, 94 Stat. 2347.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (f), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

1980—Subsec. (f). Pub. L. 96–482 added subsec. (f).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6972. Citizen suits

(a) In general

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1)(A) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality

or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to—

(i) the Administrator;

(ii) the State in which the alleged violation occurs; and

(iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) in a court of the United States, any person may intervene as a matter of right.

(2)(A) No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to—

(i) the Administrator;

(ii) the State in which the alleged endangerment may occur;

(iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B),

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.

(B) No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under section 6973 of this title or under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9606],[1]

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604];

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.]; or

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 980 [2] [42 U.S.C. 9606] or section 6973 of this title pursuant to which a responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.

In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) are prohibited only as to the scope and duration of the administrative order referred to in clause (iv).

(C) No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B);

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604]; or

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.].

(D) No action may be commenced under subsection (a)(1)(B) by any person (other than a State or local government) with respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a permit for such facility.

(E) In any action under subsection (a)(1)(B) in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.

(F) Whenever any action is brought under subsection (a)(1)(B) in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and with the Administrator.

(c) Notice

No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this chapter may be brought under this section only in the judicial district in which such alleged violation occurs.

(d) Intervention

In any action under this section the Administrator, if not a party, may intervene as a matter of right.

(e) Costs

The court, in issuing any final order in any action brought pursuant to this section or section 6976 of this title, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is

appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Other rights preserved

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency).

(g) Transporters

A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or disposal, referred to in subsection (a)(1)(B) taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.

(Pub. L. 89–272, title II, §7002, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2825; amended Pub. L. 95–609, §7(p), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 98–616, title IV, §401, Nov. 8, 1984, 98 Stat. 3268.)

EDITORIAL NOTES

REFERENCES IN TEXT

That Act, referred to in subsec. (b)(2)(B)(iii), (C)(iii), means Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to chapter 103 (§9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §401(a), (b), designated existing provisions of subsec. (a)(1) as subpar. (A) thereof, inserted "prohibition," after "requirement,", added subpar. (B), and in provisions following par. (2) inserted "or the alleged endangerment may occur" in first sentence and substituted "to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title" for "to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be".

Subsec. (b). Pub. L. 98–616, §401(d), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No action may be commenced under paragraph (a)(1) of this section—

"(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

"(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: *Provided, however*, That in any such action in a court of the United States, any person may intervene as a matter of right."

Subsec. (e). Pub. L. 98–616, §401(e), substituted "to the prevailing or substantially prevailing party" for "to any party" and inserted "or section 6976 of this title".

Subsec. (g). Pub. L. 98–616, §401(c), added subsec. (g).

1978—Subsec. (c). Pub. L. 95–609, §7(p)(1), substituted "subchapter III" for "section 212 of this Act."

Subsec. (e). Pub. L. 95–609, §7(p)(2), substituted "require" for "requiring".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *So in original. The comma probably should be a semicolon.*

[2] *So in original. Probably should be "1980".*

§6973. Imminent hazard

(a) Authority of Administrator

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractural [1] arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The Administrator shall provide notice to the affected State of any such suit. The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Violations

Any person who willfully violates, or fails or refuses to comply with, any order of the Administrator under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Immediate notice

Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the Administrator shall provide immediate notice to the appropriate local government agencies. In addition, the Administrator shall require notice of such endangerment to be promptly posted at the site where the waste is located.

(d) Public participation in settlements

Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement

prior to its final entry shall be afforded to the public. The decision of the United States or the Administrator to enter into or not to enter into such Consent Decree, covenant or agreement shall not constitute a final agency action subject to judicial review under this chapter or chapter 7 of title 5.

(Pub. L. 89–272, title II, §7003, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2826; amended Pub. L. 95–609, §7(q), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96–482, §25, Oct. 21, 1980, 94 Stat. 2348; Pub. L. 98–616, title IV, §§402, 403(a), 404, Nov. 8, 1984, 98 Stat. 3271, 3273.)

EDITORIAL NOTES

CODIFICATION

In subsec. (d), "chapter 7 of title 5" substituted for "the Administrative Procedure Act" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §402, inserted "past or present" after "evidence that the", substituted "against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or, who is" for "to immediately restrain any person", substituted "to restrain such person from" for "to stop", substituted ", to order such person to take such other action as may be necessary, or both" for "or to take such other action as may be necessary", and inserted "A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal, taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractural [sic] arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste."

Subsec. (c). Pub. L. 98–616, §403(a), added subsec. (c).

Subsec. (d). Pub. L. 98–616, §404, added subsec. (d).

1980—Pub. L. 96–482, §25, designated existing provisions as subsec. (a), substituted "may present" for "is presenting" and "such handling, storage, treatment, transportation or disposal" for "the alleged disposal" and authorized other action to be taken by the Administrator after notice including issuance of protective orders relating to public health and the environment, and added subsec. (b).

1978—Pub. L. 95–609 struck out "for" after "restrain any person".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *So in original. Probably should be "contractual".*

§6974. Petition for regulations; public participation

(a) Petition

Any person may petition the Administrator for the promulgation, amendment, or repeal of any regulation under this chapter. Within a reasonable time following receipt of such petition, the Administrator shall take action with respect to such petition and shall publish notice of such action in the Federal Register, together with the reasons therefor.

(b) Public participation

(1) Public participation in the development, revision, implementation, and enforcement of any

regulation, guideline, information, or program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 6925 of this title, the Administrator shall—

(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency's intention to issue such permit, and

(B) transmit in writing notice of the agency's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility.

If within 45 days the Administrator receives written notice of opposition to the agency's intention to issue such permit and a request for a hearing, or if the Administrator determines on his own initiative, he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time, and subject matter of such hearing. No State program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 6926 of this title unless such program provides for the notice and hearing required by the paragraph.

(Pub. L. 89–272, title II, §7004, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2826; amended Pub. L. 96–482, §26, Oct. 21, 1980, 94 Stat. 2348.)

EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–482 designated existing provisions as par. (1) and added par. (2).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6975. Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

(Pub. L. 89–272, title II, §7005, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2827.)

§6976. Judicial review

(a) Review of final regulations and certain petitions

Any judicial review of final regulations promulgated pursuant to this chapter and the Administrator's denial of any petition for the promulgation, amendment, or repeal of any regulation under this chapter shall be in accordance with sections 701 through 706 of title 5, except that—

(1) a petition for review of action of the Administrator in promulgating any regulation, or

requirement under this chapter or denying any petition for the promulgation, amendment or repeal of any regulation under this chapter may be filed only in the United States Court of Appeals for the District of Columbia, and such petition shall be filed within ninety days from the date of such promulgation or denial, or after such date if such petition for review is based solely on grounds arising after such ninetieth day; action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

(2) in any judicial proceeding brought under this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if a party seeking review under this chapter applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper; the Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(b) Review of certain actions under sections 6925 and 6926 of this title

Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 6925 of this title (or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) [1] of this title), or (2) in granting, denying, or withdrawing authorization or interim authorization under section 6926 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement. Such review shall be in accordance with sections 701 through 706 of title 5.

(Pub. L. 89–272, title II, §7006, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2827; amended Pub. L. 96–482, §27, Oct. 21, 1980, 94 Stat. 2349; Pub. L. 98–616, title II, §241(b)(1), title IV, §403(d)(5), Nov. 8, 1984, 98 Stat. 3259, 3273.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89–272, which was renumbered section 3014(d)(1) of Pub. L. 89–272 by Pub. L. 98–616 and is classified to section 6935(d)(1) of this title.

AMENDMENTS

1984—Pub. L. 98–616 inserted "(or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) of this title)" and inserted "Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement."

1980—Pub. L. 96–482, §27(a), designated existing provisions as subsec. (a), in provision preceding par. (1), included judicial review of Administrator's denial of any petition for promulgation, amendment, or repeal of any regulation in par. (1), included review of Administrator's denial of any petition for promulgation, amendment, or repeal of any regulation, and substituted "District of Columbia, and" for "District of Columbia.

Any", "date of such promulgation or denial" for "date of such promulgation", "petition for review is based" for "petition is based", and "; action" for ". Action", and in par. (2), substituted "proper; the" for "proper. The", and added subsec. (b).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *See References in Text note below.*

§6977. Grants or contracts for training projects

(a) General authority

The Administrator is authorized to make grants to, and contracts with any eligible organization. For purposes of this section the term "eligible organization" means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

(b) Purposes

(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste management and resource recovery equipment and facilities; or

(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste management and resource recovery equipment and facilities.

(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records) as required by section 3254a(b)(4) and (5) [1] of this title (as in effect before October 21, 1976) with respect to applications made under such section (as in effect before October 21, 1976).

(Pub. L. 89–272, title II, §7007, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2827; amended Pub. L. 95–609, §7(r), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 105–362, title V, §501(f), Nov. 10, 1998, 112 Stat. 3284.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3254a(b)(4) and (5) of this title, referred to in subsec. (b)(2), was in the original "section 207(b)(4) and (5)", meaning section 207(b)(4) and (5) of the Solid Waste Disposal Act, which was omitted in the general revision of the Solid Waste Disposal Act by Pub. L. 94–580 on Oct. 21, 1976.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254d of this title, prior to the general

amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–362 struck out heading and text of subsec. (c) which related to Administrator's study and report on State and local training needs and obstacles to employment and occupational advancement in solid waste management and resource recovery field.

1978—Subsec. (b)(1). Pub. L. 95–609, §7(r)(1), (2), substituted "management" for "disposal" in two places, and "resource" for "resources".

Subsec. (c)(3). Pub. L. 95–609, §7(r)(3), substituted "management" for "disposal".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *See References in Text note below.*

§6978. Payments

(a) General rule

Payments of grants under this chapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Administrator may determine.

(b) Prohibition

No grant may be made under this chapter to any private profitmaking organization.

(Pub. L. 89–272, title II, §7008, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2828.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3258 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6979. Labor standards

No grant for a project of construction under this chapter shall be made unless the Administrator finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by sections 3141–3144, 3146, and 3147 of title 40, will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with those sections; and the Secretary of Labor shall have with respect to the labor standards specified in this

section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40.

(Pub. L. 89–272, title II, §7009, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2828; amended Pub. L. 96–482, §28, Oct. 21, 1980, 94 Stat. 2349.)

EDITORIAL NOTES

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, "sections 3141–3144, 3146, and 3147 of title 40" substituted for "the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)", "those sections" substituted for "that Act", and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)", on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3256 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1980—Pub. L. 96–482 substituted "Administrator" for "Secretary".

§6979a. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 89–272, title II, §7010, as added Pub. L. 98–616, title IV, §405(a), Nov. 8, 1984, 98 Stat. 3273; Pub. L. 99–339, title II, §201(c)(1), June 19, 1986, 100 Stat. 654, relating to interim control of hazardous waste injection, was renumbered section 3020 of Pub. L. 89–272 by Pub. L. 99–339, title II, §201(c)(2), June 19, 1986, 100 Stat. 654, and transferred to section 6939b of this title.

§6979b. Law enforcement authority

The Attorney General of the United States shall, at the request of the Administrator and on the basis of a showing of need, deputize qualified employees of the Environmental Protection Agency to serve as special deputy United States marshals in criminal investigations with respect to violations of the criminal provisions of this chapter.

(Pub. L. 89–272, title II, §7010, formerly §7012, as added Pub. L. 98–616, title IV, §403(b)(1), Nov. 8, 1984, 98 Stat. 3272; renumbered §7010, Pub. L. 99–339, title II, §201(c)(2), June 19, 1986, 100 Stat. 654.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 7010 of Pub. L. 89–272, which was classified to section 6979a of this title, was renumbered section 3020 and transferred to section 6939b of this title.

SUBCHAPTER VIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND INFORMATION

§6981. Research, demonstration, training, and other activities

(a) General authority

The Administrator, alone or after consultation with the Secretary of Energy, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

(2) the operation and financing of solid waste management programs;

(3) the planning, implementation, and operation of resource recovery and resource conservation systems and hazardous waste management systems, including the marketing of recovered resources;

(4) the production of usable forms of recovered resources, including fuel, from solid waste;

(5) the reduction of the amount of such waste and unsalvageable waste materials;

(6) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes;

(7) the identification of solid waste components and potential materials and energy recoverable from such waste components;

(8) small scale and low technology solid waste management systems, including but not limited to, resource recovery source separation systems;

(9) methods to improve the performance characteristics of resources recovered from solid waste and the relationship of such performance characteristics to available and potentially available markets for such resources;

(10) improvements in land disposal practices for solid waste (including sludge) which may reduce the adverse environmental effects of such disposal and other aspects of solid waste disposal on land, including means for reducing the harmful environmental effects of earlier and existing landfills, means for restoring areas damaged by such earlier or existing landfills, means for rendering landfills safe for purposes of construction and other uses, and techniques of recovering materials and energy from landfills;

(11) methods for the sound disposal of, or recovery of resources, including energy, from, sludge (including sludge from pollution control and treatment facilities, coal slurry pipelines, and other sources);

(12) methods of hazardous waste management, including methods of rendering such waste environmentally safe; and

(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of treatment, disposal or energy recovery.

(b) Management program

(1)(A) In carrying out his functions pursuant to this chapter, and any other Federal legislation respecting solid waste or discarded material research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.

(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this chapter or without Federal assistance, the construction of pilot plant

facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or resource conservation method or technology; and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

(2) Any energy-related research, development, or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Secretary of Energy pursuant to this chapter or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Secretary of Energy, following which project responsibility will be assigned to one agency; (B) energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Secretary of Energy; (C) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 6907 of this title, and any applicable State or regional solid waste management plan; and (D) any activities undertaken under provisions of sections 6982 and 6983 of this title as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the Secretary of Energy.

(c) Authorities

(1) In carrying out subsection (a) of this section respecting solid waste research, studies, development, and demonstration, except as otherwise specifically provided in section 6984(d) of this title, the Administrator may make grants to or enter into contracts (including contracts for construction) with, public agencies and authorities or private persons.

(2) Contracts for research, development, or demonstrations or for both (including contracts for construction) shall be made in accordance with and subject to the limitations provided with respect to research contracts of the military departments in section 2353 [1] of title 10, except that the determination, approval, and certification required thereby shall be made by the Administrator.

(3) Any invention made or conceived in the course of, or under, any contract under this chapter shall be subject to section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5908] to the same extent and in the same manner as inventions made or conceived in the course of contracts under such Act [42 U.S.C. 5901 et seq.], except that in applying such section, the Environmental Protection Agency shall be substituted for the Secretary of Energy and the words "solid waste" shall be substituted for the word "energy" where appropriate.

(4) For carrying out the purpose of this chapter the Administrator may detail personnel of the Environmental Protection Agency to agencies eligible for assistance under this section.

(Pub. L. 89–272, title II, §8001, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2829; amended Pub. L. 95–91, title III, §301, title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–609, §7(s), Nov. 8, 1978, 92 Stat. 3083.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2353 of title 10, referred to in subsec. (c)(2), was renumbered section 4174 of title 10 by Pub. L.

116–283, div. A, title XVIII, §1844(b)(1), Jan. 1, 2021, 134 Stat. 4245, as amended by Pub. L. 117–81, div. A, title XVII, §1701(u)(6)(B), Dec. 27, 2021, 135 Stat. 2154.

Such Act, referred to in subsec. (c)(3), means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–609, §7(s)(1), substituted "management" for "disposal".

Subsec. (a)(13). Pub. L. 95–609, §7(s)(2), inserted "treatment," after "for purpose of".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Secretary of Energy" was substituted for "Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission" in subsec. (a), and for "Energy Research and Development Administration" in subsecs. (b)(2) and (c)(3), in view of the termination of the Federal Energy Administration, the Energy Research and Development Administration, and the Federal Power Commission and the transfer of their functions and the functions of the Administrators and Chairman thereof (with certain exceptions) to the Secretary of Energy pursuant to sections 301, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151, 7293, and 7297 of this title.

EPA STUDY OF METHODS TO REDUCE PLASTIC POLLUTION

Pub. L. 100–220, title II, §2202, Dec. 29, 1987, 101 Stat. 1465, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Commerce, to conduct a study of the adverse effects of improper disposal of plastic articles on environment and on waste disposal, and various methods to reduce or eliminate such adverse effects, and directed Administrator, within 18 months after Dec. 29, 1987, to report results of this study to Congress.

NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY

Pub. L. 96–482, §33, Oct. 21, 1980, 94 Stat. 2356, as amended by Pub. L. 105–362, title V, §501(g), Nov. 10, 1998, 112 Stat. 3284, provided for establishment, membership, functions, etc., of a National Advisory Commission on Resource Conservation and Recovery, directed Commission, upon expiration of the two-year period beginning on the date when all initial members of the Commission have been appointed or the date initial funds become available, whichever is later, to transmit a final report to President and Congress containing a detailed statement of the findings and conclusions of the Commission, and terminated the Commission 30 days after submission of its final report.

SOLID WASTE CLEANUP ON FEDERAL LANDS IN ALASKA; STUDY AND REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 94–580, §3, Oct. 21, 1976, 90 Stat. 2840, provided for a study of procedures for removal of solid waste from Federal lands in Alaska and submission of a Presidential Report to the Senate Committee on Public Lands and House Committee on Interstate and Foreign Commerce no later than one year after Oct. 21, 1976, and implementing recommendations to such committees within six months thereafter, prior to repeal by Pub. L. 96–482, §30, Oct. 21, 1980, 94 Stat. 2352.

LEACHATE CONTROL RESEARCH PROGRAM IN DELAWARE

Pub. L. 94–580, §4, Oct. 21, 1976, 90 Stat. 2840, directed Administrator of Environmental Protection Agency, in order to demonstrate effective means of dealing with contamination of public water supplies by leachate from abandoned or other landfills, to provide technical and financial assistance for a research program, designed by New Castle County areawide waste treatment management program, to control leachate from Llangollen Landfill in New Castle County, Delaware, and provided up to $250,000 in each of the fiscal years 1978 and 1979 for the operating costs of a counter-pumping program to contain the leachate from the Llangollen Landfill during the period of this study.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

[1] *See References in Text note below.*

§6982. Special studies; plans for research, development, and demonstrations

(a) Glass and plastic

The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technological, and economic investigation of potential solutions to implement such recovery.

(b) Composition of waste stream

The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

(c) Priorities study

For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (including, but not limited to, waterwall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique—

(1) the degree of public need for the potential results of such research, development, or demonstration,

(2) the potential for research, development, and demonstration without Federal action, including the degree of restraint on such potential posed by the risks involved, and

(3) the magnitude of effort and period of time necessary to develop the technology to the point where Federal assistance can be ended.

(d) Small-scale and low technology study

The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid waste management, including household resource recovery and resource recovery systems which have special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

(e) Front-end source separation

The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

(f) Mining waste

The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and

underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

(1) the sources and volume of discarded material generated per year from mining;

(2) present disposal practices;

(3) potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;

(4) alternatives to current disposal methods;

(5) the cost of those alternatives in terms of the impact on mine product costs; and

(6) potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. Not later than thirty-six months after October 21, 1980, the Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(g) Sludge

The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

(1) what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale, liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;

(2) the effects of air and water pollution legislation on the creation of large volumes of sludge;

(3) the amounts of sludge originating in each State and in each industry producing sludge;

(4) methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;

(5) alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and

(6) methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

(h) Tires

The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

(i) Resource recovery facilities

The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

(j) Resource Conservation Committee

(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, the Secretary of Energy, the Chairman of the Council of Economic Advisors, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

(A) the appropriateness of recommended incentives and disincentives to foster resource

conservation;

(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;

(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;

(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and

(E) the need for further research, development, and demonstration in the area of resource conservation.

(2) The study required in paragraph (1)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

(A) the product categories on which such charges would be imposed;

(B) the appropriate state in the production of such consumer product at which to levy such charge;

(C) appropriate criteria for establishing such charges for each consumer product category;

(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and

(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

(3) The design for the study required in paragraph (1) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months following October 21, 1976, and followup reports shall be sent six months thereafter. Each recommendation resulting from the study shall include at least two alternatives to the proposed recommendation.

(4) The results of such investigation and study, including recommendations, shall be reported to the President and the Congress not later than two years after October 21, 1976.

(5) There are authorized to be appropriated not to exceed $2,000,000 to carry out this subsection.

(k) Airport landfills

The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

(l) Completion of research and studies

The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c), (d), (e), (f), (g), and (k) not later than October 1, 1978. The Administrator shall complete the research and studies, and submit the reports, required under subsections (a), (h), and (i) not later than October 1, 1979. Upon completion, each study specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such study to appropriate committees of Congress.

(m) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy

(1) The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy on human

health and the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources and on the adequacy of means and measures currently employed by the oil and gas and geothermal drilling and production industry, Government agencies, and others to dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

(A) the sources and volume of discarded material generated per year from such wastes;

(B) present disposal practices;

(C) potential danger to human health and the environment from the surface runoff or leachate;

(D) documented cases which prove or have caused danger to human health and the environment from surface runoff or leachate;

(E) alternatives to current disposal methods;

(F) the cost of such alternatives; and

(G) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas or geothermal energy.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects.

(2) The Administrator shall complete the research and study and submit the report required under paragraph (1) not later than twenty-four months from October 21, 1980. Upon completion of the study, the Administrator shall prepare a summary of the findings of the study, a plan for research, development, and demonstration respecting the findings of the study, and shall submit the findings and the study, along with any recommendations resulting from such study, to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(3) There are authorized to be appropriated not to exceed $1,000,000 to carry out the provisions of this subsection.

(n) Materials generated from the combustion of coal and other fossil fuels

The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and other byproduct materials generated primarily from the combustion of coal or other fossil fuels. Such study shall include an analysis of—

(1) the source and volumes of such material generated per year;

(2) present disposal and utilization practices;

(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;

(4) documented cases in which danger to human health or the environment from surface runoff or leachate has been proved;

(5) alternatives to current disposal methods;

(6) the costs of such alternatives;

(7) the impact of those alternatives on the use of coal and other natural resources; and

(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such material and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report on such study, which shall include appropriate findings, not later than twenty-four months after October 21, 1980. Such study

and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(o) Cement kiln dust waste

The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal of cement kiln dust waste. Such study shall include an analysis of—

(1) the source and volumes of such materials generated per year;

(2) present disposal practices;

(3) potential danger, if any, to human health and the environment from the disposal of such materials;

(4) documented cases in which danger to human health or the environment has been proved;

(5) alternatives to current disposal methods;

(6) the costs of such alternatives;

(7) the impact of those alternatives on the use of natural resources; and

(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than thirty-six months after October 21, 1980. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(p) Materials generated from extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining

The Administrator shall conduct a detailed and comprehensive study on the adverse effects on human health and the environment, if any, of the disposal and utilization of solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining. Such study shall be conducted in conjunction with the study of mining wastes required by subsection (f) of this section and shall include an analysis of—

(1) the source and volumes of such materials generated per year;

(2) present disposal and utilization practices;

(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;

(4) documented cases in which danger to human health or the environment has been proved;

(5) alternatives to current disposal methods;

(6) the costs of such alternatives;

(7) the impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and

(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, in conjunction with the publication of the report of the study of mining wastes required to be conducted under subsection (f) of this section. Such report and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(q) Authorization of appropriations

There are authorized to be appropriated not to exceed $8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j).

(r) Minimization of hazardous waste

The Administrator shall compile, and not later than October 1, 1986, submit to the Congress, a report on the feasibility and desirability of establishing standards of performance or of taking other additional actions under this chapter to require the generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate, and of establishing with respect to hazardous wastes required management practices or other requirements to assure such wastes are managed in ways that minimize present and future risks to human health and the environment. Such report shall include any recommendations for legislative changes which the Administrator determines are feasible and desirable to implement the national policy established by section 6902 of this title.

(s) Extending landfill life and reusing landfilled areas

The Administrator shall conduct detailed, comprehensive studies of methods to extend the useful life of sanitary landfills and to better use sites in which filled or closed landfills are located. Such studies shall address—

(1) methods to reduce the volume of materials before placement in landfills;

(2) more efficient systems for depositing waste in landfills;

(3) methods to enhance the rate of decomposition of solid waste in landfills, in a safe and environmentally acceptable manner;

(4) methane production from closed landfill units;

(5) innovative uses of closed landfill sites, including use for energy production such as solar or wind energy and use for metals recovery;

(6) potential for use of sewage treatment sludge in reclaiming landfilled areas; and

(7) methods to coordinate use of a landfill owned by one municipality by nearby municipalities, and to establish equitable rates for such use, taking into account the need to provide future landfill capacity to replace that so used.

The Administrator is authorized to conduct demonstrations in the areas of study provided in this subsection. The Administrator shall periodically report on the results of such studies, with the first such report not later than October 1, 1986. In carrying out this subsection, the Administrator need not duplicate other studies which have been completed and may rely upon information which has previously been compiled.

(Pub. L. 89–272, title II, §8002, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2831; amended Pub. L. 95–609, §7(t), Nov. 8, 1978, 92 Stat. 3083; H. Res. 549, Mar. 25, 1980; Pub. L. 96–482, §29, Oct. 21, 1980, 94 Stat. 2349; Pub. L. 98–616, title II, §224(c), title VII, §702, Nov. 8, 1984, 98 Stat. 3253, 3289.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (r). Pub. L. 98–616, §224(c), added subsec. (r).

Subsec. (s). Pub. L. 98–616, §702, added subsec. (s).

1980—Subsec. (f). Pub. L. 96–482, §29(1), required publication of report no later than thirty-six months after Oct. 21, 1980, and its submission to Senate Committee on Environment and Public Works and House Committee on Energy and Commerce.

Subsecs. (m) to (q). Pub. L. 96–482, §29(2), added subsecs. (m) to (p) and redesignated former subsec. (m) as (q).

1978—Subsec. (g)(1). Pub. L. 95–609, §7(t)(1), substituted "shale, liquefaction" for "shale liquefaction".

Subsec. (j)(1). Pub. L. 95–609, §7(t)(2), enacted a provision adding the Secretary of Energy and the Chairman of the Council of Economic Advisors to the Committee.

Subsec. (j)(2). Pub. L. 95–609, §7(t)(3), substituted "paragraph (1)(D)" for "paragraph (2)(D)".
Subsec. (j)(3). Pub. L. 95–609, §7(t)(4), substituted "paragraph (1)" for "paragraph (2)(D)".
Subsec. (l). Pub. L. 95–609, §7(t)(5), struck out requirement of submission of reports under subsec. (j) of this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6983. Coordination, collection, and dissemination of information

(a) Information

The Administrator shall develop, collect, evaluate, and coordinate information on—

(1) methods and costs of the collection of solid waste;

(2) solid waste management practices, including data on the different management methods and the cost, operation, and maintenance of such methods;

(3) the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various solid waste management practices and various technologies;

(4) methods available to reduce the amount of solid waste that is generated;

(5) existing and developing technologies for the recovery of energy or materials from solid waste and the costs, reliability, and risks associated with such technologies;

(6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;

(7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);

(8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and

(9) research and development projects respecting solid waste management.

(b) Library

(1) The Administrator shall establish and maintain a central reference library for (A) the materials collected pursuant to subsection (a) of this section and (B) the actual performance and cost effectiveness records and other data and information with respect to—

(i) the various methods of energy and resource recovery from solid waste,

(ii) the various systems and means of resource conservation,

(iii) the various systems and technologies for collection, transport, storage, treatment, and final disposition of solid waste, and

(iv) other aspects of solid waste and hazardous solid waste management.

Such central reference library shall also contain, but not be limited to, the model codes and model accounting systems developed under this section, the information collected under subsection (d), and, subject to any applicable requirements of confidentiality, information respecting any aspect of solid waste provided by officers and employees of the Environmental Protection Agency which has been acquired by them in the conduct of their functions under this chapter and which may be of value to Federal, State, and local authorities and other persons.

(2) Information in the central reference library shall, to the extent practicable, be collated, analyzed, verified, and published and shall be made available to State and local governments and other persons at reasonable times and subject to such reasonable charges as may be necessary to defray expenses of making such information available.

(c) Model accounting system

In order to assist State and local governments in determining the cost and revenues associated with the collection and disposal of solid waste and with resource recovery operations, the Administrator shall develop and publish a recommended model cost and revenue accounting system applicable to the solid waste management functions of State and local governments. Such system shall be in accordance with generally accepted accounting principles. The Administrator shall periodically, but not less frequently than once every five years, review such accounting system and revise it as necessary.

(d) Model codes

The Administrator is authorized, in cooperation with appropriate State and local agencies, to recommend model codes, ordinances, and statutes, providing for sound solid waste management.

(e) Information programs

(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of any relevant research, investigations, experiments, surveys, studies, or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.

(2) The Administrator shall develop and implement educational programs to promote citizen understanding of the need for environmentally sound solid waste management practices.

(f) Coordination

In collecting and disseminating information under this section, the Administrator shall coordinate his actions and cooperate to the maximum extent possible with State and local authorities.

(g) Special restriction

Upon request, the full range of alternative technologies, programs or processes deemed feasible to meet the resource recovery or resource conservation needs of a jurisdiction shall be described in such a manner as to provide a sufficient evaluative basis from which the jurisdiction can make its decisions, but no officer or employee of the Environmental Protection Agency shall, in an official capacity, lobby for or otherwise represent an agency position in favor of resource recovery or resource conservation, as a policy alternative for adoption into ordinances, codes, regulations, or law by any State or political subdivision thereof.

(Pub. L. 89–272, title II, §8003, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2834; amended Pub. L. 95–609, §7(u), Nov. 8, 1978, 92 Stat. 3083.)

EDITORIAL NOTES

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95–609 substituted "solid waste" for "discarded materials".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6984. Full-scale demonstration facilities

(a) Authority

The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this chapter, or provide financial assistance in the form of grants to a full-scale demonstration facility under this chapter only if the Administrator finds that—

(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in solid waste management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this chapter),

(2) such contract or assistance meets the requirements of section 6981 of this title and meets other applicable requirements of this chapter,

(3) such facility will be able to comply with the guidelines published under section 6907 of this title and with other laws and regulations for the protection of health and the environment,

(4) in the case of a contract for construction or operation, such facility is not likely to be constructed or operated by State, local, or private persons or in the case of an application for financial assistance, such facility is not likely to receive adequate financial assistance from other sources, and

(5) any Federal interest in, or assistance to, such facility will be disposed of or terminated, with appropriate compensation, within such period of time as may be necessary to carry out the basic objectives of this chapter.

(b) Time limitation

No obligation may be made by the Administrator for financial assistance under this subchapter for any full-scale demonstration facility after the date ten years after October 21, 1976. No expenditure of funds for any such full-scale demonstration facility under this subchapter may be made by the Administrator after the date fourteen years after October 21, 1976.

(c) Cost sharing

(1) Wherever practicable, in constructing, operating, or providing financial assistance under this subchapter to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

(2) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide monitoring of full-scale solid waste facilities (whether or not constructed or operated under this chapter) for purposes of obtaining information concerning the performance, and other aspects, of such facilities. Where the Administrator provides only monitoring and evaluation instruments or personnel (or both) or funds for such instruments or personnel and provides no other financial

assistance to a facility, notwithstanding section 6981(c)(3) of this title, title to any invention made or conceived of in the course of developing, constructing, or operating such facility shall not be required to vest in the United States and patents respecting such invention shall not be required to be issued to the United States.

(d) Prohibition

After October 21, 1976, the Administrator shall not construct or operate any full-scale facility (except by contract with public agencies or authorities or private persons).

(Pub. L. 89–272, title II, §8004, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2836; amended Pub. L. 95–609, §7(v), Nov. 8, 1978, 92 Stat. 3084; Pub. L. 98–616, title V, §502(f), Nov. 8, 1984, 98 Stat. 3276.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98–616 inserted "(1)" before "Wherever".
1978—Subsec. (a)(1). Pub. L. 95–609 substituted "solid waste" for "discarded material".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6985. Special study and demonstration projects on recovery of useful energy and materials

(a) Studies

The Administrator shall conduct studies and develop recommendations for administrative or legislative action on—

(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, the impact of distribution of such resources on existing markets, and potentials for energy conservation through resource conservation and resource recovery;

(2) actions to reduce waste generation which have been taken voluntarily or in response to governmental action, and those which practically could be taken in the future, and the economic, social, and environmental consequences of such actions;

(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

(4) the use of Federal procurement to develop market demand for recovered resources;

(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling and conservation of such materials;

(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items; and

(8) the legal constraints and institutional barriers to the acquisition of land needed for solid waste management, including land for facilities and disposal sites;

(9) in consultation with the Secretary of Agriculture, agricultural waste management problems and practices, the extent of reuse and recovery of resources in such wastes, the prospects for improvement, Federal, State, and local regulations governing such practices, and the economic, social, and environmental consequences of such practices; and

(10) in consultation with the Secretary of the Interior, mining waste management problems, and practices, including an assessment of existing authorities, technologies, and economics, and the environmental and public health consequences of such practices.

(b) Demonstration

The Administrator is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a).

(c) Application of other sections

Section 6981(b) and (c) of this title shall be applicable to investigations, studies, and projects carried out under this section.

(Pub. L. 89–272, title II, §8005, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2837.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253a of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6986. Grants for resource recovery systems and improved solid waste disposal facilities

(a) Authority

The Administrator is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

(b) Conditions

(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of subchapter IV of this chapter; (B) is consistent with the guidelines recommended pursuant to section 6907 of this title; (C) is designed to provide area-wide resource recovery systems consistent with the purposes of this chapter, as determined by the Administrator, pursuant to regulations promulgated under subsection

(d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

(c) Limitations

(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Administrator for the purposes of this chapter, and (iii) is consistent with the guidelines recommended under section 6907 of this title, and

(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

(d) Regulations

(1) The Administrator shall promulgate regulations establishing a procedure for awarding grants under this section which—

(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

(B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Administrator (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

(e) Additional limitations

A grant under this section—

(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b)(1) applies, the first-year operation and maintenance costs;

(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B)) for operating or maintenance costs;

(3) may not be made until the applicant has made provision satisfactory to the Administrator for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and

(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Administrator may require to properly carry out his functions pursuant to this chapter.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value

of which shall be determined by the Administrator.

(f) Single State

(1) Not more than 15 percent of the total of funds authorized to be appropriated for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

(2) The Administrator shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.

(Pub. L. 89–272, title II, §8006, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2838.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254b of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6987. Authorization of appropriations

There are authorized to be appropriated not to exceed $35,000,000 for the fiscal year 1978 to carry out the purposes of this subchapter (except for section 6982 of this title).

(Pub. L. 89–272, title II, §8007, as added Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2839.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3259 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

SUBCHAPTER IX—REGULATION OF UNDERGROUND STORAGE TANKS

§6991. Definitions and exemptions

In this subchapter:

(1) INDIAN TRIBE.—

(A) IN GENERAL.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(B) INCLUSIONS.—The term "Indian tribe" includes an Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and [1]

(2) The term "nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be

dispensed after November 8, 1984.

(3) The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(4) The term "owner" means—

(A) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances and

(B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

(5) The term "person" has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

(6) The term "petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(7) The term "regulated substance" means—

(A) any substance defined in section 9601(14) of this title (but not including any substance regulated as a hazardous waste under subchapter III), and

(B) petroleum.

(8) The term "release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(9) TRUST FUND.—The term "Trust Fund" means the Leaking Underground Storage Tank Trust Fund established by section 9508 of title 26.

(10) The term "underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any—

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use on the premises where stored,

(C) septic tank,

(D) pipeline facility (including gathering lines)—

(i) which is regulated under chapter 601 of title 49, or

(ii) which is an intrastate pipeline facility regulated under State laws as provided in chapter 601 of title 49,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,

(E) surface impoundment, pit, pond, or lagoon,

(F) storm water or waste water collection system,

(G) flow-through process tank,

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).

(Pub. L. 89–272, title II, §9001, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat.

3277; amended Pub. L. 99–499, title II, §205(a), Oct. 17, 1986, 100 Stat. 1696; Pub. L. 102–508, title III, §302, Oct. 24, 1992, 106 Stat. 3307; Pub. L. 103–429, §7(d), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 109–58, title XV, §§1532(a), 1533(1), Aug. 8, 2005, 119 Stat. 1104, 1105.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (1)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2005—Pub. L. 109–58 substituted "In this subchapter:" for "For the purposes of this subchapter—" in introductory provisions, added pars. (1) and (9), redesignated former pars. (1) to (8) as pars. (10), (7), (4), (3), (8), (5), (2), and (6), respectively, and, in par. (4)(A), substituted "substances" for "sustances".

1994—Par. (1)(D). Pub. L. 103–429 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "pipeline facility (including gathering lines)—

"(i) which is regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.),

"(ii) which is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or

"(iii) which is an intrastate pipeline facility regulated under State laws as provided in the provisions of law referred to in clause (i) or (ii) of this subparagraph,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,".

1992—Par. (1)(D). Pub. L. 102–508 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "pipeline facility (including gathering lines) regulated under—

"(i) the Natural Gas Pipeline Safety Act of 1968,

"(ii) the Hazardous Liquid Pipeline Safety Act of 1979, or

"(iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph,".

1986—Par. (2)(B). Pub. L. 99–499 struck out ", including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)". See par. (8).

Par. (8). Pub. L. 99–499 added par. (8).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOVEGROUND STORAGE TANK GRANT PROGRAM

Pub. L. 106–554, §1(a)(4) [div. B, title XII, §1201], Dec. 21, 2000, 114 Stat. 2763, 2763A–313, provided that:

"(a) DEFINITIONS.—In this provision:

"(1) ABOVEGROUND STORAGE TANK.—The term 'aboveground storage tank' means any tank or combination of tanks (including any connected pipe)—

"(A) that is used to contain an accumulation of regulated substances; and

"(B) the volume of which (including the volume of any connected pipe) is located wholly above the surface of the ground.

"(2) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(3) DENALI COMMISSION.—The term 'Denali Commission' means the commission established by section 303(a) of the Denali Commission Act of 1998 [Pub. L. 105–277, div. C, title III] (42 U.S.C. 3121 note).

"(4) FEDERAL ENVIRONMENTAL LAW.—The term 'Federal environmental law' means—

"(A) the Oil Pollution Control Act of 1990 (33 U.S.C. 2701 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(D) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); or

"(E) any other Federal law that is applicable to the release into the environment of a regulated substance, as determined by the Administrator.

"(5) NATIVE VILLAGE.—The term 'Native village' has the meaning given the term in section 11(b) in Public Law 92–203 (85 Stat. 688) [43 U.S.C. 1610(b)].

"(6) PROGRAM.—The term 'program' means the Aboveground Storage Tank Grant Program established by subsection (b)(1).

"(7) REGULATED SUBSTANCE.—The term 'regulated substance' has the meaning given the term in section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991).

"(8) STATE.—The term 'State' means the State of Alaska.

"(b) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established a grant program to be known as the 'Aboveground Storage Tank Grant Program'

"(2) GRANTS.—Under the program, the Administrator shall award a grant to—

"(A) the State, on behalf of a Native village; or

"(B) the Denali Commission.

"(c) USE OF GRANTS.—The State or the Denali Commission shall use the funds of a grant under subsection (b) to repair, upgrade, or replace one or more aboveground storage tanks that—

"(1) leaks or poses an imminent threat of leaking, as certified by the Administrator, the Commandant of the Coast Guard, or any other appropriate Federal or State agency (as determined by the Administrator); and

"(2) is located in a Native village—

"(A) the median household income of which is less than 80 percent of the median household income in the State;

"(B) that is located—

"(i) within the boundaries of—

"(I) a unit of the National Park System;

"(II) a unit of the National Wildlife Refuge System; or

"(III) a National Forest; or

"(ii) on public land under the administrative jurisdiction of the Bureau of Land Management; or

"(C) that receives payments from the Federal Government under chapter 69 of title 31, United States Code (commonly known as 'payments in lieu of taxes').

"(d) REPORTS.—Not later than 1 year after the date on which the State or the Denali Commission receives a grant under subsection (c), and annually thereafter, the State or the Denali Commission, as the case may be, shall submit a report describing each project completed with grant funds and any projects planned for the following year, to—

"(1) the Administrator;

"(2) the Committee on Resources [now Committee on Natural Resources] of the House of Representatives;

"(3) the Committee on Environment and Public Works of the Senate;

"(4) the Committee on Appropriations of the House of Representatives; and

"(5) the Committee on Appropriations of the Senate.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this Act [probably means this section], to remain available until expended—

"(1) $20,000,000 for fiscal year 2001; and

"(2) such sums as are necessary for each fiscal year thereafter."

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

[1] So in original. The semicolon probably should be a period and the word "and" probably should not appear.

§6991a. Notification

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(2)(A) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within eighteen months after November 8, 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the State or local agency under this subsection.

(B) Notice under subparagraph (A) shall specify, to the extent known to the owner—

(i) the date the tank was taken out of operation,

(ii) the age of the tank on the date taken out of operation,

(iii) the size, type and location of the tank, and

(iv) the type and quantity of substances left stored in such tank on the date taken out of operation.

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

(4) Paragraphs (1) through (3) of this subsection shall not apply to tanks for which notice was given pursuant to section 9603(c) of this title.

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) and for eighteen months thereafter, any person who deposits regulated substances in an underground storage tank shall reasonably notify the owner or operator of such tank of the owner's notification requirements pursuant to this subsection.

(6) Beginning thirty days after the Administrator issues new tank performance standards pursuant to section 6991b(c) of this title, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification requirements pursuant to this subsection.

(b) Agency designation

(1) Within one hundred and eighty days after November 8, 1984, the Governors of each State shall designate the appropriate State agency or department or local agencies or departments to receive the notifications under subsection (a)(1), (2), or (3).

(2) Within twelve months after November 8, 1984, the Administrator, in consultation with State and local officials designated pursuant to subsection (b)(1), and after notice and opportunity for public comment, shall prescribe the form of the notice and the information to be included in the notifications under subsection (a)(1), (2), or (3). In prescribing the form of such notice, the Administrator shall take into account the effect on small businesses and other owners and operators.

(c) State inventories

Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after October 17, 1986.

(d) Public record

(1) In general

The Administrator shall require each State that receives Federal funds to carry out this subchapter to maintain, update at least annually, and make available to the public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subchapter.

(2) Considerations

To the maximum extent practicable, the public record of a State, respectively, shall include, for each year—

(A) the number, sources, and causes of underground storage tank releases in the State;

(B) the record of compliance by underground storage tanks in the State with—

(i) this subchapter; or

(ii) an applicable State program approved under section 6991c of this title; and

(C) data on the number of underground storage tank equipment failures in the State.

(Pub. L. 89–272, title II, §9002, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3278; amended Pub. L. 99–499, title II, §205(b), Oct. 17, 1986, 100 Stat. 1696; Pub. L. 109–58, title XV, §1526(c), Aug. 8, 2005, 119 Stat. 1098.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 added subsec. (d).
1986—Subsec. (c). Pub. L. 99–499 added subsec. (c).

§6991b. Release detection, prevention, and correction regulations

(a) Regulations

The Administrator, after notice and opportunity for public comment, and at least three months before the effective dates specified in subsection (f), shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

(b) Distinctions in regulations

In promulgating regulations under this section, the Administrator may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Administrator may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

(c) Requirements

The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;

(3) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground

storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(d) Financial responsibility

(1) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.

(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

(v) Such other factors as the Administrator deems pertinent.

(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

(i) steps are being taken to form a risk retention group for such class of tanks; or

(ii) such State is taking steps to establish a fund pursuant to section 6991c(c)(1) of this title to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).

(e) New tank performance standards

The Administrator shall, not later than three months prior to the effective date specified in subsection (f), issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.

(f) Effective dates

(1) Regulations issued pursuant to subsections (c) and (d), and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 6991(7)(B) of this title (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after November 8, 1984.

(2) Standards issued pursuant to subsection (e) of this section (entitled "New Tank Performance Standards") for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than thirty-six months after November 8, 1984.

(3) Regulations issued pursuant to subsection (c) of this section (entitled "Requirements") and standards issued pursuant to subsection (d) of this section (entitled "Financial Responsibility") for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than forty-eight months after November 8, 1984.

(g) Interim prohibition

(1) Until the effective date of the standards promulgated by the Administrator under subsection (e) and after one hundred and eighty days after November 8, 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction)—

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57–78, or another standard approved by the Administrator, show that soil resistivity in an

installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

(h) EPA response program for petroleum

(1) Before regulations

Before the effective date of regulations under subsection (c), the Administrator (or a State pursuant to paragraph (7)) is authorized to—

(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

(2) After regulations

Following the effective date of regulations under subsection (c), all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

(i) an owner or operator of the tank concerned,

(ii) subject to such corrective action regulations, and

(iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Trust Fund are necessary to assure an effective corrective action.

(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 6991e of this title or with the order of a State under this subsection to comply with the corrective action regulations.

(3) Priority of corrective actions

The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(4) Corrective action orders

The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4). A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 6991c of this title. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 6991e of this title.

(5) Allowable corrective actions

The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

(6) Recovery of costs

(A) In general

Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 1321 of title 33.

(B) Recovery

In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5).

(C) Effect on liability

(i) No transfers of liability

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(ii) No bar to cause of action

Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(D) Facility

For purposes of this paragraph, the term "facility" means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(E) Inability or limited ability to pay

(i) In general

In determining the level of recovery effort, or amount that should be recovered, the

Administrator (or the State pursuant to paragraph (7)) shall consider the owner or operator's ability to pay. An inability or limited ability to pay corrective action costs must be demonstrated to the Administrator (or the State pursuant to paragraph (7)) by the owner or operator.

(ii) Considerations

In determining whether or not a demonstration is made under clause (i), the Administrator (or the State pursuant to paragraph (7)) shall take into consideration the ability of the owner or operator to pay corrective action costs and still maintain its basic business operations, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

(iii) Information

An owner or operator requesting consideration under this subparagraph shall promptly provide the Administrator (or the State pursuant to paragraph (7)) with all relevant information needed to determine the ability of the owner or operator to pay corrective action costs.

(iv) Alternative payment methods

The Administrator (or the State pursuant to paragraph (7)) shall consider alternative payment methods as may be necessary or appropriate if the Administrator (or the State pursuant to paragraph (7)) determines that an owner or operator cannot pay all or a portion of the costs in a lump sum payment.

(v) Misrepresentation

If an owner or operator provides false information or otherwise misrepresents their financial situation under clause (ii), the Administrator (or the State pursuant to paragraph (7)) shall seek full recovery of the costs of all such actions pursuant to the provisions of subparagraph (A) without consideration of the factors in subparagraph (B).

(7) State authorities

(A) General

A State may exercise the authorities in paragraphs (1), (2), and (12), subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and the authority under sections 6991j and 6991k of this title and paragraphs (4), (6), and (8), if—

(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

(B) Cost share

Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

(8) Emergency procurement powers

Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

(9) Definition of owner or operator

(A) In general

As used in this subchapter, the terms "owner" and "operator" do not include a person that, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person's security interest.

(B) Security interest holders

The provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries at section 9607(n) of this title shall apply in determining a person's liability as an owner or operator of an underground storage tank for the purposes of this subchapter.

(C) Effect on rule

Nothing in subparagraph (B) shall be construed as modifying or affecting the final rule issued by the Administrator on September 7, 1995 (60 Fed. Reg. 46,692), or as limiting the authority of the Administrator to amend the final rule, in accordance with applicable law. The final rule in effect on September 30, 1996, shall prevail over any inconsistent provision regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title or any inconsistent provision regarding fiduciaries in section 9607(n) of this title. Any amendment to the final rule shall be consistent with the provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries in section 9607(n) of this title. This subparagraph does not preclude judicial review of any amendment of the final rule made after September 30, 1996.

(10) Definition of exposure assessment

As used in this subsection, the term "exposure assessment" means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

(11) Facilities without financial responsibility

At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 6991e of this title to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

(12) Remediation of oxygenated fuel contamination

(A) In general

The Administrator and the States may use funds made available under section 6991m(2)(B) of this title to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

(B) Applicable authority

The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).

(i) Additional measures to protect groundwater from contamination

The Administrator shall require each State that receives funding under this subchapter to require one of the following:

(1) Tank and piping secondary containment

(A) Each new underground storage tank, or piping connected to any such new tank, installed after the effective date of this subsection, or any existing underground storage tank, or existing piping connected to such existing tank, that is replaced after the effective date of this subsection, shall be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(B) In the case of a new underground storage tank system consisting of one or more underground storage tanks and connected by piping, subparagraph (A) shall apply to all underground storage tanks and connected pipes comprising such system.

(C) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, subparagraph (A) shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(D) Each installation of a new motor fuel dispenser system, after the effective date of this subsection, shall include under-dispenser spill containment if the new dispenser is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(E) This paragraph shall not apply to repairs to an underground storage tank, piping, or dispenser that are meant to restore a tank, pipe, or dispenser to operating condition.

(F) As used in this subsection:

(i) The term "secondarily contained" means a release detection and prevention system that meets the requirements of 40 CFR 280.43(g), but shall not include under-dispenser spill containment or control systems.

(ii) The term "underground storage tank" has the meaning given to it in section 6991 of this title, except that such term does not include tank combinations or more than a single underground pipe connected to a tank.

(iii) The term "installation of a new motor fuel dispenser system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment need to connect the dispenser to the underground storage tank system.

(2) Evidence of financial responsibility and certification

(A) Manufacturer and installer financial responsibility

A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility under subsection (d) in order to provide for the costs of

corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves [1] to be already covered as an owner or operator of an underground storage tank under this section.

(B) Installer certification

The Administrator and each State that receives funding under this subchapter, as appropriate, shall require that a person that installs an underground storage tank system is—

(i) certified or licensed by the tank and piping manufacturer;

(ii) certified or licensed by the Administrator or a State, as appropriate;

(iii) has their [1] underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;

(iv) has had their [1] installation of the underground storage tank inspected and approved by the Administrator or the State, as appropriate;

(v) compliant with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions; or

(vi) compliant with another method that is determined by the Administrator or a State, as appropriate, to be no less protective of human health and the environment.

(C) Savings clause

Nothing in subparagraph (A) alters or affects the liability of any owner or operator of an underground storage tank.

(j) Government-owned tanks

(1) State compliance report

(A) Not later than 2 years after August 8, 2005, each State that receives funding under this subchapter shall submit to the Administrator a State compliance report that—

(i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with this section; and

(ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subchapter.

(B) An underground storage tank described in this subparagraph is an underground storage tank that is—

(i) regulated under this subchapter; and

(ii) owned or operated by the Federal, State, or local government.

(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.[2]

(2) Financial incentive

The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subchapter, not more than $50,000, to be used to carry out the report.

(3) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subchapter.

(Pub. L. 89–272, title II, §9003, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3279; amended Pub. L. 99–499, title II, §205(c), (d), Oct. 17, 1986, 100 Stat. 1697, 1698; Pub. L.

104–208, div. A, title II, §2503, Sept. 30, 1996, 110 Stat. 3009–468; Pub. L. 109–58, title XV, §§1522(c), 1525, 1526(b), 1530(a), 1532(b)(1), (2), 1533(2), Aug. 8, 2005, 119 Stat. 1093, 1096, 1097, 1102, 1105; Pub. L. 109–168, §1(a)(2), Jan. 10, 2006, 119 Stat. 3580.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (d)(2), probably means a reference to Title 11, Bankruptcy.

The effective date of this subsection, referred to in subsec. (i)(1)(A), (D), is 18 months after Aug. 8, 2005. See Effective Date of 2005 Amendment note set out below.

AMENDMENTS

2006—Subsecs. (i), (j). Pub. L. 109–168 redesignated subsec. (i), relating to government-owned tanks, as (j). Subsec. (j) was editorially transferred to the end of the section to reflect the probable intent of Congress.

2005—Subsec. (f)(1). Pub. L. 109–58, §1533(2), substituted "subsections (c) and (d)" for "subsection (c) and (d) of this section".

Pub. L. 109–58, §1532(b)(1)(A), substituted "6991(7)(B)" for "6991(2)(B)".

Subsec. (f)(2), (3). Pub. L. 109–58, §1532(b)(1)(B), substituted "6991(7)(A)" for "6991(2)(A)".

Subsec. (h)(1), (2)(C). Pub. L. 109–58, §1532(b)(2), substituted "Trust Fund" for "Leaking Underground Storage Tank Trust Fund".

Subsec. (h)(6)(E). Pub. L. 109–58, §1522(c), added subpar. (E).

Subsec. (h)(7)(A). Pub. L. 109–58, §1532(b)(2), substituted "Trust Fund" for "Leaking Underground Storage Tank Trust Fund" in concluding provisions.

Pub. L. 109–58, §1525(1), in introductory provisions, substituted "paragraphs (1), (2), and (12)" for "paragraphs (1) and (2) of this subsection" and "and the authority under sections 6991j and 6991k of this title and paragraphs (4), (6), and (8)," for "and including the authorities of paragraphs (4), (6), and (8) of this subsection".

Subsec. (h)(11). Pub. L. 109–58, §1532(b)(2), substituted "Trust Fund" for "Leaking Underground Storage Tank Trust Fund".

Subsec. (h)(12). Pub. L. 109–58, §1525(2), added par. (12).

Subsec. (i). Pub. L. 109–58, §1530(a), added subsec. (i) relating to additional measures to protect groundwater from contamination.

Pub. L. 109–58, §1526(b), added subsec. (i) relating to government-owned tanks.

1996—Subsec. (h)(9). Pub. L. 104–208 added par. (9) and struck out heading and text of former par. (9). Text read as follows: "As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank."

1986—Subsec. (c)(6). Pub. L. 99–499, §205(c)(1), added par. (6).

Subsec. (d)(1). Pub. L. 99–499, §205(c)(3), which directed that par. (1) be amended by "striking out 'or' after 'credit,' and by striking out the period at the end thereof and inserting in lieu thereof the following: 'or any other method satisfactory to the Administrator.' ", was executed by striking the period and making insertion at end of first sentence, rather than at end of par. (1), as the probable intent of Congress, because an earlier version of the amending legislation had provided that such amendment be made to first sentence.

Pub. L. 99–499, §205(c)(2), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "As he deems necessary or desirable, the Administrator shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as he deems necessary and desirable for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank."

Subsec. (d)(2) to (5). Pub. L. 99–499, §205(c)(2), (4), added par. (5) and redesignated pars. (3) to (5) as (2) to (4), respectively. Former par. (2) redesignated (1).

Subsec. (h). Pub. L. 99–499, §205(d), added subsec. (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, §1530(b), Aug. 8, 2005, 119 Stat. 1104, provided that: "This subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section] shall take effect 18 months after the date of enactment of this subsection [Aug. 8, 2005]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, §2505, Sept. 30, 1996, 110 Stat. 3009–468, provided that: "The amendments made by this subtitle [subtitle E (§§2501–2505) of title II of div. A of Pub. L. 104–208, amending this section and sections 9601 and 9607 of this title] shall be applicable with respect to any claim that has not been finally adjudicated as of the date of enactment of this Act [Sept. 30, 1996]."

REGULATIONS

Pub. L. 109–58, title XV, §1530(c), Aug. 8, 2005, 119 Stat. 1104, provided that: "The Administrator shall issue regulations or guidelines implementing the requirements of this subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section], including guidance to differentiate between the terms 'repair' and 'replace' for the purposes of section 9003(i)(1) of the Solid Waste Disposal Act [42 U.S.C. 6991b(i)(1)]."

ASSISTANCE AGREEMENTS WITH INDIAN TRIBES

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2497, provided in part: "That hereafter, the Administrator is authorized to enter into assistance agreements with Federally recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the same purposes as are set forth in section 9003(h)(7) of the Resource Conservation and Recovery Act [probably means section 9003(h)(7) of Pub. L. 89–272, 42 U.S.C. 6991b(h)(7)]."

POLLUTION LIABILITY INSURANCE

Pub. L. 99–499, title II, §205(h), Oct. 17, 1986, 100 Stat. 1702, provided that:

"(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the operation of the Water Quality Insurance Syndicate.

"(2) REPORT.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection [Oct. 17, 1986]. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events."

[1] So in original.

[2] So in original. Probably should be "medium."

§6991c. Approval of State programs

(a) Elements of State program

Beginning 30 months after November 8, 1984, any State may,[1] submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to in subparagraph (A) or (B) of section 6991(7) of this title. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) requirements for maintaining a leak detection system, an inventory control system together

with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) standards of performance for new underground storage tanks;

(8) requirements—

(A) for notifying the appropriate State agency or department (or local agency or department) designated according to section 6991a(b)(1) of this title of the existence of any operational or non-operational underground storage tank; and

(B) for providing the information required on the form issued pursuant to section 6991a(b)(2) of this title; and

(9) State-specific training requirements as required by section 6991i of this title.

(b) Federal standards

(1) A State program submitted under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) are no less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 6991b(a) of this title.

(2)(A) A State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) are less stringent than the corresponding standards under section 6991b(a) of this title during the one-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title if State regulatory action but no State legislative action is required in order to adopt a State program.

(B) If such State legislative action is required, the State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) are less stringent than the corresponding standards under section 6991b(a) of this title during the two-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title (and during an additional one-year period after such legislative action if regulations are required to be promulgated by the State pursuant to such legislative action).

(c) Financial responsibility

(1) Corrective action and compensation programs administered by State or local agencies or departments may be submitted for approval under subsection (a)(6) as evidence of financial responsibility.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State

court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(5) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(6) WITHDRAWAL OF APPROVAL.—After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under subsection (a).

(d) EPA determination

(1) Within one hundred and eighty days of the date of receipt of a proposed State program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section.

(2) If the Administrator determines that a State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this subchapter in accordance with the provisions of this section, he shall so notify the State. If appropriate action is not taken within a reasonable time, not to exceed one hundred and twenty days after such notification, the Administrator shall withdraw approval of such program and reestablish the Federal program pursuant to this subchapter.

(f) Trust Fund distribution

(1) In general

(A) Amount and permitted uses of distribution

The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 6991m(2)(A) of this title for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—

(i) corrective actions taken by the State under section 6991b(h)(7)(A) of this title;

(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1); or

(iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subchapter.

(B) Use of funds for enforcement

In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subchapter.

(C) Prohibited uses

Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on August 8, 2005).

(2) Allocation

(A) Process

Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 6991b(h)(7)(A) of this title, the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

(B) Diversion of State funds

The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subchapter, with the exception of those transfers that had been completed earlier than August 8, 2005.

(C) Revisions to process

The Administrator may revise the allocation process referred to in subparagraph (A) after—

(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

(ii) taking into consideration, at a minimum, each of the following:

(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

(II) The number of federally regulated underground storage tanks in the States.

(III) The performance of the States in implementing and enforcing the program.

(IV) The financial needs of the States.

(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

(3) Distributions to State agencies

Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—

(A) enters into a cooperative agreement referred to in paragraph (2)(A); or

(B) is enforcing a State program approved under this section.

(Pub. L. 89–272, title II, §9004, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3282; amended Pub. L. 99–499, title II, §205(e), Oct. 17, 1986, 100 Stat. 1702; Pub. L. 109–58, title XV, §§1522(a), (b), 1524(b), 1533(3), Aug. 8, 2005, 119 Stat. 1092, 1093, 1096, 1105.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (c)(3), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, §1533(3), substituted "in subparagraph (A) or (B) of section 6991(7)" for "in 6991(2)(A) or (B) or both".

Subsec. (a)(9). Pub. L. 109–58, §1524(b), added par. (9).
Subsec. (c)(6). Pub. L. 109–58, §1522(b), added par. (6).
Subsec. (f). Pub. L. 109–58, §1522(a), added subsec. (f).

1986—Subsec. (c)(1). Pub. L. 99–499, §205(e)(1), struck out "financed by fees on tank owners and operators and" after "compensation programs".

Subsec. (c)(2). Pub. L. 99–499, §205(e)(2), struck out "or" after "letter of credit," and inserted "or any other method satisfactory to the Administrator" and "including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title".

[1] *So in original. The comma probably should not appear.*

§6991d. Inspections, monitoring, testing, and corrective action

(a) Furnishing information

For the purposes of developing or assisting in the development of any regulation, conducting any study, taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank (or any tank subject to study under section 6991h of this title that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State acting pursuant to subsection (h)(7) of section 6991b of this title or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subchapter, such officers, employees, or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where an underground storage tank is located;

(2) to inspect and obtain samples from any person of any regulated substances contained in such tank;

(3) to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or ground water; and

(4) to take corrective action.

Each such inspection shall be commenced and completed with reasonable promptness.

(b) Confidentiality

(1) Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or a particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee, or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this subchapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this subchapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the Environmental Protection Agency).

(c) Inspection requirements

(1) Uninspected tanks

In the case of underground storage tanks regulated under this subchapter that have not undergone an inspection since December 22, 1998, not later than 2 years after August 8, 2005, the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subchapter and the regulations under this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title.

(2) Periodic inspections

After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subchapter at least once every 3 years to determine compliance with this subchapter and the regulations under this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

(3) Inspection authority

Nothing in this section shall be construed to diminish the Administrator's or a State's authorities under subsection (a).

(Pub. L. 89–272, title II, §9005, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3284; amended Pub. L. 99–499, title II, §205(f), Oct. 17, 1986, 100 Stat. 1702; Pub. L. 109–58, title XV, §§1523(a), 1533(4), Aug. 8, 2005, 119 Stat. 1094, 1105.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, §1533(4)(A), substituted "study, taking" for "study taking" in introductory provisions.

Subsec. (b)(1). Pub. L. 109–58, §1533(4)(B), substituted "relevant" for "relevent".

Subsec. (b)(4). Pub. L. 109–58, §1533(4)(C), substituted "Environmental" for "Evironmental".

Subsec. (c). Pub. L. 109–58, §1523(a), added subsec. (c).

1986—Pub. L. 99–499, §205(f)(3), inserted reference to corrective action in section catchline.

Subsec. (a). Pub. L. 99–499, §205(f)(1), in first sentence, inserted "taking any corrective action" after "conducting any study", inserted "acting pursuant to subsection (h)(7) of section 6991b of this title or", struck out "and" before "permit such officer", and inserted "and permit such officer to have access for corrective action", and in second sentence, inserted "taking corrective action," after "study,". The amendment directing insertion of "taking any corrective action" after "study" in first sentence was executed by inserting that language after "conducting any study" rather than after "subject to study", as the probable intent of Congress.

Subsec. (a)(4). Pub. L. 99–499, §205(f)(2), added par. (4).

§6991e. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information, the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance within a reasonable specified time period or the Administrator may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State with a program approved under section 6991c of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance.

(b) Procedure

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Contents of order

Any order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) Civil penalties

(1) Any owner who knowingly fails to notify or submits false information pursuant to section 6991a(a) of this title shall be subject to a civil penalty not to exceed $10,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with—

(A) any requirement or standard promulgated by the Administrator under section 6991b of this title;

(B) any requirement or standard of a State program approved pursuant to section 6991c of this title;

(C) the provisions of section 6991b(g) of this title (entitled "Interim Prohibition"); or [1]

(D) [2] the requirements established in section 6991b(i) of this title,[3]

(D) [2] the training requirements established by States pursuant to section 6991i of this title (relating to operator training); or

(E) the delivery prohibition requirement established by section 6991k of this title,

shall be subject to a civil penalty not to exceed $10,000 for each tank for each day of violation. Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation.

(e) Incentive for performance

Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d):

(1) The compliance history of an owner or operator in accordance with this subchapter or a

program approved under section 6991c of this title.

(2) Any other factor the Administrator considers appropriate.

(Pub. L. 89–272, title II, §9006, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3285; amended Pub. L. 109–58, title XV, §§1524(c), 1526(d), 1527(b), 1530(d), Aug. 8, 2005, 119 Stat. 1096, 1098, 1099, 1104.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (d)(2). Pub. L. 109–58, §1527(b)(2), inserted at end "Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation."

Subsec. (d)(2)(B). Pub. L. 109–58, §1530(d)(1), which directed amendment of subpar. (B) by striking out "or" at end, could not be executed because "or" did not appear subsequent to amendment by Pub. L. 109–58, §1524(c)(1). See below.

Pub. L. 109–58, §1524(c)(1), struck out "or" at end.

Subsec. (d)(2)(C). Pub. L. 109–58, §1530(d)(2), inserted "; or" at end.

Subsec. (d)(2)(D). Pub. L. 109–58, §1530(d)(3), added subpar. (D) relating to requirements established in section 6991b(i) of this title.

Pub. L. 109–58, §1524(c)(2), added subpar. (D) relating to training requirements established by States pursuant to section 6991i of this title.

Subsec. (d)(2)(E). Pub. L. 109–58, §1527(b)(1), added subpar. (E).

Subsec. (e). Pub. L. 109–58, §1526(d), added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1530(d) of Pub. L. 109–58 effective 18 months after Aug. 8, 2005, see section 1530(b) of Pub. L. 109–58, set out as a note under section 6991b of this title.

[1] So in original. The word "or" probably should not appear.

[2] So in original. Two subpars. (D) have been enacted.

[3] So in original. The comma probably should be a semicolon.

§6991f. Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank or underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are

punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Review of and report on Federal underground storage tanks

(1) Review

Not later than 12 months after August 8, 2005, each Federal agency that owns or operates one or more underground storage tanks, or that manages land on which one or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the Senate a compliance strategy report that—

(A) lists the location and owner of each underground storage tank described in this paragraph;

(B) lists all tanks that are not in compliance with this subchapter that are owned or operated by the Federal agency;

(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;

(D) lists each violation of this subchapter respecting any underground storage tank owned or operated by the agency;

(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and

(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

(2) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subchapter.

(Pub. L. 89–272, title II, §9007, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3286; amended Pub. L. 109–58, title XV, §1528, Aug. 8, 2005, 119 Stat. 1100.)

EDITORIAL NOTES

AMENDMENTS

2005—Pub. L. 109–58 amended section generally. Prior to amendment, section required each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any underground storage tank to comply with all Federal, State, interstate, and local requirements, applicable to such tank, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable service charges, provided that neither the United States, nor any agent, employee, or officer thereof, was immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief, and authorized the President to exempt any tank from compliance with such requirements upon certain determinations.

§6991g. State authority

Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.

(Pub. L. 89–272, title II, §9008, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3286; amended Pub. L. 99–499, title II, §205(g), Oct. 17, 1986, 100 Stat. 1702.)

EDITORIAL NOTES

AMENDMENTS

1986—Pub. L. 99–499 amended section generally. Prior to amendment, section read as follows: "Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter."

§6991h. Study of underground storage tanks

(a) Petroleum tanks

Not later than twelve months after November 8, 1984, the Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section 6991(7)(B) of this title.

(b) Other tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall complete a study of all other underground storage tanks.

(c) Elements of studies

The studies under subsections (a) and (b) shall include an assessment of the ages, types (including methods of manufacture, coatings, protection systems, the compatibility of the construction materials and the installation methods) and locations (including the climate of the locations) of such tanks; soil conditions, water tables, and the hydrogeology of tank locations; the relationship between the foregoing factors and the likelihood of releases from underground storage tanks; the effectiveness and costs of inventory systems, tank testing, and leak detection systems; and such other factors as the Administrator deems appropriate.

(d) Farm and heating oil tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall conduct a study regarding the tanks referred to in subparagraphs (A) and (B) of section 6991(10) of this title. Such study shall include estimates of the number and location of such tanks and an analysis of the extent to which there may be releases or threatened releases from such tanks into the environment.

(e) Reports

Upon completion of the studies authorized by this section, the Administrator shall submit reports to the President and to the Congress containing the results of the studies and recommendations respecting whether or not such tanks should be subject to the preceding provisions of this subchapter.

(f) Reimbursement

(1) If any owner or operator (excepting an agency, department, or instrumentality of the United States Government, a State or a political subdivision thereof) shall incur costs, including the loss of business opportunity, due to the closure or interruption of operation of an underground storage tank solely for the purpose of conducting studies authorized by this section, the Administrator shall provide such person fair and equitable reimbursement for such costs.

(2) All claims for reimbursement shall be filed with the Administrator not later than ninety days after the closure or interruption which gives rise to the claim.

(3) Reimbursements made under this section shall be from funds appropriated by the Congress pursuant to the authorization contained in section 6916(g) [1] of this title.

(4) For purposes of judicial review, a determination by the Administrator under this subsection shall be considered final agency action.

(Pub. L. 89–272, title II, §9009, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3287; amended Pub. L. 109–58, title XV, §1532(b)(3), Aug. 8, 2005, 119 Stat. 1105.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6916(g) of this title, referred to in subsec. (f)(3), probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, §1532(b)(3)(A), substituted "6991(7)(B)" for "6991(2)(B)".

Subsec. (d). Pub. L. 109–58, §1532(b)(3)(B), substituted "subparagraphs (A) and (B) of section 6991(10)" for "section 6991(1)(A) and (B)".

[1] *See References in Text note below.*

§6991i. Operator training

(a) Guidelines

(1) In general

Not later than 2 years after August 8, 2005, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for—

(A) persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;

(B) persons having daily on-site responsibility for the operation and maintenance of underground storage tanks systems; and

(C) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(2) Considerations

The guidelines described in paragraph (1) shall take into account—

(A) State training programs in existence as of the date of publication of the guidelines;

(B) training programs that are being employed by tank owners and tank operators as of August 8, 2005;

(C) the high turnover rate of tank operators and other personnel;

(D) the frequency of improvement in underground storage tank equipment technology;

(E) the nature of the businesses in which the tank operators are engaged;

(F) the substantial differences in the scope and length of training needed for the different classes of persons described in subparagraphs (A), (B), and (C) of paragraph (1); and

(G) such other factors as the Administrator determines to be necessary to carry out this section.

(b) State programs

(1) In general

Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1), each State that receives funding under this subchapter shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1).

(2) Requirements

State requirements described in paragraph (1) shall—

(A) be consistent with subsection (a);

(B) be developed in cooperation with tank owners and tank operators;

(C) take into consideration training programs implemented by tank owners and tank operators as of August 8, 2005; and

(D) be appropriately communicated to tank owners and operators.

(3) Financial incentive

The Administrator may award to a State that develops and implements requirements described in paragraph (1), in addition to any funds that the State is entitled to receive under this subchapter, not more than $200,000, to be used to carry out the requirements.

(c) Training

All persons that are subject to the operator training requirements of subsection (a) shall—

(1) meet the training requirements developed under subsection (b); and

(2) repeat the applicable requirements developed under subsection (b), if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with—

(A) a requirement or standard promulgated by the Administrator under section 6991b of this title; or

(B) a requirement or standard of a State program approved under section 6991c of this title.

(Pub. L. 89–272, title II, §9010, as added Pub. L. 98–616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3287; amended Pub. L. 109–58, title XV, §1524(a), Aug. 8, 2005, 119 Stat. 1095.)

EDITORIAL NOTES

REFERENCES IN TEXT

August 8, 2005, referred to in subsec. (b)(2)(C), was in the original "the date of enactment of this section", which was translated as meaning the date of enactment of Pub. L. 109–58, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2005—Pub. L. 109–58 amended section catchline and text generally. Prior to amendment, text read as follows: "For authorization of appropriations to carry out this subchapter, see section 6916(g) of this title."

§6991j. Use of funds for release prevention and compliance

Funds made available under section 6991m(2)(D) of this title from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subchapter—

(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of [1] State regulations pertaining to underground storage tanks regulated under this subchapter; and

(2) by the Administrator, for tanks regulated under this subchapter (including under a State program approved under section 6991c of this title).

(Pub. L. 89–272, title II, §9011, as added Pub. L. 109–58, title XV, §1526(a), Aug. 8, 2005, 119 Stat. 1097.)

[1] *So in original.*

§6991k. Delivery prohibition

(a) Requirements

(1) Prohibition of delivery or deposit

Beginning 2 years after August 8, 2005, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for such delivery, deposit, or acceptance.

(2) Guidance

Within 1 year after August 8, 2005, the Administrator shall, in consultation with the States, underground storage tank owners, and product delivery industries, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum—

(A) the criteria for determining which underground storage tank facilities are ineligible for delivery, deposit, or acceptance of a regulated substance;

(B) the mechanisms for identifying which facilities are ineligible for delivery, deposit, or acceptance of a regulated substance to the underground storage tank owning and fuel delivery industries;

(C) the process for reclassifying ineligible facilities as eligible for delivery, deposit, or acceptance of a regulated substance;

(D) one or more processes for providing adequate notice to underground storage tank owners and operators and supplier industries that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance; and

(E) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

(3) Compliance

States that receive funding under this subchapter shall, at a minimum, comply with the processes and procedures published under paragraph (2).

(4) Consideration

(A) Rural and remote areas

Subject to subparagraph (B), the Administrator or a State may consider not treating an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated

substance if such treatment would jeopardize the availability of, or access to, fuel in any rural and remote areas unless an urgent threat to public health, as determined by the Administrator, exists.

(B) Applicability

Subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State under subparagraph (A).

(b) Effect on State authority

Nothing in this section shall affect or preempt the authority of a State to prohibit the delivery, deposit, or acceptance of a regulated substance to an underground storage tank.

(c) Defense to violation

A person shall not be in violation of subsection (a)(1) if the person has not been provided with notice pursuant to subsection (a)(2)(D) of the ineligibility of a facility for delivery, deposit, or acceptance of a regulated substance as determined by the Administrator or a State, as appropriate, under this section.

(Pub. L. 89–272, title II, §9012, as added Pub. L. 109–58, title XV, §1527(a), Aug. 8, 2005, 119 Stat. 1098; amended Pub. L. 109–168, §1(a)(1), Jan. 10, 2006, 119 Stat. 3580.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (a)(2)(D). Pub. L. 109–168 substituted "of a regulated" for "or a regulated".

§6991*l*. Tanks on tribal lands

(a) Strategy

The Administrator, in coordination with Indian tribes, shall, not later than 1 year after August 8, 2005, develop and implement a strategy—

(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe; and

(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe.

(b) Report

Not later than 2 years after August 8, 2005, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subchapter in areas located wholly within—

(1) the boundaries of Indian reservations; and

(2) any other areas under the jurisdiction of an Indian tribe.

The Administrator shall make the report under this subsection available to the public.

(c) Not a safe harbor

This section does not relieve any person from any obligation or requirement under this subchapter.

(d) State authority

Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of August 8, 2005.

(Pub. L. 89–272, title II, §9013, as added Pub. L. 109–58, title XV, §1529(a), Aug. 8, 2005, 119 Stat. 1101.)

§6991m. Authorization of appropriations

There are authorized to be appropriated to the Administrator the following amounts:

(1) To carry out this subchapter (except sections 6991b(h), 6991d(c), 6991j, and 6991k of this title) $50,000,000 for each of fiscal years 2006 through 2011.

(2) From the Trust Fund—

(A) to carry out section 6991b(h) of this title (except section 6991b(h)(12) of this title) $200,000,000 for each of fiscal years 2006 through 2011;

(B) to carry out section 6991b(h)(12) of this title, $200,000,000 for each of fiscal years 2006 through 2011;

(C) to carry out sections 6991b(i), 6991c(f), and 6991d(c) of this title $100,000,000 for each of fiscal years 2006 through 2011; and

(D) to carry out sections 6991i, 6991j, 6991k, and 6991l of this title $55,000,000 for each of fiscal years 2006 through 2011.

(Pub. L. 89–272, title II, §9014, as added Pub. L. 109–58, title XV, §1531(a), Aug. 8, 2005, 119 Stat. 1104; amended Pub. L. 109–168, §1(a)(3), Jan. 10, 2006, 119 Stat. 3580; Pub. L. 109–432, div. A, title II, §210(b), Dec. 20, 2006, 120 Stat. 2947; Pub. L. 109–433, §1(b), Dec. 20, 2006, 120 Stat. 3196.)

EDITORIAL NOTES

AMENDMENTS

2006—Par. (2). Pub. L. 109–432 and Pub. L. 109–433 amended par. (2) identically, substituting "Fund" for "Fund, notwithstanding section 9508(c)(1) of title 26" in introductory provisions.

Pub. L. 109–168 substituted "2006 through 2011" for "2005 through 2009" wherever appearing.

SUBCHAPTER X—DEMONSTRATION MEDICAL WASTE TRACKING PROGRAM

§6992. Scope of demonstration program for medical waste

(a) Covered States

The States within the demonstration program established under this subchapter for tracking medical wastes shall be New York, New Jersey, Connecticut, the States contiguous to the Great Lakes and any State included in the program through the petition procedure described in subsection (c), except for any of such States in which the Governor notifies the Administrator under subsection (b) that such State shall not be covered by the program.

(b) Opt out

(1) If the Governor of any State covered under subsection (a) which is not contiguous to the Atlantic Ocean notifies the Administrator that such State elects not to participate in the demonstration program, the Administrator shall remove such State from the program.

(2) If the Governor of any other State covered under subsection (a) notifies the Administrator that such State has implemented a medical waste tracking program that is no less stringent than the

demonstration program under this subchapter and that such State elects not to participate in the demonstration program, the Administrator shall, if the Administrator determines that such State program is no less stringent than the demonstration program under this subchapter, remove such State from the demonstration program.

(3) Notifications under paragraphs (1) or (2) shall be submitted to the Administrator no later than 30 days after the promulgation of regulations implementing the demonstration program under this subchapter.

(c) Petition in

The Governor of any State may petition the Administrator to be included in the demonstration program and the Administrator may, in his discretion, include any such State. Such petition may not be made later than 30 days after promulgation of regulations establishing the demonstration program under this subchapter, and the Administrator shall determine whether to include the State within 30 days after receipt of the State's petition.

(d) Expiration of demonstration program

The demonstration program shall expire on the date 24 months after the effective date of the regulations under this subchapter.

(Pub. L. 89–272, title II, §11001, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2950.)

§6992a. Listing of medical wastes

(a) List

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations listing the types of medical waste to be tracked under the demonstration program. Except as provided in subsection (b), such list shall include, but need not be limited to, each of the following types of solid waste:

(1) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.

(2) Pathological wastes, including tissues, organs, and body parts that are removed during surgery or autopsy.

(3) Waste human blood and products of blood, including serum, plasma, and other blood components.

(4) Sharps that have been used in patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades.

(5) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

(6) Wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves.

(7) Laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats, and aprons.

(8) Dialysis wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats.

(9) Discarded medical equipment and parts that were in contact with infectious agents.

(10) Biological waste and discarded materials contaminated with blood, excretion, excudates [1] or secretion from human beings or animals who are isolated to protect others from communicable diseases.

(11) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the

environment.

(b) Exclusions from list

The Administrator may exclude from the list under this section any categories or items described in paragraphs (6) through (10) of subsection (a) which he determines do not pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(Pub. L. 89–272, title II, §11002, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2951.)

[1] *So in original. Probably should be "exudates".*

§6992b. Tracking of medical waste

(a) Demonstration program

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations establishing a program for the tracking of the medical waste listed in section 6992a of this title which is generated in a State subject to the demonstration program. The program shall (1) provide for tracking of the transportation of the waste from the generator to the disposal facility, except that waste that is incinerated need not be tracked after incineration, (2) include a system for providing the generator of the waste with assurance that the waste is received by the disposal facility, (3) use a uniform form for tracking in each of the demonstration States, and (4) include the following requirements:

(A) A requirement for segregation of the waste at the point of generation where practicable.

(B) A requirement for placement of the waste in containers that will protect waste handlers and the public from exposure.

(C) A requirement for appropriate labeling of containers of the waste.

(b) Small quantities

In the program under subsection (a), the Administrator may establish an exemption for generators of small quantities of medical waste listed under section 6992a of this title, except that the Administrator may not exempt from the program any person who, or facility that, generates 50 pounds or more of such waste in any calendar month.

(c) On-site incinerators

Concurrently with the promulgation of regulations under subsection (a), the Administrator shall promulgate a recordkeeping and reporting requirement for any generator in a demonstration State of medical waste listed in section 6992a of this title that (1) incinerates medical waste listed in section 6992a of this title on site and (2) does not track such waste under the regulations promulgated under subsection (a). Such requirement shall require the generator to report to the Administrator on the volume and types of medical waste listed in section 6992a of this title that the generator incinerated on site during the 6 months following the effective date of the requirements of this subsection.

(d) Type of medical waste and types of generators

For each of the requirements of this section, the regulations may vary for different types of medical waste and for different types of medical waste generators.

(Pub. L. 89–272, title II, §11003, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2952.)

§6992c. Inspections

(a) Requirements for access

For purposes of developing or assisting in the development of any regulation or report under this subchapter or enforcing any provision of this subchapter, any person who generates, stores, treats,

transports, disposes of, or otherwise handles or has handled medical waste shall, upon request of any officer, employee, or representative of the Environmental Protection Agency duly designated by the Administrator, furnish information relating to such waste, including any tracking forms required to be maintained under section 6992b of this title, conduct monitoring or testing, and permit such person at all reasonable times to have access to, and to copy, all records relating to such waste. For such purposes, such officers, employees, or representatives are authorized to—

(1) enter at reasonable times any establishment or other place where medical wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) conduct monitoring or testing; and

(3) inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

(b) Procedures

Each inspection under this section shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained if giving such an equal portion is feasible. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge of the premises concerned.

(c) Availability to public

The provisions of section 6927(b) of this title shall apply to records, reports, and information obtained under this section in the same manner and to the same extent as such provisions apply to records, reports, and information obtained under section 6927 of this title.

(Pub. L. 89–272, title II, §11004, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2952.)

§6992d. Enforcement

(a) Compliance orders

(1) Violations

Whenever on the basis of any information the Administrator determines that any person has violated, or is in violation of, any requirement or prohibition in effect under this subchapter (including any requirement or prohibition in effect under regulations under this subchapter) (A) the Administrator may issue an order (i) assessing a civil penalty for any past or current violation, (ii) requiring compliance immediately or within a specified time period, or (iii) both, or (B) the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Any order issued pursuant to this subsection shall state with reasonable specificity the nature of the violation.

(2) Orders assessing penalties

Any penalty assessed in an order under this subsection shall not exceed $25,000 per day of noncompliance for each violation of a requirement or prohibition in effect under this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Public hearing

Any order issued under this subsection shall become final unless, not later than 30 days after issuance of the order, the persons named therein request a public hearing. Upon such request, the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section, the Administrator may issue subpoenas for the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(4) Violation of compliance orders

In the case of an order under this subsection requiring compliance with any requirement of or regulation under this subchapter, if a violator fails to take corrective action within the time specified in an order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order.

(b) Criminal penalties

Any person who—

(1) knowingly violates the requirements of or regulations under this subchapter;

(2) knowingly omits material information or makes any false material statement or representation in any label, record, report, or other document filed, maintained, or used for purposes of compliance with this subchapter or regulations thereunder; or

(3) knowingly generates, stores, treats, transports, disposes of, or otherwise handles any medical waste (whether such activity took place before or takes place after November 1, 1988) and who knowingly destroys, alters, conceals, or fails to file any record, report, or other document required to be maintained or filed for purposes of compliance with this subchapter or regulations thereunder

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed 2 years (5 years in the case of a violation of paragraph (1)). If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(c) Knowing endangerment

Any person who knowingly violates any provision of subsection (b) who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than $250,000 or imprisonment for not more than 15 years, or both. A defendant that is an organization shall, upon conviction under this subsection, be subject to a fine of not more than $1,000,000. The terms of this paragraph shall be interpreted in accordance with the rules provided under section 6928(f) of this title.

(d) Civil penalties

Any person who violates any requirement of or regulation under this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this section, constitute a separate violation.

(e) Civil penalty policy

Civil penalties assessed by the United States or by the States under this subchapter shall be assessed in accordance with the Administrator's "RCRA Civil Penalty Policy", as such policy may be amended from time to time.

(Pub. L. 89–272, title II, §11005, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2953.)

§6992e. Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government in a demonstration State (1) having jurisdiction over any solid waste management facility or disposal site at which medical waste is disposed of or otherwise handled, or (2) engaged in any activity resulting, or which may result, in the disposal, management, or handling of medical waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such

relief), respecting control and abatement of medical waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders, civil, criminal, and administrative penalties, and other sanctions, including injunctive relief, fines, and imprisonment. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such order, penalty, or other sanction. For purposes of enforcing any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil, criminal, administrative penalty, or other sanction), against any such department, agency, or instrumentality, the United States hereby expressly waives any immunity otherwise applicable to the United States. The President may exempt any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) "Person" defined

For purposes of this chapter, the term "person" shall be treated as including each department, agency, and instrumentality of the United States.

(Pub. L. 89–272, title II, §11006, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2954.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 20 of House Document No. 103–7.

§6992f. Relationship to State law

(a) State inspections and enforcement

A State may conduct inspections under [1] 6992c of this title and take enforcement actions under section 6992d of this title against any person, including any person who has imported medical waste into a State in violation of the requirements of, or regulations under, this subchapter, to the same extent as the Administrator. At the time a State initiates an enforcement action under section 6992d of this title against any person, the State shall notify the Administrator in writing.

(b) Retention of State authority

Nothing in this subchapter shall—

(1) preempt any State or local law; or

(2) except as provided in subsection (c), otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law.

(c) State forms

Any State or local law which requires submission of a tracking form from any person subject to this subchapter shall require that the form be identical in content and format to the form required under section 6992b of this title, except that a State may require the submission of other tracking

information which is supplemental to the information required on the form required under section 6992b of this title through additional sheets or such other means as the State deems appropriate.

(Pub. L. 89–272, title II, §11007, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2955.)

[1] *So in original. Probably should be "under section".*

§6992g. Repealed. Pub. L. 105–362, title V, §501(h)(1)(A), Nov. 10, 1998, 112 Stat. 3284

Section, Pub. L. 89–272, title II, §11008, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2956, related to Administrator's report to Congress concerning demonstration medical waste tracking program.

§6992h. Health impacts report

Within 24 months after November 1, 1988, the Administrator of the Agency for Toxic Substances and Disease Registry shall prepare for Congress a report on the health effects of medical waste, including each of the following—

(1) A description of the potential for infection or injury from the segregation, handling, storage, treatment, or disposal of medical wastes.

(2) An estimate of the number of people injured or infected annually by sharps, and the nature and seriousness of those injuries or infections.

(3) An estimate of the number of people infected annually by other means related to waste segregation, handling, storage, treatment, or disposal, and the nature and seriousness of those infections.

(4) For diseases possibly spread by medical waste, including Acquired Immune Deficiency Syndrome and hepatitis B, an estimate of what percentage of the total number of cases nationally may be traceable to medical wastes.

(Pub. L. 89–272, title II, §11008, formerly §11009, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2957; renumbered §11008, Pub. L. 105–362, title V, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11008 of Pub. L. 89–272 was classified to section 6992g of this title prior to repeal by Pub. L. 105–362, §501(h)(1)(A).

§6992i. General provisions

(a) Consultation

(1) In promulgating regulations under this subchapter, the Administrator shall consult with the affected States and may consult with other interested parties.

(2) The Administrator shall also consult with the International Joint Commission to determine how to monitor the disposal of medical waste emanating from Canada.

(b) Public comment

In the case of the regulations required by this subchapter to be promulgated within 9 months after November 1, 1988, the Administrator may promulgate such regulations in interim final form without prior opportunity for public comment, but the Administrator shall provide an opportunity for public comment on the interim final rule. The promulgation of such regulations shall not be subject to the Paperwork Reduction Act of 1980.[1]

(c) Relationship to subchapter III

Nothing in this subchapter shall affect the authority of the Administrator to regulate medical waste, including medical waste listed under section 6992a of this title, under subchapter III of this chapter.

(Pub. L. 89–272, title II, §11009, formerly §11010, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2957; renumbered §11009, Pub. L. 105–362, title V, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Paperwork Reduction Act of 1980, referred to in subsec. (b), is Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

PRIOR PROVISIONS

A prior section 11009 of Pub. L. 89–272 was renumbered section 11008 and is classified to section 6992h of this title.

[1] *See References in Text note below.*

§6992j. Effective date

The regulations promulgated under this subchapter shall take effect within 90 days after promulgation, except that, at the time of promulgation, the Administrator may provide for a shorter period prior to the effective date if he finds the regulated community does not need 90 days to come into compliance.

(Pub. L. 89–272, title II, §11010, formerly §11011, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2958; renumbered §11010, Pub. L. 105–362, title V, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11010 of Pub. L. 89–272 was renumbered section 11009 and is classified to section 6992i of this title.

§6992k. Authorization of appropriations

There are authorized to be appropriated to the Administrator such sums as may be necessary for each of the fiscal years 1989 through 1991 for purposes of carrying out activities under this subchapter.

(Pub. L. 89–272, title II, §11011, formerly §11012, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2958; renumbered §11011, Pub. L. 105–362, title V, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11011 of Pub. L. 89–272 was renumbered section 11010 and is classified to section 6992j of this title.

CHAPTER 83—ENERGY EXTENSION SERVICE

§§7001 to 7011. Repealed. Pub. L. 102–486, title I, §143(a), Oct. 24, 1992, 106 Stat. 2843

Section 7001, Pub. L. 95–39, title V, §502, June 3, 1977, 91 Stat. 191, related to congressional declaration and statement of purposes.

Section 7002, Pub. L. 95–39, title V, §503, June 3, 1977, 91 Stat. 192, provided for establishment of Energy Extension Service.

Section 7003, Pub. L. 95–39, title V, §504, June 3, 1977, 91 Stat. 192, provided for development and implementation of comprehensive program.

Section 7004, Pub. L. 95–39, title V, §505, June 3, 1977, 91 Stat. 193, provided for initial implementation of State energy extension service plans.

Section 7005, Pub. L. 95–39, title V, §506, June 3, 1977, 91 Stat. 195, provided for national implementation of State energy extension service plans.

Section 7006, Pub. L. 95–39, title V, §507, June 3, 1977, 91 Stat. 198, related to administration of Energy Extension Service.

Section 7007, Pub. L. 95–39, title V, §508, June 3, 1977, 91 Stat. 199, related to energy education, extension, and information.

Section 7008, Pub. L. 95–39, title V, §509, June 3, 1977, 91 Stat. 199, provided for establishment of National Energy Extension Service Advisory Board.

Section 7009, Pub. L. 95–39, title V, §511, June 3, 1977, 91 Stat. 201, related to records.

Section 7010, Pub. L. 95–39, title V, §512, June 3, 1977, 91 Stat. 201, related to authorization of appropriations.

Section 7011, Pub. L. 95–39, title V, §513, June 3, 1977, 91 Stat. 202, set out definitions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 95–39, title V, §501, June 3, 1977, 91 Stat. 191, which provided that this title, which enacted this chapter and amended sections 5813 and 5818 of this title, could be cited as the "National Energy Extension Service Act", was repealed by Pub. L. 102–486, title I, §143(a), Oct. 24, 1992, 106 Stat. 2843.

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§7101. Definitions

(a) As used in this chapter, unless otherwise provided or indicated by the context, the term the "Department" means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.

(b) As used in this chapter (1) reference to "function" includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to "perform", when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this chapter, "Federal lease" means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

(Pub. L. 95–91, §2, Aug. 4, 1977, 91 Stat. 567.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (c), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–28, §1, July 18, 1997, 111 Stat. 245, provided that: "This Act [amending sections 7191 and 7234 of this title and repealing section 776 of Title 15, Commerce and Trade] may be cited as the 'Department of Energy Standardization Act of 1997'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–271, §1, Apr. 11, 1990, 104 Stat. 135, provided that: "This Act [amending section 7171 of this title and enacting provisions set out as a note under section 7171 of this title] may be cited as the 'Federal Energy Regulatory Commission Member Term Act of 1990'."

SHORT TITLE

Pub. L. 95–91, §1, Aug. 4, 1977, 91 Stat. 565, provided: "That this Act [enacting this chapter and section 916 of Title 7, Agriculture, amending sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 to 5316 of Title 5, Government Organization and Employees, section 1701z–8 of Title 12, Banks and Banking, and sections 766, 790a, 790d, and 2002 of Title 15, Commerce and Trade, repealing sections 2036 and 5818 of this title and sections 763, 768, and 786 of Title 15, enacting provisions set out as a note under section 2201 of this title, and repealing provisions set out as a note under section 761 of Title 15] may be cited as the 'Department of Energy Organization Act'."

For short title of part E of title XXXI of div. C of Pub. L. 101–510, which enacted subchapter XIII of this chapter, as the "Department of Energy Science Education Enhancement Act", see section 3161 of Pub. L. 101–510, set out as a note under section 7381 of this title.

For short title of part A of title V of Pub. L. 103–382, which enacted subchapter XIV of this chapter, as the "Albert Einstein Distinguished Educator Fellowship Act of 1994", see section 511 of Pub. L. 103–382, set out as a note under section 7382 of this title.

For short title of subtitle D of title XXXI of div. C of Pub. L. 106–65, which enacted subchapter XV of this chapter, as the "Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999", see section 3141 of Pub. L. 106–65, set out as a note under section 7383 of this title.

For short title of section 1 [div. C, title XXXVI] of Pub. L. 106–398, which enacted subchapter XVI of this chapter, as the "Energy Employees Occupational Illness Compensation Program Act of 2000", see section 1 [div. C, title XXXVI, §3601] of Pub. L. 106–398, set out as a note under section 7384 of this title.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12083

Ex. Ord. No. 12083, Sept. 27, 1978, 43 F.R. 44813, as amended by Ex. Ord. No. 12121, Feb. 26, 1979, 44 F.R. 11195; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which established the Energy Coordinating Committee and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §20, Aug. 17, 1982, 47 F.R. 36100, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

SUBCHAPTER I—DECLARATION OF FINDINGS AND PURPOSES

§7111. Congressional findings

The Congress of the United States finds that—

(1) the United States faces an increasing shortage of nonrenewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch.

(Pub. L. 95–91, title I, §101, Aug. 4, 1977, 91 Stat. 567.)

§7112. Congressional declaration of purpose

The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this chapter:

(1) To establish a Department of Energy in the executive branch.

(2) To achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions.

(3) To provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages.

(4) To create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program.

(5) To carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies.

(6) To place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources.

(7) To continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department.

(8) To facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve.

(9) To promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost.

(10) To establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President.

(11) To provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs.

(12) To foster and assure competition among parties engaged in the supply of energy and fuels.

(13) To assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety.

(14) To assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of

this chapter.

(15) To provide for, encourage, and assist public participation in the development and enforcement of national energy programs.

(16) To create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development.

(17) To foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising.

(18) To provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this chapter.

(19) To ensure that the Department can continue current support of mathematics, science, and engineering education programs by using the personnel, facilities, equipment, and resources of its laboratories and by working with State and local education agencies, institutions of higher education, and business and industry. The Department's involvement in mathematics, science, and engineering education should be consistent with its main mission and should be coordinated with all Federal efforts in mathematics, science, and engineering education, especially with the Department of Education and the National Science Foundation (which have the primary Federal responsibility for mathematics, science, and engineering education).

(Pub. L. 95–91, title I, §102, Aug. 4, 1977, 91 Stat. 567; Pub. L. 101–510, div. C, title XXXI, §3163, Nov. 5, 1990, 104 Stat. 1841.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in introductory provisions and pars. (14) and (18), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1990—Pub. L. 101–510 substituted "chapter:" for "chapter—" in introductory provisions, capitalized the first letter of the first word in each of pars. (1) to (18), substituted a period for last semicolon in each of pars. (1) to (17), struck out "and" at end of par. (17), and added par. (19).

§7113. Relationship with States

Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this chapter shall affect the authority of any State over matters exclusively within its jurisdiction.

(Pub. L. 95–91, title I, §103, Aug. 4, 1977, 91 Stat. 569.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SUBCHAPTER II—ESTABLISHMENT OF DEPARTMENT

§7131. Establishment

There is established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this chapter referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this chapter, under the supervision and direction of the Secretary.

(Pub. L. 95–91, title II, §201, Aug. 4, 1977, 91 Stat. 569.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Department of Energy, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 121(g)(4), 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EMERGENCY PREPAREDNESS FOR ENERGY SUPPLY DISRUPTIONS

Pub. L. 114–94, div. F, §61001, Dec. 4, 2015, 129 Stat. 1771, provided that:

"(a) FINDING.—Congress finds that recent natural disasters have underscored the importance of having resilient oil and natural gas infrastructure and effective ways for industry and government to communicate to address energy supply disruptions.

"(b) AUTHORIZATION FOR ACTIVITIES TO ENHANCE EMERGENCY PREPAREDNESS FOR NATURAL DISASTERS.—The Secretary of Energy shall develop and adopt procedures to—

"(1) improve communication and coordination between the Department of Energy's energy response team, Federal partners, and industry;

"(2) leverage the Energy Information Administration's subject matter expertise within the Department's energy response team to improve supply chain situation assessments;

"(3) establish company liaisons and direct communication with the Department's energy response team to improve situation assessments;

"(4) streamline and enhance processes for obtaining temporary regulatory relief to speed up emergency response and recovery;

"(5) facilitate and increase engagement among States, the oil and natural gas industry, and the Department in developing State and local energy assurance plans;

"(6) establish routine education and training programs for key government emergency response positions with the Department and States; and

"(7) involve States and the oil and natural gas industry in comprehensive drill and exercise programs.

"(c) COOPERATION.—The activities carried out under subsection (b) shall include collaborative efforts with State and local government officials and the private sector.

"(d) REPORT.—Not later than 180 days after the date of enactment of this Act [Dec. 4, 2015], the Secretary of Energy shall submit to Congress a report describing the effectiveness of the activities authorized under this section."

§7132. Principal officers

(a) Deputy Secretary

There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(b) Under Secretary for Science

(1) There shall be in the Department an Under Secretary for Science, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(3) The Under Secretary for Science shall be appointed from among persons who—

(A) have extensive background in scientific or engineering fields; and

(B) are well qualified to manage the civilian research and development programs of the Department.

(4) The Under Secretary for Science shall—

(A) serve as the Science and Technology Advisor to the Secretary;

(B) monitor the research and development programs of the Department in order to advise the Secretary with respect to any undesirable duplication or gaps in the programs;

(C) advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department;

(D) advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(E) advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department;

(F) advise the Secretary with respect to long-term planning, coordination, and development of a strategic framework for Department research and development activities; and

(G) carry out such additional duties assigned to the Under Secretary by the Secretary relating to basic and applied research, including supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 7133 of this title, as the Secretary considers advantageous.

(c) Under Secretary for Nuclear Security

(1) There shall be in the Department an Under Secretary for Nuclear Security, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5.

(2) The Under Secretary for Nuclear Security shall be appointed from among persons who—

(A) have extensive background in national security, organizational management, and appropriate technical fields; and

(B) are well qualified to manage the nuclear weapons, nonproliferation, and materials disposition programs of the National Nuclear Security Administration in a manner that advances and protects the national security of the United States.

(3) The Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security under section 2402 of title 50. In carrying out the functions of the Administrator, the Under Secretary shall be subject to the authority, direction, and control of the Secretary. Such authority, direction, and

control may be delegated only to the Deputy Secretary of Energy, without redelegation.

(d) Under Secretary

(1) There shall be in the Department an Under Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe, consistent with this section.

(2) The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(e) General Counsel

(1) There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe.

(2) The General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(Pub. L. 95–91, title II, §202, Aug. 4, 1977, 91 Stat. 569; Pub. L. 106–65, div. C, title XXXII, §3202, Oct. 5, 1999, 113 Stat. 954; Pub. L. 109–58, title X, §1006(a), (c)(1), Aug. 8, 2005, 119 Stat. 930, 931.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58, §1006(a), added subsec. (b) and struck out former subsec. (b) which read as follows: "There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5."

Subsecs. (d), (e). Pub. L. 109–58, §1006(c)(1), added subsecs. (d) and (e).

1999—Subsec. (c). Pub. L. 106–65 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERM OF OFFICE OF PERSON FIRST APPOINTED AS UNDER SECRETARY FOR NUCLEAR SECURITY OF THE DEPARTMENT OF ENERGY

Pub. L. 106–398, §1 [div. C, title XXXI, §3151], Oct. 30, 2000, 114 Stat. 1654, 1654A–464, provided that:

"(a) LENGTH OF TERM.—The term of office as Under Secretary for Nuclear Security of the Department of Energy of the person first appointed to that position shall be three years.

"(b) EXCLUSIVE REASONS FOR REMOVAL.—The exclusive reasons for removal from office as Under Secretary for Nuclear Security of the person described in subsection (a) shall be inefficiency, neglect of duty, or malfeasance in office.

"(c) POSITION DESCRIBED.—The position of Under Secretary for Nuclear Security of the Department of Energy referred to in this section is the position established by subsection (c) of section 202 of the Department of Energy Organization Act (42 U.S.C. 7132), as added by section 3202 of the National Nuclear Security Administration Act (title XXXII of Public Law 106–65; 113 Stat. 954)."

Substantially identical provisions were contained in Pub. L. 106–377, §1(a)(2) [title III, §313], Oct. 27, 2000, 114 Stat. 1441, 1441A–81.

§7133. Assistant Secretaries; appointment and confirmation; identification of responsibilities

(a) There shall be in the Department 8 Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate

provided for at level IV of the Executive Schedule under section 5315 of title 5; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this chapter. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

(2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—

(A) solar energy resources;

(B) geothermal energy resources;

(C) recycling energy resources;

(D) the fuel cycle for fossil energy resources; and

(E) the fuel cycle for nuclear energy resources.

(3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 7112 of this title.

(5) Repealed. Pub. L. 106–65, div. C, title XXXII, §3294(b), Oct. 5, 1999, 113 Stat. 970.

(6) Intergovernmental policies and relations, including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

(8) Nuclear waste management responsibilities, including—

(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph,

except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than

those already conferred by law.

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all available information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible.

(Pub. L. 95–91, title II, §203, Aug. 4, 1977, 91 Stat. 570; Pub. L. 106–65, div. C, title XXXII, §3294(a)(2), (b), Oct. 5, 1999, 113 Stat. 970; Pub. L. 109–58, title X, §1006(b)(1), Aug. 8, 2005, 119 Stat. 931; Pub. L. 111–11, title XIII, §13004(a), Mar. 30, 2009, 123 Stat. 1449.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–11 substituted "8 Assistant Secretaries" for "7 Assistant Secretaries" in introductory provisions.

2005—Subsec. (a). Pub. L. 109–58 substituted "7" for "six" in introductory provisions.

1999—Subsec. (a). Pub. L. 106–65, §3294(a)(2), substituted "six" for "eight" in introductory provisions.

Subsec. (a)(5). Pub. L. 106–65, §3294(b), struck out par. (5) which read as follows: "National security functions, including those transferred to the Department from the Energy Research and Development Administration which relate to management and implementation of the nuclear weapons program and other national security functions involving nuclear weapons research and development."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

FEDERAL POWER MARKETING ADMINISTRATION EMPLOYMENT LEVELS

Pub. L. 101–514, title V, §510, Nov. 5, 1990, 104 Stat. 2098, provided that no funds appropriated or made available were to be used by the executive branch to change employment levels determined by Administrators of the Federal Power Marketing Administrations to be necessary to carry out their responsibilities under this chapter and related laws, or to change employment levels of other Department of Energy programs to compensate for employment levels of the Federal Power Marketing Administrations, prior to repeal by Pub. L. 104–46, title V, §501, Nov. 13, 1995, 109 Stat. 419.

MARKETING AND EXCHANGE OF SURPLUS ELECTRICITY FROM NAVAJO GENERATING STATION

Pub. L. 98–381, title I, §107, Aug. 17, 1984, 98 Stat. 1339, provided that:

"(a) Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated with the United States' interest in the Navajo generating station which is in excess of the pumping requirements of

the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, as amended [43 U.S.C. 1571(b)(2)(B)] (hereinafter in this Act referred to as 'Navajo surplus') shall be marketed and exchanged by the Secretary of Energy pursuant to this section.

"(b) Navajo surplus shall be marketed by the Secretary of Energy pursuant to the plan adopted under subsection (c) of this section, directly to, with or through the Arizona Power Authority and/or other entities having the status of preference entities under the reclamation law in accordance with the preference provisions of section 9(c) of the Reclamation Project Act of 1939 [43 U.S.C. 485h(c)] and as provided in part IV, section A of the Criteria.

"(c) In the marketing and exchanging of Navajo surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project. The Secretary of the Interior, in concert with the Secretary of Energy, in accordance with section 14 of the Reclamation Project Act of 1939 [43 U.S.C. 389], shall grant electrical power and energy exchange rights with Arizona entities as necessary to implement the adopted plan: *Provided, however*, That if exchange rights with Arizona entities are not required to implement the adopted plan, exchange rights may be offered to other entities.

"(d) For the purposes provided in subsection (c) of this section, the Secretary of Energy, or the marketing entity or entities under the adopted plan, are authorized to establish and collect or cause to be established and collected, rate components, in addition to those currently authorized, and to deposit the revenues received in the Lower Colorado River Basin Development Fund to be available for such purposes and if required under the adopted plan, to credit, utilize, pay over directly or assign revenues from such additional rate components to make repayment and establish reserves for repayment of funds, including interest incurred, to entities which have advanced funds for the purposes of subsection (c) of this section: *Provided, however*, That rates shall not exceed levels that allow for an appropriate saving for the contractor.

"(e) To the extent that this section may be in conflict with any other provision of law relating to the marketing and exchange of Navajo surplus, or to the disposition of any revenues therefrom, this section shall control."

§7134. Federal Energy Regulatory Commission; compensation of Chairman and members

There shall be within the Department, a Federal Energy Regulatory Commission established by subchapter IV of this chapter (hereinafter referred to in this chapter as the "Commission"). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

(Pub. L. 95–91, title II, §204, Aug. 4, 1977, 91 Stat. 571.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7135. Energy Information Administration

(a) Establishment; appointment of Administrator; compensation; qualifications; duties

(1) There shall be within the Department an Energy Information Administration to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level IV of the Executive Schedule under section 5315 of title 5. The Administrator shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(2) The Administrator shall be responsible for carrying out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

(b) Delegation of functions

The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of energy information (as defined in section 796 of title 15) and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.

(c) Functions of Director of Office of Energy Information and Analysis

In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy Administration Act of 1974 [15 U.S.C. 790 et seq.], and the provisions of sections 53(d) and 59 thereof [15 U.S.C. 790b(d), 790h] shall be applicable to the Administrator in the performance of any function under this chapter.

(d) Collection or analysis of information and preparation of reports without approval

The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(e) Annual audit

The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55 [1] of part B of the Federal Energy Administration Act of 1974.

(f) Furnishing information or analysis to any other administration, commission, or office within Department

The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission, or office determines relates to the functions of such administration, commission, or office.

(g) Availability of information to public

Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5. The provisions of section 796(d) of title 15, and section 5916 of this title, shall continue to apply to any information obtained by the Administrator under such provisions.

(h) Identification and designation of "major energy producing companies"; format for

financial report; accounting practices; filing of financial report; annual report of Department; definitions; confidentiality

(1)(A) In addition to the acquisition, collection, analysis, and dissemination of energy information pursuant to this section, the Administrator shall identify and designate "major energy-producing companies" which alone or with their affiliates are involved in one or more lines of commerce in the energy industry so that the energy information collected from such major energy-producing companies shall provide a statistically accurate profile of each line of commerce in the energy industry in the United States.

(B) In fulfilling the requirements of this subsection the Administrator shall—

(i) utilize, to the maximum extent practicable, consistent with the faithful execution of his responsibilities under this chapter, reliable statistical sampling techniques; and

(ii) otherwise give priority to the minimization of the reporting of energy information by small business.

(2) The Administrator shall develop and make effective for use during the second full calendar year following August 4, 1977, the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit for the energy-related activities of such companies—

(A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of commerce in which such company is engaged and for all significant energy-related functions within such company;

(B) an analysis of the competitive structure of sectors and functional groupings within the energy industry;

(C) the segregation of energy information, including financial information, describing company operations by energy source and geographic area;

(D) the determination of costs associated with exploration, development, production, processing, transportation, and marketing and other significant energy-related functions within such company; and

(E) such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this chapter.

(3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent with the purposes and provisions of this chapter, is consistent with such accounting practices where applicable.

(4) The Administrator shall require each major energy-producing company to file with the Administrator an energy-producing company financial report on at least an annual basis and may request energy information described in such report on a quarterly basis if he determines that such quarterly report of information will substantially assist in achieving the purposes of this chapter.

(5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the Department required by subsection (a) [2] of section 7267 of this title.

(6) As used in this subsection the term—

(A) "energy-producing company" means a person engaged in:

(i) ownership or control of mineral fuel resources or nonmineral energy resources;

(ii) exploration for, or development of, mineral fuel resources;

(iii) extraction of mineral fuel or nonmineral energy resources;

(iv) refining, milling, or otherwise processing mineral fuels or nonmineral energy resources;

(v) storage of mineral fuels or nonmineral energy resources;

(vi) the generation, transmission, or storage of electrical energy;

(vii) transportation of mineral fuels or nonmineral energy resources by any means whatever; or

(viii) wholesale or retail distribution of mineral fuels, nonmineral energy resources or electrical energy;

(B) "energy industry" means all energy-producing companies; and

(C) "person" has the meaning as set forth in section 796 of title 15.

(7) The provisions of section 1905 of title 18 shall apply in accordance with its terms to any information obtained by the Administration pursuant to this subsection.

(i) Manufacturers energy consumption survey

(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States at least once every four years and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including—

(A) quantity of fuels consumed;

(B) energy expenditures;

(C) fuel switching capabilities; and

(D) use of nonpurchased sources of energy, such as solar, wind, biomass, geothermal, waste by-products, and cogeneration.

(2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

(j) Collection and publication of survey results

(1) The Administrator shall annually collect and publish the results of a survey of electricity production from domestic renewable energy resources, including production in kilowatt hours, total installed capacity, capacity factor, and any other measure of production efficiency. Such results shall distinguish between various renewable energy resources.

(2) In carrying out this subsection, the Administrator shall—

(A) utilize, to the maximum extent practicable and consistent with the faithful execution of his responsibilities under this chapter, reliable statistical sampling techniques; and

(B) otherwise take into account the reporting burdens of energy information by small businesses.

(3) As used in this subsection, the term "renewable energy resources" includes energy derived from solar thermal, geothermal, biomass, wind, and photovoltaic resources.

(k) Survey procedure

Pursuant to section 52(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a(a)), the Administrator shall—

(1) conduct surveys of residential and commercial energy use at least once every four years, and make such information available to the public;

(2) when surveying electric utilities, collect information on demand-side management programs conducted by such utilities, including information regarding the types of demand-side management programs being operated, the quantity of measures installed, expenditures on demand-side management programs, estimates of energy savings resulting from such programs, and whether the savings estimates were verified; and

(3) in carrying out this subsection, take into account reporting burdens and the protection of proprietary information as required by law.

(l) Data collection

In order to improve the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs, the Administrator shall, in carrying out the data collection provisions of

subsections (i) and (k), consider—

(1) expanding the survey instruments to include questions regarding participation in Government and utility conservation programs;

(2) expanding fuel-use surveys in order to provide greater detail on energy use by user subgroups; and

(3) expanding the scope of data collection on energy efficiency and load-management programs, including the effects of building construction practices such as those designed to obtain peak load shifting.

(m) Renewable fuels survey

(1) In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information both on a national and regional basis, including each of the following:

(A) The quantity of renewable fuels produced.

(B) The quantity of renewable fuels blended.

(C) The quantity of renewable fuels imported.

(D) The quantity of renewable fuels demanded.

(E) Market price data.

(F) Such other analyses or evaluations as the Administrator finds are necessary to achieve the purposes of this section.

(2) The Administrator shall also collect or estimate information both on a national and regional basis, pursuant to subparagraphs (A) through (F) of paragraph (1), for the 5 years prior to implementation of this subsection.

(3) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

(Pub. L. 95–91, title II, §205, Aug. 4, 1977, 91 Stat. 572; Pub. L. 99–509, title III, §3101(a), Oct. 21, 1986, 100 Stat. 1888; Pub. L. 102–486, title I, §171, Oct. 24, 1992, 106 Stat. 2864; Pub. L. 109–58, title XV, §1508, Aug. 8, 2005, 119 Stat. 1083; Pub. L. 113–76, div. D, title III, §315, Jan. 17, 2014, 128 Stat. 177.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Energy Administration Act of 1974, referred to in subsec. (c), is Pub. L. 93–275, May 7, 1974, 88 Stat. 96. Part B of the Federal Energy Administration Act of 1974 is classified generally to subchapter II (§790 et seq.) of chapter 16B of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

This chapter, referred to in subsecs. (c), (h)(1)(B)(i), (2)(E) to (4), and (j)(2)(A), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Section 55 of part B of the Federal Energy Administration Act of 1974, referred to in subsec. (e), was classified to section 790d of Title 15, Commerce and Trade, and was repealed by Pub. L. 104–66, title I, §1051(k), Dec. 21, 1995, 109 Stat. 717.

The Energy Policy and Conservation Act, referred to in subsec. (h)(3), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

2014—Subsec. (i)(1). Pub. L. 113–76, §315(1), substituted "once every four years" for "once every two years" in introductory provisions.

Subsec. (k)(1). Pub. L. 113–76, §315(2), which directed amendment of par. (1) by substituting "once every

four years" for "once every three years" was executed by making the substitution for "once every 3 years" to reflect the probable intent of Congress.

2005—Subsec. (m). Pub. L. 109–58 added subsec. (m).

1992—Subsec. (i)(1). Pub. L. 102–486, §171(a)(1), in introductory provisions, substituted "at least once every two years" for "on at least a triennial basis".

Subsec. (i)(1)(D). Pub. L. 102–486, §171(a)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "use of nonpurchased sources of energy, such as cogeneration and waste by-products."

Subsecs. (j) to (l). Pub. L. 102–486, §171(b), added subsecs. (j) to (l).

1986—Subsec. (i). Pub. L. 99–509 added subsec. (i).

STATUTORY NOTES AND RELATED SUBSIDIARIES

END USE CONSUMPTION SURVEYS; MANUFACTURING ENERGY CONSUMPTION SURVEY

Pub. L. 104–134, title I, §101(c) [title II], Apr. 26, 1996, 110 Stat. 1321–156, 1321–188; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part: "That notwithstanding section 4(d) of the Service Contract Act of 1965 (41 U.S.C. 353(d)) [now 41 U.S.C. 6707(d)] or any other provision of law, funds appropriated under this heading [DEPARTMENT OF ENERGY, ENERGY INFORMATION ADMINISTRATION] hereafter may be used to enter into a contract for end use consumption surveys for a term not to exceed eight years: *Provided further*, That notwithstanding any other provision of law, hereafter the Manufacturing Energy Consumption Survey shall be conducted on a triennial basis."

[1] *See References in Text note below.*

[2] *So in original. Section 7267 of this title was enacted without a subsec. (a).*

§7135a. Delegation by Secretary of Energy of energy research, etc., functions to Administrator of Energy Information Administration; prohibition against required delegation; utilization of capabilities by Secretary

Notwithstanding any other provision of law, the Secretary of Energy shall not be required to delegate to the Administrator of the Energy Information Administration any energy research, development, and demonstration function vested in the Secretary, pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.], the Federal Nonnuclear Energy Research and Development Act [42 U.S.C. 5901 et seq.], the Geothermal Research, Development and Demonstration Act,[1] the Electric and Hybrid Vehicle Research, Development and Demonstration Act [15 U.S.C. 2501 et seq.], the Solar Heating and Cooling Demonstration Act [42 U.S.C. 5501 et seq.], the Solar Energy Research, Development and Demonstration Act,[1] and the Energy Reorganization Act [42 U.S.C. 5801 et seq.]. Additionally, the Secretary may utilize the capabilities of the Energy Information Administration as he deems appropriate for the conduct of such programs.

(Pub. L. 95–238, title I, §104(b), Feb. 25, 1978, 92 Stat. 53.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act, referred to in text, probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Nonnuclear Energy Research and Development Act, referred to in text, probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

The Geothermal Research, Development, and Demonstration Act, referred to in text, probably means the Geothermal Energy, Research, Development, and Demonstration Act of 1974, Pub. L. 93–410, Sept. 3, 1974, 88 Stat. 1079, which was classified generally to chapter 24 (§1101 et seq.) of Title 30, Mineral Lands and Mining, prior to repeal by Pub. L. 116–260, div. Z, title III, §3002(i)(3), Dec. 27, 2020, 134 Stat. 2495.

The Electric and Hybrid Vehicle Research, Development and Demonstration Act, referred to in text, probably means the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94–413, Sept. 17, 1976, 90 Stat. 1260, which is classified principally to chapter 52 (§2501 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 15 and Tables.

The Solar Heating and Cooling Demonstration Act, referred to in text, probably means the Solar Heating and Cooling Demonstration Act of 1974, Pub. L. 93–409, Sept. 3, 1974, 88 Stat. 1069, which is classified generally to subchapter I (§5501 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Solar Energy Research, Development, and Demonstration Act, referred to in text, probably means the Solar Energy Research, Development, and Demonstration Act of 1974, Pub. L. 93–473, Oct. 26, 1974, 88 Stat. 1431, which was classified generally to subchapter II (§5551 et seq.) of chapter 71 of this title, prior to repeal by Pub. L. 116–260, div. Z, title III, §3006(e)(1), Dec. 27, 2020, 134 Stat. 2513.

The Energy Reorganization Act, referred to in text, probably means the Energy Reorganization Act of 1974, Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, which is classified principally to chapter 73 (§5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

[1] *See References in Text note below.*

§7136. Economic Regulatory Administration; appointment of Administrator; compensation; qualifications; functions

(a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5. Such Administrator shall be, by demonstrated ability, background, training, or experience, an individual who is specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to, or vested in, the Administration.

(b) Consistent with the provisions of subchapter IV, the Secretary shall utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate.

(Pub. L. 95–91, title II, §206, Aug. 4, 1977, 91 Stat. 574.)

§7137. Functions of Comptroller General

The functions of the Comptroller General of the United States under section 771 of title 15 shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this chapter or any other Act administered by the Department.

(Pub. L. 95–91, title II, §207, Aug. 4, 1977, 91 Stat. 574.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91

Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7138. Repealed. Pub. L. 100–504, title I, §102(e)(1)(A), Oct. 18, 1988, 102 Stat. 2517

Section, Pub. L. 95–91, title II, §208, Aug. 4, 1977, 91 Stat. 575; Pub. L. 96–226, title II, §202, Apr. 3, 1980, 94 Stat. 315; Pub. L. 97–375, title II, §205, Dec. 21, 1982, 96 Stat. 1823, related to the Office of Inspector General in the Department of Energy, providing for (a) appointment and confirmation of Inspector General and Deputy Inspector General, removal, assistants, and compensation; (b) duties and responsibilities of Inspector General; (c) semiannual reports to Secretary and Congress; (d) report on problems, abuses, or deficiencies relating to administration of Department programs and operations; (e) additional investigations and reports; (f) transmittal of reports, information, or documents without clearance or approval; (g) additional authority of Inspector General; (h) auditing requirements; (i) avoidance of duplication and coordination and cooperation with activities of Comptroller General; and (j) report of violations of Federal criminal law to Attorney General. See section 9 of Pub. L. 95–452, Inspector General Act of 1978, as amended, formerly set out in the Appendix to Title 5, Government Organization and Employees, as restated in 5 U.S.C. 422.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 18, 1988, see section 113 of Pub. L. 100–504, set out as an Effective and Termination Dates of 1988 Amendments note under section 5315 of Title 5, Government Organization and Employees.

§7139. Office of Science; establishment; appointment of Director; compensation; duties

(a) Establishment

There shall be within the Department an Office of Science to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) Duties and responsibilities of Director

It shall be the duty and responsibility of the Director—

(1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;

(2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

(3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;

(4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

(6) to carry out such additional duties assigned to the Office by the Secretary.

(c) Mission

The mission of the Office of Science shall be the delivery of scientific discoveries, capabilities, and major scientific tools to transform the understanding of nature and to advance the energy,

economic, and national security of the United States.

(d) User facilities

The Director shall carry out the construction, operation, and maintenance of user facilities to support the mission described in subsection (c). As practicable, these facilities shall serve the needs of the Department, industry, the academic community, and other relevant entities for the purposes of advancing the missions of the Department, improving the competitiveness of the United States, protecting public health and safety, and addressing other national priorities including emergencies.

(e) Coordination

(1) In general

The Secretary—

(A) shall ensure the coordination of the Office of Science with the other activities of the Department, including the transfer of knowledge, capabilities, and relevant technologies from basic research programs of the Department to applied research and development programs of the Department for the purpose of enabling development of mission-relevant technologies;

(B) shall support joint activities among the programs of the Department;

(C) shall coordinate with other relevant Federal agencies operating under existing authorizations relating to subjects relating to the mission described in subsection (c) in supporting advancements in related research areas as appropriate; and

(D) may form partnerships to enhance the utilization of and ensure access to user facilities by other Federal agencies.

(2) Office of Science

The Director—

(A) shall ensure the coordination of programs and activities carried out by the Office of Science; and

(B) shall direct all programs which have not recently completed a future planning roadmap consistent with the funding of such programs authorized under the Research and Development, Competition, and Innovation Act to complete such a roadmap.

(Pub. L. 95–91, title II, §209, Aug. 4, 1977, 91 Stat. 577; Pub. L. 105–245, title III, §309(a), Oct. 7, 1998, 112 Stat. 1853; Pub. L. 109–58, title X, §1006(c)(4), Aug. 8, 2005, 119 Stat. 932; Pub. L. 115–246, title III, §302, Sept. 28, 2018, 132 Stat. 3140; Pub. L. 117–167, div. B, title I, §10101, Aug. 9, 2022, 136 Stat. 1408.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Research and Development, Competition, and Innovation Act, referred to in subsec. (e)(2)(B), is div. B of Pub. L. 117–167, Aug. 9, 2022, 136 Stat. 1399, which enacted chapter 163 (§18901 et seq.) of this title and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 18901 of this title and Tables.

AMENDMENTS

2022—Subsecs. (d), (e). Pub. L. 117–167 added subsecs. (d) and (e).

2018—Subsec. (c). Pub. L. 115–246 added subsec. (c).

2005—Subsec. (b)(6). Pub. L. 109–58 added par. (6) and struck out former par. (6) which read as follows: "to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 7133 of this title, as the Secretary considers advantageous."

1998—Pub. L. 105–245 substituted "Office of Science" for "Office of Energy Research" in section catchline and in subsec. (a).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ADVISORY COMMITTEES TO THE OFFICE OF SCIENCE

Pub. L. 117–167, div. B, title I, §10113(f), Aug. 9, 2022, 136 Stat. 1468, provided that: "In order to improve the advice and guidance provided to the Office of Science, the Undersecretary for Science shall seek to ensure, to the maximum extent practicable, the robust participation of institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) located in eligible jurisdictions (as defined in section 2203(b)(3)(A) of the Energy Policy Act of 1992 (42 U.S.C. 13503(b)(3)(A))) on the Office of Science Federal Advisory Committee."

§7140. Leasing Liaison Committee; establishment; composition

There is established a Leasing Liaison Committee which shall be composed of an equal number of members appointed by the Secretary and the Secretary of the Interior.

(Pub. L. 95–91, title II, §210, Aug. 4, 1977, 91 Stat. 577.)

§7141. Office of Minority Economic Impact

(a) Establishment; appointment of Director; compensation

There shall be established within the Department an Office of Minority Economic Impact. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) Advice to Secretary on effect of energy policies, regulations, and other actions of Department respecting minority participation in energy programs

The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.

(c) Research programs respecting effects of national energy programs, policies, and regulations of Department on minorities

The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socio-economic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time, develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable—

(1) determine the average energy consumption and use patterns of minorities relative to other population categories;

(2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and

(3) determines [1] how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.

(d) Management and technical assistance to minority educational institutions and business enterprises to foster participation in research, development, demonstration, and contract activities of Department

The Director may provide the management any [2] technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying out his functions under this section, the Director may enter into contracts, in accordance with section 7256 of this title and other applicable provisions of law, with any person,

including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of minority communities. The management and technical assistance may include—

(1) a national information clearinghouse which will develop and disseminate information on the aspects of energy programs to minority business enterprises, minority educational institutions and other appropriate minority organizations;

(2) market research, planning economic and business analysis, and feasibility studies to identify and define economic opportunities for minorities in energy research, production, conservation, and development;

(3) technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and that can provide jobs to workers in such communities; and

(4) programs to assist minority business enterprises in the commercial application of energy-related technologies.

(e) Loans to minority business enterprises; restriction on use of funds; interest; deposits into Treasury

(1) The Secretary, acting through the Office, may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate. He shall limit the use of financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements, and shall limit the amount of the financial assistance to any recipient to not more than 75 percent of such costs.

(2) The Secretary shall determine the rate of interest on loans under this section in consultation with the Secretary of the Treasury.

(3) The Secretary shall deposit into the Treasury as miscellaneous receipts amounts received in connection with the repayment and satisfaction of such loans.

(f) Definitions

As used in this section, the term—

(1) "minority" means any individual who is a citizen of the United States and who is Asian American, Native Hawaiian, a Pacific Islander, African American, Hispanic, Puerto Rican, Native American, or an Alaska Native;

(2) "minority business enterprise" means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a minority or group of minorities; and

(3) "minority educational institution" means an educational institution with an enrollment in which a substantial proportion (as determined by the Secretary) of the students are minorities.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed $3,000,000 for fiscal year 1979, not to exceed $5,000,000 for fiscal year 1980, and not to exceed $6,000,000 for fiscal year 1981. Of the amounts so appropriated each fiscal year, not less than 50 percent shall be available for purposes of financial assistance under subsection (e).

(Pub. L. 95–91, title II, §211, as added Pub. L. 95–619, title VI, §641, Nov. 9, 1978, 92 Stat. 3284; amended Pub. L. 114–157, §1(a), May 20, 2016, 130 Stat. 393.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (f)(1). Pub. L. 114–157 substituted "Asian American, Native Hawaiian, a Pacific Islander, African American, Hispanic, Puerto Rican, Native American, or an Alaska Native" for "a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent".

[1] *So in original. Probably should be "determine".*

[2] *So in original. Probably should be "and".*

§7142. National Atomic Museum and National Atomic Testing Museum

(a) Recognition and status

The museum operated by the Department of Energy and currently located at Building 20358 on Wyoming Avenue South near the corner of M street within the confines of the Kirtland Air Force Base (East), Albuquerque, New Mexico—

(1) is recognized as the official atomic museum of the United States;

(2) shall be known as the "National Atomic Museum"; and

(3) shall have the sole right throughout the United States and its possessions to have and use the name "National Atomic Museum".

(b) Volunteers

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) recruit, train, and accept the services of individuals without compensation as volunteers for, or in aid of, interpretive functions or other services or activities of and related to the museum; and

(B) provide to volunteers incidental expenses, such as nominal awards, uniforms, and transportation.

(2) Except as provided in paragraphs (3) and (4), a volunteer who is not otherwise employed by the Federal Government is not subject to laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, because of service as a volunteer under this subsection.

(3) For purposes of chapter 171 of title 28 (relating to tort claims), a volunteer under this subsection is considered a Federal employee.

(4) For the purposes of subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries), a volunteer under this subsection is considered an employee of the United States.

(c) Authority

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) accept and use donations of money or gifts pursuant to section 7262 [1] of this title, if such gifts or money are designated in a written document signed by the donor as intended for the museum, and such donations or gifts are determined by the Secretary to be suitable and beneficial for use by the museum;

(B) operate a retail outlet on the premises of the museum for the purpose of selling or distributing mementos, replicas of memorabilia, literature, materials, and other items of an informative, educational, and tasteful nature relevant to the contents of the museum; and

(C) exhibit, perform, display, and publish information and materials concerning museum mementos, items, memorabilia, and replicas thereof in any media or place anywhere in the world, at reasonable fees or charges where feasible and appropriate, to substantially cover costs.

(2) The net proceeds of activities authorized under subparagraphs (B) and (C) of paragraph (1) may be used by the National Atomic Museum for activities of the museum.

(d) Recognition and status of National Atomic Testing Museum

The museum operated by the Nevada Test Site Historical Foundation and located in Las Vegas, Nevada—

(1) is recognized as the official atomic testing museum of the United States; and

(2) shall be known as the "National Atomic Testing Museum".

(Pub. L. 102–190, div. C, title XXXI, §3137, Dec. 5, 1991, 105 Stat. 1578; Pub. L. 103–35, title II,

§203(b)(4), May 31, 1993, 107 Stat. 102; Pub. L. 112–81, div. C, title XXXI, §3114, Dec. 31, 2011, 125 Stat. 1709.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7262 of this title, referred to in subsec. (c)(1)(A), was repealed by Pub. L. 104–206, title V, §502, Sept. 30, 1996, 110 Stat. 3002.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

2011—Pub. L. 112–81, §3114(1), inserted "and National Atomic Testing Museum" after "Atomic Museum" in section catchline.

Subsec. (d). Pub. L. 112–81, §3114(2), added subsec. (d).

1993—Subsec. (c)(1). Pub. L. 103–35 struck out comma after "Secretary of Energy" in introductory provisions.

[1] *See References in Text note below.*

§7142a. Designation of American Museum of Science and Energy

(a) In general

The Museum—

(1) is designated as the "American Museum of Science and Energy"; and

(2) shall be the official museum of science and energy of the United States.

(b) References

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Museum is deemed to be a reference to the "American Museum of Science and Energy".

(c) Property of the United States

(1) In general

The name "American Museum of Science and Energy" is declared the property of the United States.

(2) Use

The Museum shall have the sole right throughout the United States and its possessions to have and use the name "American Museum of Science and Energy".

(3) Effect on other rights

This subsection shall not be construed to conflict or interfere with established or vested rights.

(Pub. L. 106–554, §1(a)(4) [div. B, title IV, §401], Dec. 21, 2000, 114 Stat. 2763, 2763A–266.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7142b. Authority

To carry out the activities of the Museum, the Secretary may—

(1) accept and dispose of any gift, devise, or bequest of services or property, real or personal, that is—

(A) designated in a written document by the person making the gift, devise, or bequest as intended for the Museum; and

(B) determined by the Secretary to be suitable and beneficial for use by the Museum;

(2) operate a retail outlet on the premises of the Museum for the purpose of selling or distributing items (including mementos, food, educational materials, replicas, and literature) that are—

(A) relevant to the contents of the Museum; and

(B) informative, educational, and tasteful;

(3) collect reasonable fees where feasible and appropriate;

(4) exhibit, perform, display, and publish materials and information of or relating to the Museum in any media or place;

(5) consistent with guidelines approved by the Secretary, lease space on the premises of the Museum at reasonable rates and for uses consistent with such guidelines; and

(6) use the proceeds of activities authorized under this section to pay the costs of the Museum.

(Pub. L. 106–554, §1(a)(4) [div. B, title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A–267.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7142c. Museum volunteers

(a) Authority to use volunteers

The Secretary may recruit, train, and accept the services of individuals or entities as volunteers for services or activities related to the Museum.

(b) Status of volunteers

(1) In general

Except as provided in paragraph (2), service by a volunteer under subsection (a) shall not be considered Federal employment.

(2) Exceptions

(A) Federal Tort Claims Act

For purposes of chapter 171 of title 28, a volunteer under subsection (a) shall be treated as an employee of the Government (as defined in section 2671 of that title).

(B) Compensation for work injuries

For purposes of subchapter I of chapter 81 of title 5, a volunteer described in subsection (a) shall be treated as an employee (as defined in section 8101 of title 5).

(c) Compensation

A volunteer under subsection (a) shall serve without pay, but may receive nominal awards and reimbursement for incidental expenses, including expenses for a uniform or transportation in furtherance of Museum activities.

(Pub. L. 106–554, §1(a)(4) [div. B, title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A–267.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7142d. Definitions

For purposes of sections 7142a to 7142d of this title:

(1) Museum

The term "Museum" means the museum operated by the Secretary of Energy and located at 300 South Tulane Avenue in Oak Ridge, Tennessee.

(2) Secretary

The term "Secretary" means the Secretary of Energy or a designated representative of the Secretary.

(Pub. L. 106–554, §1(a)(4) [div. B, title IV, §404], Dec. 21, 2000, 114 Stat. 2763, 2763A–268.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 7142a to 7142d of this title, referred to in text, was in the original "this Act", and was translated as reading "this title", meaning §1(a)(4) [div. B, title IV] of Pub. L. 106–554, which enacted sections 7142a to 7142d of this title, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7143. Repealed. Pub. L. 106–65, div. C, title XXXII, §3294(d)(1), Oct. 5, 1999, 113 Stat. 970

Section, Pub. L. 95–91, title II, §212, as added Pub. L. 103–337, div. C, title XXXI, §3158(a), Oct. 5, 1994, 108 Stat. 3093, established the Office of Fissile Materials Disposition.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

§7144. Establishment of policy for National Nuclear Security Administration

(a) Responsibility for establishing policy

The Secretary shall be responsible for establishing policy for the National Nuclear Security Administration.

(b) Review of programs and activities

The Secretary may direct officials of the Department who are not within the National Nuclear Security Administration to review the programs and activities of the Administration and to make recommendations to the Secretary regarding administration of those programs and activities, including consistency with other similar programs and activities of the Department.

(c) Staff

The Secretary shall have adequate staff to support the Secretary in carrying out the Secretary's responsibilities under this section.

(Pub. L. 95–91, title II, §213, as added Pub. L. 106–65, div. C, title XXXII, §3203(a), Oct. 5, 1999, 113 Stat. 954.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as a note under section 2401 of Title 50, War and National Defense.

§7144a. Establishment of security, counterintelligence, and intelligence policies

The Secretary shall be responsible for developing and promulgating the security, counterintelligence, and intelligence policies of the Department. The Secretary may use the immediate staff of the Secretary to assist in developing and promulgating those policies.

(Pub. L. 95–91, title II, §214, as added Pub. L. 106–65, div. C, title XXXII, §3204(a), Oct. 5, 1999, 113 Stat. 955; amended Pub. L. 109–364, div. C, title XXXI, §3117(g), Oct. 17, 2006, 120 Stat. 2508; Pub. L. 116–92, div. E, title LXIV, §6422, Dec. 20, 2019, 133 Stat. 2200.)

EDITORIAL NOTES

AMENDMENTS

2019—Pub. L. 116–92 struck out subsec. (a) designation and subsecs. (b) and (c), which, respectively, established the Intelligence Executive Committee and provided for budget justification materials.

2006—Pub. L. 109–364 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 5, 1999, see section 3299 of Pub. L. 106–65, set out as a note under section 2401 of Title 50, War and National Defense.

§7144b. Office of Intelligence and Counterintelligence

(a) Definitions

In this section, the terms "intelligence community" and "National Intelligence Program" have the meanings given such terms in section 3003 of title 50.

(b) In general

There is in the Department an Office of Intelligence and Counterintelligence. Such office shall be under the National Intelligence Program.

(c) Director

(1) The head of the Office shall be the Director of the Office of Intelligence and Counterintelligence, who shall be an employee in the Senior Executive Service, the Senior

Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select an individual to serve as the Director from among individuals who have substantial expertise in matters relating to the intelligence community, including foreign intelligence and counterintelligence.

(d) Duties

(1) Subject to the authority, direction, and control of the Secretary, the Director shall perform such duties and exercise such powers as the Secretary may prescribe.

(2) The Director shall be responsible for establishing policy for intelligence and counterintelligence programs and activities at the Department.

(3) The Director shall develop and implement—

(A) a plan and cost assessment for delineated and standardized counterintelligence training for all personnel who interact with classified and sensitive military technology and dual-use commercial technology in the Department; and

(B) a delineated and standardized training plan to train officers in the Office of Intelligence and Counterintelligence who have counterintelligence responsibilities on counterintelligence skills and practices.

(Pub. L. 95–91, title II, §215, as added Pub. L. 106–65, div. C, title XXXII, §3204(a), Oct. 5, 1999, 113 Stat. 955; amended Pub. L. 109–364, div. C, title XXXI, §3117(f), Oct. 17, 2006, 120 Stat. 2508; Pub. L. 116–92, div. E, title LXIV, §6421(a), Dec. 20, 2019, 133 Stat. 2199; Pub. L. 118–159, div. F, title LXIII, §6309(a), Dec. 23, 2024, 138 Stat. 2477.)

EDITORIAL NOTES

AMENDMENTS

2024—Subsec. (d)(3). Pub. L. 118–159 added par. (3).

2019—Pub. L. 116–92 amended section generally. Prior to amendment, section related to establishment, director, duties, and annual reports of the Office of Counterintelligence.

2006—Subsec. (b)(1). Pub. L. 109–364 substituted "who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate" for "which shall be a position in the Senior Executive Service".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 5, 1999, see section 3299 of Pub. L. 106–65, set out as a note under section 2401 of Title 50, War and National Defense.

OFFICE OF INTELLIGENCE AND COUNTERINTELLIGENCE REVIEW OF VISITORS AND ASSIGNEES

Pub. L. 118–159, div. F, title LXIV, §6432, Dec. 23, 2024, 138 Stat. 2488, provided that:

"(a) DEFINITIONS.—In this section:

"(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

"(A) the congressional intelligence committees [Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives];

"(B) the Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Foreign Relations, the Committee on the Judiciary, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

"(C) the Committee on Armed Services, the Committee on Energy and Commerce, the Committee on Science, Space, and Technology, and the Committee on Appropriations of the House of Representatives.

"(2) COUNTRY OF RISK.—The term 'country of risk' means—

"(A) the People's Republic of China;

"(B) the Russian Federation;

"(C) the Islamic Republic of Iran; and

"(D) the Democratic People's Republic of Korea.

"(3) COVERED ASSIGNEE; COVERED VISITOR.—The terms 'covered assignee' and 'covered visitor' mean a foreign national from a country of risk who—

"(A) is not an employee of either the Department of Energy or the management and operations contractor operating a National Laboratory on behalf of the Department of Energy; and

"(B) has requested access to the premises, information, or technology of a National Laboratory.

"(4) DIRECTOR.—The term 'Director' means the Director of the Office of Intelligence and Counterintelligence of the Department of Energy (or their designee).

"(5) FOREIGN NATIONAL.—The term 'foreign national' has the meaning given the term 'alien' in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

"(6) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).

"(7) NONTRADITIONAL INTELLIGENCE COLLECTION.—The term 'nontraditional intelligence collection' means a risk posed by an individual not employed by a foreign intelligence service, who is seeking access to information about a capability, research, or organizational dynamics of the United States to inform a foreign adversary or non-state actor.

"(b) POLICY FOR REVIEW OF COVERED VISITOR AND COVERED ASSIGNEE ACCESS REQUESTS.—(1) The Director shall, in consultation with the applicable Under Secretary of the Department of Energy that oversees the National Laboratory, or their designee, promulgate a policy to assess the counterintelligence risk that covered visitors or covered assignees pose to the research or activities undertaken at a National Laboratory.

"(2) Prior to being granted access to the premises, information, or technology of a National Laboratory, a covered visitor or covered assignee should be appropriately screened by the National Laboratory and the Office of Intelligence and Counterintelligence of the Department in accordance with the policy promulgated under paragraph (1).

"(c) ADVICE WITH RESPECT TO COVERED VISITORS OR COVERED ASSIGNEES.—

"(1) IN GENERAL.—The Director shall provide advice to a National Laboratory on covered visitors and covered assignees when 1 or more of the following conditions are present:

"(A) The Director has reason to believe that a covered visitor or covered assignee poses a nontraditional intelligence collection risk.

"(B) The Director is in receipt of information indicating that a covered visitor or covered assignee poses a counterintelligence risk to a National Laboratory.

"(2) ADVICE DESCRIBED.—Advice provided to a National Laboratory in accordance with paragraph (1) shall include a description of the assessed risk.

"(3) RISK MITIGATION.—When appropriate, the Director shall, in consultation with the Secretary of Energy, or the Secretary's designee, provide recommendations to mitigate the assessed risk as part of the advice provided in accordance with paragraph (1).

"(d) REPORTS TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2024], and quarterly thereafter, the Secretary of Energy shall submit to the appropriate congressional committees a report, which shall include—

"(1) the number of covered visitors or covered assignees permitted to access the premises, information, or technology of each National Laboratory during the previous quarter;

"(2) the number of instances in which the Director provided advice to a National Laboratory in accordance with subsection (c) during the previous quarter; and

"(3) the number of instances in which a National Laboratory took action inconsistent with advice provided by the Director in accordance with subsection (c) during the previous quarter.

"(e) FUNDING.—The Secretary of Energy may expend such sums as are authorized to be appropriated for the purposes detailed in this section."

§7144c. Repealed. Pub. L. 116–92, div. E, title LXIV, §6421(b), Dec. 20, 2019, 133 Stat. 2199

Section, Pub. L. 95–91, title II, §216, as added Pub. L. 106–65, div. C, title XXXII, §3204(a), Oct. 5, 1999,

113 Stat. 956; amended Pub. L. 109–364, div. C, title XXXI, §3117(f), Oct. 17, 2006, 120 Stat. 2508, established the Office of Intelligence.

§7144d. Office of Arctic Energy

(a) Establishment

The Secretary of Energy may establish within the Department of Energy an Office of Arctic Energy.

(b) Purposes

The purposes of such office shall be as follows:

(1) To promote research, development, and deployment of electric power technology that is cost-effective and especially well suited to meet the needs of rural and remote regions of the United States, especially where permafrost is present or located nearby.

(2) To promote research, development, and deployment in such regions of—

(A) enhanced oil recovery technology, including heavy oil recovery, reinjection of carbon, and extended reach drilling technologies;

(B) gas-to-liquids technology and liquified natural gas (including associated transportation systems);

(C) small hydroelectric facilities, river turbines, and tidal power;

(D) natural gas hydrates, coal bed methane, and shallow bed natural gas; and

(E) alternative energy, including wind, geothermal, and fuel cells.

(c) Location

The Secretary shall locate such office at a university with expertise and experience in the matters specified in subsection (b).

(Pub. L. 106–398, §1 [div. C, title XXXI, §3197], Oct. 30, 2000, 114 Stat. 1654, 1654A–482.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7144e. Office of Indian Energy Policy and Programs

(a) Establishment

There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the "Office"). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(b) Duties of Director

The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this chapter, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

(1) promote Indian tribal energy development, efficiency, and use;

(2) reduce or stabilize energy costs;

(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds.

(Pub. L. 95–91, title II, §217, as added Pub. L. 109–58, title V, §502(a), Aug. 8, 2005, 119 Stat. 763.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

§7151. General transfers

(a) Except as otherwise provided in this chapter, there are transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in subchapter IV, there are transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 7172(a)(2) of this title to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

(Pub. L. 95–91, title III, §301, Aug. 4, 1977, 91 Stat. 577.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EXECUTIVE DOCUMENTS

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Energy, see Parts 1, 2, and 7 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

EX. ORD. NO. 12038. TRANSFER OF CERTAIN FUNCTIONS TO SECRETARY OF ENERGY

Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, as amended by Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073, provided:

By virtue of the authority vested in me as President of the United States of America, in order to reflect the responsibilities of the Secretary of Energy for the performance of certain functions previously vested in other officers of the United States by direction of the President and subsequently transferred to the Secretary of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 et seq.) it is hereby ordered as follows:

SECTION 1. *Functions of the Federal Energy Administration*. In accordance with the transfer of all functions vested by law in the Federal Energy Administration, or the Administrator thereof, to the Secretary of Energy pursuant to Section 301(a) of the Department of Energy Organization Act [subsec. (a) of this section],

hereinafter referred to as the Act, the Executive Orders and Proclamations referred to in this Section, which conferred authority or responsibility upon the Administrator of the Federal Energy Administration, are amended as follows:

(a) Executive Order No. 11647, as amended [formerly set out as a note under 31 U.S.C. 501], relating to Federal Regional Councils, is further amended by deleting "The Federal Energy Administration" in Section 1(a)(10) and substituting "The Department of Energy", and by deleting "The Deputy Administrator of the Federal Energy Administration" in Section 3(a)(10) and substituting "The Deputy Secretary of Energy".

(b) Executive Order No. 11790 of June 25, 1974 [set out as a note under 15 U.S.C. 761], relating to the Federal Energy Administration Act of 1974, is amended by deleting "Administrator of the Federal Energy Administration" and "Administrator" wherever they appear in Sections 1 through 6 and substituting "Secretary of Energy" and "Secretary", respectively, and by deleting Section 7 through 10.

(c) Executive Order No. 11912, as amended [set out as a note under 42 U.S.C. 6201], relating to energy policy and conservation, and Proclamation No. 3279, as amended [formerly set out as a note under 19 U.S.C. 1862], relating to imports of petroleum and petroleum products, are further amended by deleting "Administrator of the Federal Energy Administration", "Federal Energy Administration", and "Administrator" (when used in reference to the Federal Energy Administration) wherever those terms appear and by substituting "Secretary of Energy", "Department of Energy", and "Secretary", respectively, and by deleting "the Administrator of Energy Research and Development" in Section 10(a)(1) of Executive Order No. 11912, as amended.

SEC. 2. *Functions of the Federal Power Commission*. In accordance with the transfer of functions vested in the Federal Power Commission to the Secretary of Energy pursuant to Section 301(b) of the Act [subsec. (b) of this section], the Executive Orders referred to in this Section, which conferred authority or responsibility upon the Federal Power Commission, or Chairman thereof, are amended or modified as follows:

(a) Executive Order No. 10485 of September 3, 1953, [set out as a note under 15 U.S.C. 717b], relating to certain facilities at the borders of the United States is amended by deleting Section 2 thereof, and by deleting "Federal Power Commission" and "Commission" wherever those terms appear in Sections 1, 3 and 4 of such Order and substituting for each "Secretary of Energy".

(b) Executive Order No. 11969 of February 2, 1977 [formerly set out as a note under 15 U.S.C. 717], relating to the administration of the Emergency Natural Gas Act of 1977 [formerly set out as a note under 15 U.S.C. 717], is hereby amended by deleting the second sentence in Section 1, by deleting "the Secretary of the Interior, the Administrator of the Federal Energy Administration, other members of the Federal Power Commission and in Section 2, and by deleting "Chairman of the Federal Power Commission" and "Chairman" wherever those terms appear and substituting therefor "Secretary of Energy" and "Secretary", respectively.

(c) Paragraph (2) of Section 3 of Executive Order No. 11331, as amended [formerly set out as a note under 42 U.S.C. 1962b], relating to the Pacific Northwest River Basins Commission, is hereby amended by deleting "from each of the following Federal departments and agencies" and substituting therefor "to be appointed by the head of each of the following Executive agencies", by deleting "Federal Power Commission" and substituting therefor "Department of Energy", and by deleting "such member to be appointed by the head of each department or independent agency he represents,".

SEC. 3. *Functions of the Secretary of the Interior*. In accordance with the transfer of certain functions vested in the Secretary of the Interior to the Secretary of Energy pursuant to Section 302 of the Act [42 U.S.C. 7152], the Executive Orders referred to in this Section, which conferred authority or responsibility on the Secretary of the Interior, are amended or modified as follows:

(a) Sections 1 and 4 of Executive Order No. 8526 of August 27, 1940, relating to functions of the Bonneville Power Administration, are hereby amended by substituting "Secretary of Energy" for "Secretary of the Interior", by adding "of the Interior" after "Secretary" in Sections 2 and 3, and by adding "and the Secretary of Energy," after "the Secretary of the Interior" wherever the latter term appears in Section 5.

(b) Executive Order No. 11177 of September 16, 1964, relating to the Columbia River Treaty, is amended by deleting "Secretary of the Interior" and "Department of the Interior" wherever those terms appear and substituting therefor "Secretary of Energy" and "Department of Energy", respectively.

SEC. 4. *Functions of the Atomic Energy Commission and the Energy Research and Development Administration.*

(a) In accordance with the transfer of all functions vested by law in the Administrator of Energy Research and Development to the Secretary of Energy pursuant to Section 301(a) of the Act [subsec. (a) of this section] the Executive Orders referred to in this Section are amended or modified as follows:

(1) All current Executive Orders which refer to functions of the Atomic Energy Commission, including Executive Order No. 10127, as amended; Executive Order No. 10865, as amended [set out as a note under 50 U.S.C. 3161]; Executive Order No. 10899 of December 9, 1960 [set out as a note under 42 U.S.C. 2162];

Executive Order No. 11057 of December 18, 1962 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11477 of August 7, 1969 [set out as a note under 42 U.S.C. 2187]; Executive Order No. 11752 of December 17, 1973 [formerly set out as a note under 42 U.S.C. 4331]; and Executive Order No. 11761 of January 17, 1974 [formerly set out as a note under 20 U.S.C. 1221]; are modified to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Public Law 93–438; 88 Stat. 1233) [42 U.S.C. 5801 et seq.], and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.].

(2) [Former] Executive Order No. 11652, as amended, relating to the classification of national security matters, is further amended by substituting "Department of Energy" for "Energy Research and Development Administration" in Sections 2(A), 7(A) and 8 and by deleting "Federal Power Commission" in Section 2(B)(3).

(3) Executive Order No. 11902 of February 2, 1976 [formerly set out as a note under 42 U.S.C. 5841], relating to export licensing policy for nuclear materials and equipment, is amended by substituting "the Secretary of Energy" for "the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator" in Section 1(b) and for the "Administrator" in Sections 2 and 3.

(4) [Former] Executive Order No. 11905, as amended, relating to foreign intelligence activities, is further amended by deleting "Energy Research and Development Administration", "Administrator or the Energy Research and Development Administration", and "ERDA" wherever those terms appear and substituting "Department of Energy", "Secretary of Energy", and "DOE" respectively.

(5) Section 3(2) of each of the following Executive Orders is amended by substituting "Department of Energy" for "Energy Research and Development Administration":

(i) Executive Order No. 11345, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Great Lakes River Basin Commission.

(ii) Executive Order No. 11371, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the New England River Basin Commission.

(iii) Executive Order No. 11578, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Ohio River Basin Commission.

(iv) Executive Order No. 11658, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Missouri River Basin Commission.

(v) Executive Order No. 11659, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Mississippi River Basin Commission.

SEC. 5. *Special Provisions Relating to Emergency Preparedness and Mobilization Functions.*

(a) Executive Order No. 10480, as amended [formerly set out as a note under former 50 U.S.C. App. 2153], is further amended by adding thereto the following new Sections:

"Sec. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

"Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under 44 U.S.C. 1505].

(b) Executive Order No. 11490, as amended [formerly set out as a note under 50 U.S.C. App. 2251], is further amended by adding thereto the following new section:

"Sec. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior.".

SEC. 6. This Order shall be effective as of October 1, 1977, the effective date of the Department of Energy Organization Act [this chapter] pursuant to the provisions of section 901 [42 U.S.C. 7341] thereof and Executive Order No. 12009 of September 13, 1977 [formerly set out as a note under 42 U.S.C. 7341], and all actions taken by the Secretary of Energy on or after October 1, 1977, which are consistent with the foregoing provisions are entitled to full force and effect.

JIMMY CARTER.

§7151a. Jurisdiction over matters transferred from Energy Research and Development Administration

Notwithstanding any other provision of law, jurisdiction over matters transferred to the Department of Energy from the Energy Research and Development Administration which on the effective date of such transfer were required by law, regulation, or administrative order to be made on the record after an opportunity for an agency hearing may be assigned to the Federal Energy Regulatory Commission or retained by the Secretary at his discretion.

(Pub. L. 95–238, title I, §104(a), Feb. 25, 1978, 92 Stat. 53.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7152. Transfers from Department of the Interior

(a) Functions relating to electric power

(1) There are transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 825s of title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.];

(D) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(E) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration,[1] shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) [2] of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

(b), (c) Repealed. Pub. L. 97–100, title II, §201, Dec. 23, 1981, 95 Stat. 1407

(d) Functions of Bureau of Mines

There are transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

(1) fuel supply and demand analysis and data gathering;

(2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and

(3) coal preparation and analysis.

(Pub. L. 95–91, title III, §302, Aug. 4, 1977, 91 Stat. 578; Pub. L. 97–100, title II, §201, Dec. 23, 1981, 95 Stat. 1407; Pub. L. 104–58, title I, §104(h), Nov. 28, 1995, 109 Stat. 560.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Bonneville Project Act of 1937, referred to in subsec. (a)(1)(C), is act Aug. 20, 1937, ch. 720, 50 Stat. 731, which is classified generally to chapter 12B (§832 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 832 of Title 16 and Tables.

The Federal Columbia River Transmission System Act, referred to in subsec. (a)(1)(C), is Pub. L. 93–454, Oct. 18, 1974, 88 Stat. 1376, which is classified generally to chapter 12G (§838 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 838 of Title 16 and Tables.

Act of June 18, 1954, as amended by the Act of December 23, 1963, referred to in subsec. (a)(1)(E), is act June 18, 1954, ch. 310, 68 Stat. 255, which was not classified to the Code.

Paragraphs (1)(E) and (1)(F) of this subsection, referred to in subsec. (a)(3), were redesignated as pars. (1)(D) and (1)(E) of this subsection, respectively, by Pub. L. 104–58, title I, §104(h)(1)(B), Nov. 28, 1995, 109 Stat. 560.

Act of May 15, 1910, referred to in subsec. (d), probably means act May 16, 1910, ch. 240, 36 Stat. 369, which is classified to sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1995—Subsec. (a)(1)(C) to (F). Pub. L. 104–58, §104(h)(1), redesignated subpars. (D) to (F) as (C) to (E), respectively, and struck out former subpar. (C) which read as follows: "the Alaska Power Administration;".

Subsec. (a)(2). Pub. L. 104–58, §104(h)(2), inserted "and" after "Southwestern Power Administration," and struck out "and the Alaska Power Administration" after "Bonneville Power Administration,".

1981—Subsecs. (b), (c). Pub. L. 97–100 struck out subsecs. (b) and (c) which related, respectively, to the functions of the Secretary of Energy to promulgate regulations under certain provisions of the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act and to the functions of establishing production rates for all Federal leases.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Bureau of Mines redesignated United States Bureau of Mines by section 10(b) of Pub. L. 102–285, set out as a note under section 1 of Title 30, Mineral Lands and Mining. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of Title 30.

EFFECTIVE DATE OF 1995 AMENDMENT

For effective date of amendment by Pub. L. 104–58, see section 104(h) of Pub. L. 104–58, set out below.

ALASKA POWER ADMINISTRATION ASSET SALE AND TERMINATION

Pub. L. 104–58, title I, Nov. 28, 1995, 109 Stat. 557, provided that:

"SEC. 101. SHORT TITLE.

"This title may be cited as the 'Alaska Power Administration Asset Sale and Termination Act'.

"SEC. 102. DEFINITIONS.

"For purposes of this title:

"(1) The term 'Eklutna' means the Eklutna Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Eklutna Purchase Agreement.

"(2) The term 'Eklutna Purchase Agreement' means the August 2, 1989, Eklutna Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Eklutna Purchasers, together with any amendments thereto adopted before the enactment of this section [Nov. 28, 1995].

"(3) The term 'Eklutna Purchasers' means the Municipality of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc. and the Matanuska Electric Association, Inc.

"(4) The term 'Snettisham' means the Snettisham Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Snettisham Purchase Agreement.

"(5) The term 'Snettisham Purchase Agreement' means the February 10, 1989, Snettisham Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Alaska Power Authority and its successors in interest, together with any amendments thereto adopted before the enactment of this section.

"(6) The term 'Snettisham Purchaser' means the Alaska Industrial Development and Export Authority or a successor State agency or authority.

"SEC. 103. SALE OF EKLUTNA AND SNETTISHAM HYDROELECTRIC PROJECTS.

"(a) SALE OF EKLUTNA.—The Secretary of Energy is authorized and directed to sell Eklutna to the Eklutna Purchasers in accordance with the terms of this Act and the Eklutna Purchase Agreement.

"(b) SALE OF SNETTISHAM.—The Secretary of Energy is authorized and directed to sell Snettisham to the Snettisham Purchaser in accordance with the terms of this Act and the Snettisham Purchase Agreement.

"(c) COOPERATION OF OTHER AGENCIES.—The heads of other Federal departments, agencies, and instrumentalities of the United States shall assist the Secretary of Energy in implementing the sales and conveyances authorized and directed by this title.

"(d) PROCEEDS.—Proceeds from the sales required by this title shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to prepare, survey, and acquire Eklutna and Snettisham for sale and conveyance. Such preparations and acquisitions shall provide sufficient title to ensure the beneficial use, enjoyment, and occupancy by the purchasers.

"(f) CONTRIBUTED FUNDS.—Notwithstanding any other provision of law, the Alaska Power Administration is authorized to receive, administer, and expend such contributed funds as may be provided by the Eklutna Purchasers or customers or the Snettisham Purchaser or customers for the purposes of upgrading, improving, maintaining, or administering Eklutna or Snettisham. Upon the termination of the Alaska Power Administration under section 104(f), the Secretary of Energy shall administer and expend any remaining balances of such contributed funds for the purposes intended by the contributors.

"SEC. 104. EXEMPTION AND OTHER PROVISIONS.

"(a) FEDERAL POWER ACT.—(1) After the sales authorized by this Act occur, Eklutna and Snettisham, including future modifications, shall continue to be exempt from the requirements of Part I of the Federal Power Act (16 U.S.C. 791a et seq.), except as provided in subsection (b).

"(2) The exemption provided by paragraph (1) shall not affect the Memorandum of Agreement entered into among the State of Alaska, the Eklutna Purchasers, the Alaska Energy Authority, and Federal fish and wildlife agencies regarding the protection, mitigation of, damages to, and enhancement of fish and wildlife, dated August 7, 1991, which remains in full force and effect.

"(3) Nothing in this title or the Federal Power Act preempts the State of Alaska from carrying out the responsibilities and authorities of the Memorandum of Agreement.

"(b) SUBSEQUENT TRANSFERS.—Except for subsequent assignment of interest in Eklutna by the Eklutna Purchasers to the Alaska Electric Generation and Transmission Cooperative Inc. pursuant to section 19 of the Eklutna Purchase Agreement, upon any subsequent sale or transfer of any portion of Eklutna or Snettisham from the Eklutna Purchasers or the Snettisham Purchaser to any other person, the exemption set forth in paragraph (1) of subsection (a) of this section shall cease to apply to such portion.

"(c) REVIEW.—(1) The United States District Court for the District of Alaska shall have jurisdiction to

review decisions made under the Memorandum of Agreement and to enforce the provisions of the Memorandum of Agreement, including the remedy of specific performance.

"(2) An action seeking review of a Fish and Wildlife Program ('Program') of the Governor of Alaska under the Memorandum of Agreement or challenging actions of any of the parties to the Memorandum of Agreement prior to the adoption of the Program shall be brought not later than 90 days after the date on which the Program is adopted by the Governor of Alaska, or be barred.

"(3) An action seeking review of implementation of the Program shall be brought not later than 90 days after the challenged act implementing the Program, or be barred.

"(d) EKLUTNA LANDS.—With respect to Eklutna lands described in Exhibit A of the Eklutna Purchase Agreement:

"(1) The Secretary of the Interior shall issue rights-of-way to the Alaska Power Administration for subsequent reassignment to the Eklutna Purchasers—

"(A) at no cost to the Eklutna Purchasers;

"(B) to remain effective for a period equal to the life of Eklutna as extended by improvements, repairs, renewals, or replacements; and

"(C) sufficient for the operation of, maintenance of, repair to, and replacement of, and access to, Eklutna facilities located on military lands and lands managed by the Bureau of Land Management, including lands selected by the State of Alaska.

"(2) Fee title to lands at Anchorage Substation shall be transferred to Eklutna Purchasers at no additional cost if the Secretary of the Interior determines that pending claims to, and selections of, those lands are invalid or relinquished.

"(3) With respect to the Eklutna lands identified in paragraph 1 of Exhibit A of the Eklutna Purchase Agreement, the State of Alaska may select, and the Secretary of the Interior shall convey to the State, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85–508; 72 Stat. 339) [set out as a note preceding section 21 of Title 48, Territories and Insular Possessions], and the North Anchorage Land Agreement dated January 31, 1983. This conveyance shall be subject to the rights-of-way provided to the Eklutna Purchasers under paragraph (1).

"(e) SNETTISHAM LANDS.—With respect to the Snettisham lands identified in paragraph 1 of Exhibit A of the Snettisham Purchase Agreement and Public Land Order No. 5108, the State of Alaska may select, and the Secretary of the Interior shall convey to the State of Alaska, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85–508; 72 Stat. 339).

"(f) TERMINATION OF ALASKA POWER ADMINISTRATION.—Not later than one year after both of the sales authorized in section 103 have occurred, as measured by the Transaction Dates stipulated in the Purchase Agreements, the Secretary of Energy shall—

"(1) complete the business of, and close out, the Alaska Power Administration;

"(2) submit to Congress a report documenting the sales; and

"(3) return unobligated balances of funds appropriated for the Alaska Power Administration to the Treasury of the United States.

"(g) REPEALS.—(1) The Act of July 31, 1950 (64 Stat. 382) [enacting sections 312 to 312d of Title 48, Territories and Insular Possessions, and provisions formerly set out as a note under section 312 of Title 48] is repealed effective on the date that Eklutna is conveyed to the Eklutna Purchasers [ownership of Eklutna project transferred Oct. 2, 1997].

"(2) Section 204 of the Flood Control Act of 1962 (76 Stat. 1193) is repealed effective on the date that Snettisham is conveyed to the Snettisham Purchaser [purchase of Snettisham project completed Aug. 19, 1998].

"(3) The Act of August 9, 1955 [enacting sections 1962d–12 to 1962d–14 of this title], concerning water resources investigation in Alaska (69 Stat. 618), is repealed.

"(h) DOE ORGANIZATION ACT.—As of the later of the two dates determined in paragraphs (1) and (2) of subsection (g), section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)) is amended—

"(1) in paragraph (1)—

"(A) by striking subparagraph (C); and

"(B) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E) respectively; and

"(2) in paragraph (2) by striking out 'and the Alaska Power Administration' and by inserting 'and' after 'Southwestern Power Administration,'.

"(i) DISPOSAL.—The sales of Eklutna and Snettisham under this title are not considered disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 [see chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of Title 41, Public Contracts] (40 U.S.C. 484) [now 40 U.S.C. 541–555] or the Act of October 3, 1944, popularly referred to as the 'Surplus Property Act of 1944' (50 U.S.C. App. 1622) [now 40 U.S.C. 545 note].

"SEC. 105. OTHER FEDERAL HYDROELECTRIC PROJECTS.

"The provisions of this title regarding the sale of the Alaska Power Administration's hydroelectric projects under section 103 and the exemption of these projects from Part I of the Federal Power Act [16 U.S.C. 791a et seq.] under section 104 do not apply to other Federal hydroelectric projects."

USE OF FUNDS TO STUDY NONCOST-BASED METHODS OF PRICING HYDROELECTRIC POWER

Pub. L. 102–377, title V, §505, Oct. 2, 1992, 106 Stat. 1343, provided that: "Notwithstanding any other provision of this Act, subsequent Energy and Water Development Appropriations Acts or any other provision of law hereafter, none of the funds made available under this Act, subsequent Energy and Water Development Appropriations Acts or any other law hereafter shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required 'at cost' to a 'market rate' or any other noncost-based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted."

TRANSFERS TO SECRETARY OF THE INTERIOR OF CERTAIN FOSSIL ENERGY RESEARCH AND DEVELOPMENT AUTHORITIES

Pub. L. 97–257, title I, §100, Sept. 10, 1982, 96 Stat. 841, provided: "That there are transferred to, and vested in, the Secretary of the Interior all functions vested in, or delegated to, the Secretary of Energy and the Department of Energy under or with respect to (1) the Act of May 16, 1910 [30 U.S.C. 1, 3, 5–7], and other authorities formerly exercised by the Bureau of Mines [now United States Bureau of Mines], but limited to research and development relating to increased efficiency of production technology of solid fuel minerals; (2) section 908 of the Surface Mining Control and Reclamation Act of 1977, relating to research and development concerning alternative coal mining technologies (30 U.S.C. 1328); (3) sections 5(g)(2), 8(a)(4), 8(a)(9), 27(b)(2)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(g)(2) and 1337(a)(4) and 1337(a)(9) [and 1353(b)(2) and (3)]); and (4) section 105 of the Energy Policy and Conservation Act (42 U.S.C. 6213): *Provided further*, That the personnel employed, personnel positions, equipment, facilities, and unexpended balances of the aforementioned transferred programs shall be merged with the 'Mines and minerals' account of the Bureau of Mines."

[1] So in original. The comma probably should not appear.

[2] See References in Text note below.

§7153. Administration of leasing transfers

(a) Authority retained by Secretary of the Interior

The Secretary of the Interior shall retain any authorities not transferred under section 7152(b) [1] of this title and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 7152(b) [1] of this title with respect to the issuance or supervision of Federal leases. Nothing in section 7152(b) [1] of this title shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources.

(b) Consultation with Secretary of the Interior with respect to promulgation of regulations

In exercising the authority under section 7152(b) [1] of this title to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations.

(c) Repealed. Pub. L. 97–100, title II, §201, Dec. 23, 1981, 95 Stat. 1407

(d) Preparation of environmental impact statement

The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 4332(2)(C) of this title for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

(Pub. L. 95–91, title III, §303, Aug. 4, 1977, 91 Stat. 579; Pub. L. 97–100, title II, §201, Dec. 23, 1981, 95 Stat. 1407.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7152(b) of this title, referred to in subsecs. (a) and (b), was repealed by Pub. L. 97–100, title II, §201, Dec. 23, 1981, 95 Stat. 1407.

AMENDMENTS

1981—Subsec. (c). Pub. L. 97–100 struck out subsec. (c) which afforded the Secretary of Energy the opportunity to disapprove any terms and conditions on which the Secretary of the Interior proposed to issue a Federal lease.

[1] *See References in Text note below.*

§7154. Transfers from Department of Housing and Urban Development

(a) There is transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976 [42 U.S.C. 6833], to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act [42 U.S.C. 6831 et seq.], shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.

(b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 1701z–8 of title 12.

(Pub. L. 95–91, title III, §304, Aug. 4, 1977, 91 Stat. 580.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (a), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1125. Title III of the Energy Conservation and Production Act, known as the Energy Conservation Standards for New Buildings Act of 1976, is classified generally to subchapter II (§6831 et seq.) of chapter 81 of this title. For complete classification of the Energy Conservation and Production Act and the Energy Standards for New Buildings Act of 1976 to the Code, see Short Title note set out under section 6801 of this title and Tables.

§7155. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 95–91, title III, §306, Aug. 4, 1977, 91 Stat. 581, transferred to Secretary the functions set forth in Interstate Commerce Act and vested by law in Interstate Commerce Commission or Chairman and members thereof as related to transportation of oil by pipeline. See section 60501 of Title 49, Transportation.

§7156. Transfers from Department of the Navy

There are transferred to and vested in the Secretary all functions vested by chapter 869 of title 10, in the Secretary of the Navy as they relate to the administration of and jurisdiction over—

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

In the administration of any of the functions transferred to, and vested in, the Secretary by this section the Secretary shall take into consideration the requirements of national security.

(Pub. L. 95–91, title III, §307, Aug. 4, 1977, 91 Stat. 581; Pub. L. 115–232, div. A, title VIII, §809(n)(3)(A), Aug. 13, 2018, 132 Stat. 1844.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–232 substituted "chapter 869 of title 10" for "chapter 641 of title 10" in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of Title 10, Armed Forces.

§7156a. Repealed. Pub. L. 105–85, div. C, title XXXIV, §3403, Nov. 18, 1997, 111 Stat. 2059

Section, Pub. L. 96–137, §2, Dec. 12, 1979, 93 Stat. 1061, related to assignment of naval officers to key management positions within Office of Naval Petroleum and Oil Shale Reserves in Department of Energy and to position of Director.

§7157. Transfers from Department of Commerce

There are transferred to, and vested in, the Secretary all functions of the Secretary of Commerce,

the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

(Pub. L. 95–91, title III, §308, Aug. 4, 1977, 91 Stat. 581.)

§7158. Naval reactor and military application programs

The Division of Naval Reactors established pursuant to section 2035 of this title, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Under Secretary for Nuclear Security, and such organizational unit shall be deemed to be an organizational unit established by this chapter.

(Pub. L. 95–91, title III, §309, Aug. 4, 1977, 91 Stat. 581; Pub. L. 106–65, div. C, title XXXII, §3294(c), Oct. 5, 1999, 113 Stat. 970.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–65 struck out subsec. (a) designation before "The Division of Naval Reactors", substituted "Under Secretary for Nuclear Security" for "Assistant Secretary to whom the Secretary has assigned the function listed in section 7133(a)(2)(E) of this title", and struck out subsec. (b) which read as follows: "The Division of Military Application, established by section 2035 of this title, and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 2037 of this title, are transferred to the Department under the Assistant Secretary to whom the Secretary has assigned those functions listed in section 7133(a)(5) of this title, and such organizational units shall be deemed to be organizational units established by this chapter."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

TRANSFER OF FUNCTIONS

Pub. L. 98–525, title XVI, §1634, Oct. 19, 1984, 98 Stat. 2649, which was formerly set out as a note under this section, was renumbered section 4101 of Pub. L. 107–314 by Pub. L 108–136, div. C, title XXXI, §3141(d)(2), Nov. 24, 2003, 117 Stat. 1757, and classified to section 2511 of Title 50, War and National Defense, and was repealed and restated as section 6102 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1340, 1458.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

All national security functions and activities performed immediately before Oct. 5, 1999, by the Office of Naval Reactors transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, and the Deputy Administrator for Naval Reactors of the Administration to be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under Executive Order No. 12344, set out as a note under section 6102 of Title 10, Armed Forces, see sections 2406 and 2481 of Title 50, War and National Defense.

§7159. Transfer to Department of Transportation

Notwithstanding section 7151(a) of this title, there are transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 6361(b)(1)(B) of this title.

(Pub. L. 95–91, title III, §310, Aug. 4, 1977, 91 Stat. 582.)

SUBCHAPTER IV—FEDERAL ENERGY REGULATORY COMMISSION

§7171. Appointment and administration

(a) Federal Energy Regulatory Commission; establishment

There is established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b) Composition; term of office; conflict of interest; expiration of terms

(1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after April 11, 1990, shall expire as follows:

(A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30, 1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.

(B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall expire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

(c) Duties and responsibilities of Chairman

The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) Supervision and direction of members, employees, or other personnel of Commission

In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) Designation of Acting Chairman; quorum; seal

The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) Rules

The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) Powers of Commission

In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5 relating to hearing examiners.

(h) Principal office of Commission

The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) Commission deemed agency; attorney for Commission

For the purpose of section 552b of title 5, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this chapter or as otherwise authorized by law.

(j) Annual authorization and appropriation request

In each annual authorization and appropriation request under this chapter, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(k) Addressing insufficient compensation of employees and other personnel of the Commission

(1) In general

Notwithstanding any other provision of law, if the Chairman of the Commission publicly certifies that compensation for a category of employees or other personnel of the Commission is insufficient to retain or attract employees and other personnel to allow the Commission to carry

out the functions of the Commission in a timely, efficient, and effective manner, the Chairman may fix the compensation for the category of employees or other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, or any other civil service law.

(2) Certification requirements

A certification issued under paragraph (1) shall—

(A) apply with respect to a category of employees or other personnel responsible for conducting work of a scientific, technological, engineering, or mathematical nature;

(B) specify a maximum amount of reasonable compensation for the category of employees or other personnel;

(C) be valid for a 5-year period beginning on the date on which the certification is issued;

(D) be no broader than necessary to achieve the objective of retaining or attracting employees and other personnel to allow the Commission to carry out the functions of the Commission in a timely, efficient, and effective manner; and

(E) include an explanation for why the other approaches available to the Chairman for retaining and attracting employees and other personnel are inadequate.

(3) Renewal

(A) In general

Not later than 90 days before the date of expiration of a certification issued under paragraph (1), the Chairman shall determine whether the certification should be renewed for a subsequent 5-year period.

(B) Requirement

If the Chairman determines that a certification should be renewed under subparagraph (A), the Chairman may renew the certification, subject to the certification requirements under paragraph (2) that were applicable to the initial certification.

(4) New hires

(A) In general

An employee or other personnel that is a member of a category of employees or other personnel that would have been covered by a certification issued under paragraph (1), but was hired during a period in which the certification has expired and has not been renewed under paragraph (3) shall not be eligible for compensation at the level that would have applied to the employee or other personnel if the certification had been in effect on the date on which the employee or other personnel was hired.

(B) Compensation of new hires on renewal

On renewal of a certification under paragraph (3), the Chairman may fix the compensation of the employees or other personnel described in subparagraph (A) at the level established for the category of employees or other personnel in the certification.

(5) Retention of level of fixed compensation

A category of employees or other personnel, the compensation of which was fixed by the Chairman in accordance with paragraph (1), may, at the discretion of the Chairman, have the level of fixed compensation for the category of employees or other personnel retained, regardless of whether a certification described under that paragraph is in effect with respect to the compensation of the category of employees or other personnel.

(6) Consultation required

The Chairman shall consult with the Director of the Office of Personnel Management in implementing this subsection, including in the determination of the amount of compensation with respect to each category of employees or other personnel.

(7) Experts and consultants

(A) In general

Subject to subparagraph (B), the Chairman may—

(i) obtain the services of experts and consultants in accordance with section 3109 of title 5;

(ii) compensate those experts and consultants for each day (including travel time) at rates not in excess of the rate of pay for level IV of the Executive Schedule under section 5315 of that title; and

(iii) pay to the experts and consultants serving away from the homes or regular places of business of the experts and consultants travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of that title for persons in Government service employed intermittently.

(B) Limitations

The Chairman shall—

(i) to the maximum extent practicable, limit the use of experts and consultants pursuant to subparagraph (A); and

(ii) ensure that the employment contract of each expert and consultant employed pursuant to subparagraph (A) is subject to renewal not less frequently than annually.

(Pub. L. 95–91, title IV, §401, Aug. 4, 1977, 91 Stat. 582; Pub. L. 101–271, §2(a), (b), Apr. 11, 1990, 104 Stat. 135; Pub. L. 116–260, div. Z, title XI, §11004(a), Dec. 27, 2020, 134 Stat. 2612.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (i) and (j), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

2020—Subsec. (k). Pub. L. 116–260 added subsec. (k).

1990—Subsec. (b). Pub. L. 101–271 designated existing provisions as par. (1), substituted "5 years" for "four years", struck out after third sentence "The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years.", substituted "A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires." for "A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection.", and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. Z, title XI, §11004(c), Dec. 27, 2020, 134 Stat. 2614, provided that: "The amendment made by subsection (a) [amending this section] shall apply beginning on the date that is 30 days after the date of enactment of this Act [Dec. 27, 2020]."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–271, §2(c), Apr. 11, 1990, 104 Stat. 136, provided that: "The amendments made by this section [amending this section] apply only to persons appointed or reappointed as members of the Federal Energy Regulatory Commission after the date of enactment of this Act [Apr. 11, 1990]."

REPORTS

Pub. L. 116–260, div. Z, title XI, §11004(b), Dec. 27, 2020, 134 Stat. 2614, provided that:

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Dec. 27, 2020], and every 2 years thereafter for 10 years, the Chairman of the Federal Energy Regulatory Commission shall

submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on information relating to hiring, vacancies, and compensation at the Federal Energy Regulatory Commission.

"(2) INCLUSIONS.—Each report under paragraph (1) shall include—

"(A) an analysis of any trends with respect to hiring, vacancies, and compensation at the Federal Energy Regulatory Commission; and

"(B) a description of the efforts to retain and attract employees or other personnel responsible for conducting work of a scientific, technological, engineering, or mathematical nature at the Federal Energy Regulatory Commission."

RENEWABLE ENERGY AND ENERGY CONSERVATION INCENTIVES

Pub. L. 101–549, title VIII, §808, Nov. 15, 1990, 104 Stat. 2690, provided that:

"(a) DEFINITION.—For purposes of this section, 'renewable energy' means energy from photovoltaic, solar thermal, wind, geothermal, and biomass energy production technologies.

"(b) RATE INCENTIVES STUDY.—Within 18 months after enactment [Nov. 15, 1990], the Federal Energy Regulatory Commission, in consultation with the Environmental Protection Agency, shall complete a study which calculates the net environmental benefits of renewable energy, compared to nonrenewable energy, and assigns numerical values to them. The study shall include, but not be limited to, environmental impacts on air, water, land use, water use, human health, and waste disposal.

"(c) MODEL REGULATIONS.—In conjunction with the study in subsection (b), the Commission shall propose one or more models for incorporating the net environmental benefits into the regulatory treatment of renewable energy in order to provide economic compensation for those benefits.

"(d) REPORT.—The Commission shall transmit the study and the model regulations to Congress, along with any recommendations on the best ways to reward renewable energy technologies for their environmental benefits, in a report no later than 24 months after enactment [Nov. 15, 1990]."

RETENTION AND USE OF REVENUES FROM LICENSING FEES, INSPECTION SERVICES, AND OTHER SERVICES AND COLLECTIONS; REDUCTION TO ACHIEVE FINAL FISCAL YEAR APPROPRIATION

Pub. L. 99–500, §101(e) [title III], Oct. 18, 1986, 100 Stat. 1783–194, 1783–208, and Pub. L. 99–591, §101(e) [title III], Oct. 30, 1986, 100 Stat. 3341–194, 3341–208, provided in part: "That hereafter and notwithstanding any other provision of law revenues from licensing fees, inspection services, and other services and collections, estimated at $78,754,000 in fiscal year 1987, may be retained and used for necessary expenses in this account [Federal Energy Regulatory Commission, Salaries and Expenses], and may remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced as revenues are received during fiscal year 1987, so as to result in a final fiscal year 1987 appropriation estimated at not more than $20,325,000."

Similar provisions were contained in the following appropriation acts:

Pub. L. 119–74, div. B, title III, Jan. 23, 2026, 140 Stat. 84.
Pub. L. 118–42, div. D, title III, Mar. 9, 2024, 138 Stat. 205.
Pub. L. 117–328, div. D, title III, Dec. 29, 2022, 136 Stat. 4642.
Pub. L. 117–103, div. D, title III, Mar. 15, 2022, 136 Stat. 231.
Pub. L. 116–260, div. D, title III, Dec. 27, 2020, 134 Stat. 1372.
Pub. L. 116–94, div. C, title III, Dec. 20, 2019, 133 Stat. 2678.
Pub. L. 115–244, div. A, title III, Sept. 21, 2018, 132 Stat. 2915.
Pub. L. 115–141, div. D, title III, Mar. 23, 2018, 132 Stat. 527.
Pub. L. 115–31, div. D, title III, May 5, 2017, 131 Stat. 319.
Pub. L. 114–113, div. D, title III, Dec. 18, 2015, 129 Stat. 2415.
Pub. L. 113–235, div. D, title III, Dec. 16, 2014, 128 Stat. 2322.
Pub. L. 113–76, div. D, title III, Jan. 17, 2014, 128 Stat. 172.
Pub. L. 112–74, div. B, title III, Dec. 23, 2011, 125 Stat. 875.
Pub. L. 111–85, title III, Oct. 28, 2009, 123 Stat. 2871.
Pub. L. 111–8, div. C, title III, Mar. 11, 2009, 123 Stat. 625.
Pub. L. 110–161, div. C, title III, Dec. 26, 2007, 121 Stat. 1966.
Pub. L. 109–103, title III, Nov. 19, 2005, 119 Stat. 2277.
Pub. L. 108–447, div. C, title III, Dec. 8, 2004, 118 Stat. 2957.
Pub. L. 108–137, title III, Dec. 1, 2003, 117 Stat. 1859.
Pub. L. 108–7, div. D, title III, Feb. 20, 2003, 117 Stat. 153.

Pub. L. 107–66, title III, Nov. 12, 2001, 115 Stat. 508.
Pub. L. 106–377, §1(a)(2) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–78.
Pub. L. 106–60, title III, Sept. 29, 1999, 113 Stat. 494.
Pub. L. 105–245, title III, Oct. 7, 1998, 112 Stat. 1851.
Pub. L. 105–62, title III, Oct. 13, 1997, 111 Stat. 1334.
Pub. L. 104–206, title III, Sept. 30, 1996, 110 Stat. 2998.
Pub. L. 104–46, title III, Nov. 13, 1995, 109 Stat. 416.
Pub. L. 103–316, title III, Aug. 26, 1994, 108 Stat. 1719.
Pub. L. 103–126, title III, Oct. 28, 1993, 107 Stat. 1330.
Pub. L. 102–377, title III, Oct. 2, 1992, 106 Stat. 1338.
Pub. L. 102–104, title III, Aug. 17, 1991, 105 Stat. 531.
Pub. L. 101–514, title III, Nov. 5, 1990, 104 Stat. 2093.
Pub. L. 101–101, title III, Sept. 29, 1989, 103 Stat. 661.
Pub. L. 100–371, title III, July 19, 1988, 102 Stat. 870.
Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–124.

§7172. Jurisdiction of Commission

(a) Transfer of functions from Federal Power Commission

(1) There are transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act [16 U.S.C. 791a et seq.];

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act [16 U.S.C. 824 et seq.], and the interconnection, under section 202(b), of such Act [16 U.S.C. 824a(b)], of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act [15 U.S.C. 717, 717c to 717e];

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act [15 U.S.C. 717f];

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act [15 U.S.C. 717 et seq.]; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act [16 U.S.C. 791a et seq.] and Natural Gas Act [15 U.S.C. 717 et seq.].

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act [16 U.S.C. 797, 825, 825a, 825e to 825h, 825k to 825o]; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act [15 U.S.C. 717g, 717h, 717l to 717p, 717s, 717t].

(b) Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

(c) Consideration of proposals made by Secretary to amend regulations issued under section

753 of title 15; exception

(1) Pursuant to the procedures specified in section 7174 of this title and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 753(a) [1] of title 15 which is required by section 757 or 760a [1] of title 15 to be transmitted by the President to, and reviewed by, each House of Congress, under section 6421 of this title.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 757 or 760a [1] of title 15, and section 6421 of this title.

(d) Matters involving agency determinations to be made on record after agency hearing

The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 6213 and 6214 [1] of this title shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) Matters assigned by Secretary after public notice and matters referred under section 7174 of this title

In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 7174 of this title.

(f) Limitation

No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) Final agency action

The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 7174 of this title, shall be final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) Rules, regulations, and statements of policy

The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to this section.

(Pub. L. 95–91, title IV, §402, Aug. 4, 1977, 91 Stat. 583; Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (a)(1)(A), (B), (F), is act June 10, 1920, ch. 285, 41 Stat. 1063, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. Parts I and II of the Federal Power Act are classified generally to subchapters I (§791a et seq.) and II (§824 et seq.), respectively,

of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsec. (a)(1)(E), (F), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Sections 753, 757, and 760a of title 15, referred to in subsec. (c), were omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under those sections on Sept. 30, 1981.

Section 6214 of this title, referred to in subsec. (d), was repealed by Pub. L. 106–469, title I, §103(3), Nov. 9, 2000, 114 Stat. 2029.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–272 struck out subsec. (b) which read as follows: "There are transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline." See section 60502 of Title 49, Transportation.

STATUTORY NOTES AND RELATED SUBSIDIARIES

OIL PIPELINE REGULATORY REFORM

Pub. L. 102–486, title XVIII, Oct. 24, 1992, 106 Stat. 3010, provided that:

"SEC. 1801. OIL PIPELINE RATEMAKING METHODOLOGY.

"(a) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of this Act [Oct. 24, 1992], the Federal Energy Regulatory Commission shall issue a final rule which establishes a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of part I of the Interstate Commerce Act [former 49 U.S.C. 1(5)].

"(b) EFFECTIVE DATE.—The final rule to be issued under subsection (a) may not take effect before the 365th day following the date of the issuance of the rule.

"SEC. 1802. STREAMLINING OF COMMISSION PROCEDURES.

"(a) RULEMAKING.—Not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Commission shall issue a final rule to streamline procedures of the Commission relating to oil pipeline rates in order to avoid unnecessary regulatory costs and delays.

"(b) SCOPE OF RULEMAKING.—Issues to be considered in the rulemaking proceeding to be conducted under subsection (a) shall include the following:

"(1) Identification of information to be filed with an oil pipeline tariff and the availability to the public of any analysis of such tariff filing performed by the Commission or its staff.

"(2) Qualification for standing (including definitions of economic interest) of parties who protest oil pipeline tariff filings or file complaints thereto.

"(3) The level of specificity required for a protest or complaint and guidelines for Commission action on the portion of the tariff or rate filing subject to protest or complaint.

"(4) An opportunity for the oil pipeline to file a response for the record to an initial protest or complaint.

"(5) Identification of specific circumstances under which Commission staff may initiate a protest.

"(c) ADDITIONAL PROCEDURAL CHANGES.—In conducting the rulemaking proceeding to carry out subsection (a), the Commission shall identify and transmit to Congress any other procedural changes relating to oil pipeline rates which the Commission determines are necessary to avoid unnecessary regulatory costs and delays and for which additional legislative authority may be necessary.

"(d) WITHDRAWAL OF TARIFFS AND COMPLAINTS.—

"(1) WITHDRAWAL OF TARIFFS.—If an oil pipeline tariff which is filed under part I of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.] and which is subject to investigation is withdrawn—

"(A) any proceeding with respect to such tariff shall be terminated;

"(B) the previous tariff rate shall be reinstated; and

"(C) any amounts collected under the withdrawn tariff rate which are in excess of the previous tariff rate shall be refunded.

"(2) WITHDRAWAL OF COMPLAINTS.—If a complaint which is filed under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] with respect to an oil pipeline tariff is withdrawn, any

proceeding with respect to such complaint shall be terminated.

"(e) ALTERNATIVE DISPUTE RESOLUTION.—To the maximum extent practicable, the Commission shall establish appropriate alternative dispute resolution procedures, including required negotiations and voluntary arbitration, early in an oil pipeline rate proceeding as a method preferable to adjudication in resolving disputes relating to the rate. Any proposed rates derived from implementation of such procedures shall be considered by the Commission on an expedited basis for approval.

"SEC. 1803. PROTECTION OF CERTAIN EXISTING RATES.

"(a) RATES DEEMED JUST AND REASONABLE.—Except as provided in subsection (b)—

"(1) any rate in effect for the 365-day period ending on the date of the enactment of this Act [Oct. 24, 1992] shall be deemed to be just and reasonable (within the meaning of section 1(5) of the Interstate Commerce Act [former 49 U.S.C. 1(5)]); and

"(2) any rate in effect on the 365th day preceding the date of such enactment shall be deemed to be just and reasonable (within the meaning of such section 1(5)) regardless of whether or not, with respect to such rate, a new rate has been filed with the Commission during such 365-day period;

if the rate in effect, as described in paragraph (1) or (2), has not been subject to protest, investigation, or complaint during such 365-day period.

"(b) CHANGED CIRCUMSTANCES.—No person may file a complaint under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] against a rate deemed to be just and reasonable under subsection (a) unless—

"(1) evidence is presented to the Commission which establishes that a substantial change has occurred after the date of the enactment of this Act [Oct. 24, 1992]—

"(A) in the economic circumstances of the oil pipeline which were a basis for the rate; or

"(B) in the nature of the services provided which were a basis for the rate; or

"(2) the person filing the complaint was under a contractual prohibition against the filing of a complaint which was in effect on the date of enactment of this Act and had been in effect prior to January 1, 1991, provided that a complaint by a party bound by such prohibition is brought within 30 days after the expiration of such prohibition.

If the Commission determines pursuant to a proceeding instituted as a result of a complaint under section 13 of the Interstate Commerce Act that the rate is not just and reasonable, the rate shall not be deemed to be just and reasonable. Any tariff reduction or refunds that may result as an outcome of such a complaint shall be prospective from the date of the filing of the complaint.

"(c) LIMITATION REGARDING UNDULY DISCRIMINATORY OR PREFERENTIAL TARIFFS .—Nothing in this section shall prohibit any aggrieved person from filing a complaint under section 13 or section 15(l) of the Interstate Commerce Act [former 49 U.S.C. 13, 15(1)] challenging any tariff provision as unduly discriminatory or unduly preferential.

"SEC. 1804. DEFINITIONS.

"For the purposes of this title, the following definitions apply:

"(1) COMMISSION.—The term 'Commission' means the Federal Energy Regulatory Commission and, unless the context requires otherwise, includes the Oil Pipeline Board and any other office or component of the Commission to which the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)) are delegated.

"(2) OIL PIPELINE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'oil pipeline' means any common carrier (within the meaning of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.]) which transports oil by pipeline subject to the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

"(B) EXCEPTION.—The term 'oil pipeline' does not include the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) or any pipeline delivering oil directly or indirectly to the Trans-Alaska Pipeline.

"(3) OIL.—The term 'oil' has the same meaning as is given such term for purposes of the transfer of functions from the Interstate Commerce Commission to the Federal Energy Regulatory Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

"(4) RATE.—The term 'rate' means all charges that an oil pipeline requires shippers to pay for transportation services."

[1] *See References in Text note below.*

§7173. Initiation of rulemaking procedures before Commission

(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission

The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 7172 of this title.

(b) Consideration and final action on proposals of Secretary

The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act and Natural Gas Act

Any function described in section 7172 of this title which relates to the establishment of rates and charges under the Federal Power Act [16 U.S.C. 791a et seq.] or the Natural Gas Act [15 U.S.C. 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) Submission of written questions by interested persons

With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

(Pub. L. 95–91, title IV, §403, Aug. 4, 1977, 91 Stat. 585.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c), is act June 10, 1920, ch. 285, 41 Stat. 1063, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsecs. (c) and (d), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

§7174. Referral of other rulemaking proceedings to Commission

(a) Notification of Commission of proposed action; public comment

Except as provided in section 7173 of this title, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 7151 of this title or section 60501 of title 49, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 7172(a)(1) and (c)(1) of this title and section 60502 of title 49, the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Recommendations of Commission; publication

Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

(1) concur in adoption of the rule or statement as proposed by the Secretary;

(2) concur in adoption of the rule or statement only with such changes as it may recommend; or

(3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Options of Secretary; final agency action

Following publication of the Commission's recommendations the Secretary shall have the option of—

(1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1);

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2); or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5.

(Pub. L. 95–91, title IV, §404, Aug. 4, 1977, 91 Stat. 586.)

EDITORIAL NOTES

CODIFICATION

In subsec. (a), "section 60501 of title 49" substituted for reference to section 306 of this Act, meaning section 306 of Pub. L. 95–91 [42 U.S.C. 7155], and "section 60502 of title 49" substituted for reference to section 402(b), meaning section 402(b) of Pub. L. 95–91 [42 U.S.C. 7172(b)] on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§7175. Right of Secretary to intervene in Commission proceedings

The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants.

(Pub. L. 95–91, title IV, §405, Aug. 4, 1977, 91 Stat. 586.)

§7176. Reorganization

For the purposes of chapter 9 of title 5 the Commission shall be deemed to be an independent regulatory agency.

(Pub. L. 95–91, title IV, §406, Aug. 4, 1977, 91 Stat. 586.)

§7177. Access to information

(a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the Commission determines is necessary to carry out its responsibilities under this chapter.

(b) The Secretary, in formulating the information to be requested in the reports or investigations under section 825c and section 825j of title 16 and section 717i and section 717j of title 15 shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission.

(Pub. L. 95–91, title IV, §407, Aug. 4, 1977, 91 Stat. 587.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7178. Federal Energy Regulatory Commission fees and annual charges

(a) In general

(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this section and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this section shall not affect the authority, requirements, exceptions, or limitations in sections 803(e) and 823a(e) of title 16.

(b) Basis for assessments

The fees or annual charges assessed shall be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.

(c) Estimates

The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) Time of payment

The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) Adjustments

The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.

(f) Use of funds

All moneys received under this section shall be credited to the general fund of the Treasury.

(g) Waiver

The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

(Pub. L. 99–509, title III, §3401, Oct. 21, 1986, 100 Stat. 1890.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Department of Energy Organization Act which comprises this chapter.

SUBCHAPTER V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

§7191. Procedures for issuance of rules, regulations, or orders

(a) Applicability of subchapter II of chapter 5 of title 5

(1) Subject to the other requirements of this subchapter, the provisions of subchapter II of chapter 5 of title 5 shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this chapter or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this subchapter. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this chapter, provides administrative procedure requirements in addition to the requirements provided in this subchapter, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this subchapter shall apply to the Commission to the same extent this subchapter applies to the Secretary in the exercise of any of the Commission's functions under section 7172(c)(1) of this title or which the Secretary has assigned under section 7172(e) of this title.

(b) Substantial issue of fact or law or likelihood of substantial impact on Nation's economy, etc.; oral presentation

(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a).

(c) Waiver of requirements

The requirements of subsection (b) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of

this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(d) Effects confined to single unit of local government, geographic area within State, or State; hearing or oral presentation

(1) With respect to any rule, regulation, or order described in subsection (a), the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(e) Prescription of procedures for State and local government agencies

Where authorized by any law vested, transferred, or delegated pursuant to this chapter, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action.

(Pub. L. 95–91, title V, §501, Aug. 4, 1977, 91 Stat. 587; Pub. L. 105–28, §2(a), July 18, 1997, 111 Stat. 245.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (e), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–28, §2(a)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

"(1) In addition to the requirements of subsection (a) of this section, notice of any proposed rule, regulation, or order described in subsection (a) of this section shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

"(2) Public notice of all rules, regulations, or orders described in subsection (a) of this section which are

promulgated by officers of a State or local government agency pursuant to a delegation under this chapter shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

"(3) For the purposes of this subchapter, the exception from the requirements of section 553 of title 5 provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available."

Subsec. (c). Pub. L. 105–28, §2(a)(2), (3), redesignated subsec. (e) as (c) and substituted "subsection (b)" for "subsections (b), (c), and (d)". Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 105–28, §2(a)(1), (2), redesignated subsec. (f) as (d) and struck out former subsec. (d) which read as follows: "Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period."

Subsecs. (e) to (g). Pub. L. 105–28, §2(a)(2), redesignated subsecs. (e) to (g) as (c) to (e), respectively.

§7192. Judicial review

(a) Agency action

Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission or any officer, employee, or component of the Department shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law.

(b) Review by district court of United States; removal

Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this chapter, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this chapter, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this chapter or the validity of action taken by any agency under this chapter). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this chapter or the validity of agency action under this chapter, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Litigation supervision by Attorney General

Subject to the provisions of section 7171(i) of this title and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

(Pub. L. 95–91, title V, §502, Aug. 4, 1977, 91 Stat. 589.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7193. Remedial orders

(a) Violations of rules, regulations, or orders promulgated pursuant to Emergency Petroleum Allocation Act of 1973

If upon investigation the Secretary or his authorized representative believes that a person has violated any regulation, rule, or order described in section 7191(a) of this title promulgated pursuant to the Emergency Petroleum Allocation Act of 1973 [1] [15 U.S.C. 751 et seq.], he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section "person" includes any individual, association, company, corporation, partnership, or other entity however organized.

(b) Notice of intent to contest; final order not subject to review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person fails to notify the Secretary that he intends to contest the remedial order, the remedial order shall become effective and shall be deemed a final order of the Secretary and not subject to review by any court or agency.

(c) Notice of contestation to Commission; stay; hearing; cross examination; final order; enforcement and review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall immediately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

(d) Time limits

The Secretary may set reasonable time limits for the Commission to complete action on a proceeding referred to it pursuant to this section.

(e) Effect on procedural action taken by Secretary prior to issuance of initial remedial order

Nothing in preceding provisions of this section shall be construed to affect any procedural action taken by the Secretary prior to or incident to initial issuance of a remedial order which is the subject of the hearing provided in preceding provisions of this section, but such procedures shall be reviewable in the hearing.

(f) Savings provision

The provisions of preceding provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after October 1, 1977.

(g) Retroactive application; marketing of petroleum products

With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if—

(1) such civil action or order is based on a retroactive application of such rule or regulation or is

based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.

(Pub. L. 95–91, title V, §503, Aug. 4, 1977, 91 Stat. 590; Pub. L. 95–620, title VIII, §805, Nov. 9, 1978, 92 Stat. 3348.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, which was classified generally to chapter 16A (§751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

AMENDMENTS

1978—Subsecs. (e), (f). Pub. L. 95–620, §805(b), inserted "preceding provisions of" before "this section". Subsec. (g). Pub. L. 95–620, §805(a), added subsec. (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

[1] *See References in Text note below.*

§7194. Requests for adjustments

(a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 7191(a) of this title issued under the Federal Energy Administration Act [15 U.S.C. 761 et seq.], the Emergency Petroleum Allocation Act of 1973 [1] [15 U.S.C. 751 et seq.], the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], or the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens, and shall by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or recission [2] of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition.

(b)(1) If any person is aggrieved or adversely affected by a denial of a request for adjustment under subsection (a) such person may request a review of such denial by the Commission and may obtain judicial review in accordance with this subchapter when such a denial becomes final.

(2) The Commission shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litigation involving judicial review of such action shall be the responsibility of the Secretary.

(Pub. L. 95–91, title V, §504, Aug. 4, 1977, 91 Stat. 590.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Energy Administration Act, referred to in subsec. (a), is Pub. L. 93–275, May 7, 1974, 88 Stat. 96, which is classified generally to chapter 16B (§761 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, which was classified generally to chapter 16A (§751 et seq.) of Title 15, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a), is Pub. L. 93–319, June 22, 1974, 88 Stat. 246, which is classified principally to chapter 16C (§791 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

[1] See References in Text note below.

[2] So in original. Probably should be "recision".

§7195. Report to Congress; contents

Within one year after October 1, 1977, the Secretary shall submit a report to Congress concerning the actions taken to implement section 7191 of this title. The report shall include a discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

(Pub. L. 95–91, title V, §505, Aug. 4, 1977, 91 Stat. 591.)

SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS

PART A—CONFLICT OF INTEREST PROVISIONS

§§7211, 7212. Repealed. Pub. L. 104–106, div. D, title XLIII, §4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section 7211, Pub. L. 95–91, title VI, §601, Aug. 4, 1977, 91 Stat. 591; Pub. L. 103–160, div. C, title XXXI, §3161(c)(1)(A), (B), Nov. 30, 1993, 107 Stat. 1958, related to definitions of supervisory employees and energy concern.

Section 7212, Pub. L. 95–91, title VI, §602, Aug. 4, 1977, 91 Stat. 592; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 103–160, div. C, title XXXI, §3161(b), (c)(1)(C), Nov. 30, 1993, 107 Stat. 1958, related to divestiture of energy holdings by supervisory employees.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2220 of Title 10, Armed Forces.

§§7213 to 7217. Repealed. Pub. L. 103–160, div. C, title XXXI, §3161(a), Nov. 30, 1993, 107 Stat. 1957

Section 7213, Pub. L. 95–91, title VI, §603, Aug. 4, 1977, 91 Stat. 593, related to disclosure of energy assets.

Section 7214, Pub. L. 95–91, title VI, §604, Aug. 4, 1977, 91 Stat. 594, required, with exceptions for certain information, that supervisory employees of Department file report on prior employment.

Section 7215, Pub. L. 95–91, title VI, §605, Aug. 4, 1977, 91 Stat. 594, related to postemployment prohibitions and reporting requirements.

Section 7216, Pub. L. 95–91, title VI, §606, Aug. 4, 1977, 91 Stat. 595, prohibited former supervisory employees from participating in certain Department proceedings.

Section 7217, Pub. L. 95–91, title VI, §607, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784, related to procedures applicable to reports under former sections 7213, 7214, and 7215 of this title.

§7218. Repealed. Pub. L. 104–106, div. D, title XLIII, §4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 95–91, title VI, §603, formerly §608, Aug. 4, 1977, 91 Stat. 596; renumbered §603 and amended, Pub. L. 103–160, div. C, title XXXI, §3161(c)(1)(D), (E), Nov. 30, 1993, 107 Stat. 1958, related to sanctions.

A prior section 603 of Pub. L. 95–91 was classified to section 7213 of this title prior to repeal by Pub. L. 103–160.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2220 of Title 10, Armed Forces.

PART B—PERSONNEL PROVISIONS

§7231. Officers and employees

(a) Authority of Secretary to appoint and fix compensation

In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

(b) Appointment of scientific, engineering, etc., personnel without regard to civil service laws; compensation; termination of authority

(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5.

(2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease—

(A) when a person appointed, within four years after October 1, 1977, to fill such position under paragraph (1) leaves such position, or

(B) on the day which is four years after such date,

whichever is later.

(c) Placement of GS–16, GS–17, and GS–18 positions without regard to section 3324 of title 5; termination of authority

(1) Subject to the provisions of chapter 51 of title 5 but notwithstanding the last two sentences of section 5108(a) [1] of such title, the Secretary may place at GS–16, GS–17, and GS–18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a) [1] of such title.

(2) Appointments under this subsection may be made without regard to the provisions of sections 3324 of title 5, relating to the approval by the Director of the Office of Personnel Management of appointments under GS–16, GS–17, and GS–18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this chapter and who, immediately before October 1, 1977, held a position and duties comparable to those of such position.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.

(d) Appointment of additional scientific, engineering, etc., personnel without regard to civil service laws; compensation

In addition to the number of positions which may be placed at GS–16, GS–17, and GS–18 under section 5108 of title 5, under existing law, or under this chapter, and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5.

(e) Determination of maximum aggregate number of positions

For the purposes of determining the maximum aggregate number of positions which may be placed at GS–16, GS–17, or GS–18 under section 5108(a) of title 5, 63 percent of the positions established under subsections (b) and (c) shall be deemed GS–16 positions, 25 percent of such positions shall be deemed GS–17 positions, and 12 percent of such positions shall be deemed GS–18.

(f) Intelligence and intelligence-related positions exempt from competitive service

All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of August 14, 1991, shall, while employed in such positions, be exempt from the competitive service.

(Pub. L. 95–91, title VI, §621, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 102–88, title IV, §403, Aug. 14, 1991, 105 Stat. 434.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 5108(a) of title 5, referred to in subsec. (c)(1), was amended generally by Pub. L. 101–509, title V, §529 [title I, §102(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1443, and, as so amended, contains only one sentence.

This chapter, referred to in subsecs. (c)(2) and (d), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

August 14, 1991, referred to in subsec. (f), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 102–88, which enacted subsec. (f) of this section, to reflect the probable intent of Congress.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–88 added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

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

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

RECRUITMENT AND DIRECT APPOINTMENTS OF HIGHLY QUALIFIED INDIVIDUALS TO MEET SEVERE CANDIDATE SHORTAGES AND CRITICAL HIRING NEEDS

Pub. L. 117–58, div. J, title III, §301, Nov. 15, 2021, 135 Stat. 1379, provided that: "Notwithstanding section 3304 of title 5, United States Code, and without regard to the provisions of sections 3309 through 3318 of such title 5, the Secretary of Energy, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions to carry out the Department of Energy activities funded under this title, may, from within the funds provided to the Department of Energy under this title, recruit and directly appoint highly qualified individuals into the competitive service: *Provided*, That such authority shall not apply to positions in the Excepted Service or the Senior Executive Service: *Provided further*, That any action authorized herein shall be consistent with the merit principles of section 2301 of such title 5, and the Department shall comply with the public notice requirements of section 3327 of such title 5: *Provided further*, That the authority under this section shall terminate on September 30, 2027: *Provided further*, That 180 days after the date of enactment of this Act [Nov. 15, 2021], the Secretary of Energy shall submit to the House and Senate Committees on Appropriations an estimate of the number of highly qualified individuals it expects to hire under the authority provided in this section."

APPOINTMENTS OF EXCEPTIONALLY WELL QUALIFIED INDIVIDUALS TO SCIENTIFIC, ENGINEERING, OR OTHER CRITICAL TECHNICAL POSITIONS

Pub. L. 113–76, div. D, title III, §313, Jan. 17, 2014, 128 Stat. 176, provided that:

"(a) IN GENERAL.—Subject to subsections (b) through (d), the Secretary may appoint, without regard to the provisions of chapter 33 of title 5, United States Code, governing appointments in the competitive service, exceptionally well qualified individuals to scientific, engineering, or other critical technical positions.

"(b) LIMITATIONS.—

"(1) NUMBER OF POSITIONS.—The number of critical positions authorized by subsection (a) may not exceed 120 at any one time in the Department.

"(2) TERM.—The term of an appointment under subsection (a) may not exceed 4 years.

"(3) PRIOR EMPLOYMENT.—An individual appointed under subsection (a) shall not have been a Department employee during the 2-year period ending on the date of appointment.

"(4) PAY.—

"(A) IN GENERAL.—The Secretary shall have the authority to fix the basic pay of an individual appointed under subsection (a) at a rate to be determined by the Secretary up to level I of the Executive Schedule [5 U.S.C. 5312] without regard to the civil service laws.

"(B) TOTAL ANNUAL COMPENSATION.—The total annual compensation for any individual appointed under subsection (a) may not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3, United States Code.

"(5) ADVERSE ACTIONS.—An individual appointed under subsection (a) may not be considered to be an employee for purposes of subchapter II of chapter 75 of title 5, United States Code.

"(c) REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary shall ensure that—

"(A) the exercise of the authority granted under subsection (a) is consistent with the merit principles of section 2301 of title 5, United States Code; and

"(B) the Department notifies diverse professional associations and institutions of higher

education, including those serving the interests of women and racial or ethnic minorities that are underrepresented in scientific, engineering, and mathematical fields, of position openings as appropriate.

"(2) REPORT.—Not later than 2 years after the date of enactment of this Act [Jan. 17, 2014], the Secretary and the Director of the Office of Personnel Management shall submit to Congress a report on the use of the authority provided under this section that includes, at a minimum, a description or analysis of—

"(A) the ability to attract exceptionally well qualified scientists, engineers, and technical personnel;

"(B) the amount of total compensation paid each employee hired under the authority each calendar year; and

"(C) whether additional safeguards or measures are necessary to carry out the authority and, if so, what action, if any, has been taken to implement the safeguards or measures.

"(d) TERMINATION OF EFFECTIVENESS.—The authority provided by this section terminates effective on the date that is 4 years after the date of enactment of this Act."

AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL

Pub. L. 103–337, div. C, title XXXI, §3161, Oct. 5, 1994, 108 Stat. 3095, as amended by Pub. L. 105–85, div. C, title XXXI, §3139, Nov. 18, 1997, 111 Stat. 2040; Pub. L. 105–261, div. C, title XXXI, §§3152, 3155, Oct. 17, 1998, 112 Stat. 2253, 2257; Pub. L. 106–398, §1 [div. C, title XXXI, §3191], Oct. 30, 2000, 114 Stat. 1654, 1654A–480; Pub. L. 107–314, div. C, title XXXI, §3174, Dec. 2, 2002, 116 Stat. 2745, which was formerly set out as a note under this section, was renumbered section 4601 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(i)(2), Nov. 24, 2003, 117 Stat. 1776, and classified to section 2701 of Title 50, War and National Defense, and was repealed and restated as section 6241 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1412, 1458.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (c)(2), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

[1] *See References in Text note below.*

§7232. Senior positions

In addition to those positions created by subchapter II of this chapter, there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5 who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

(Pub. L. 95–91, title VI, §622, Aug. 4, 1977, 91 Stat. 597.)

§7233. Experts and consultants

The Secretary may obtain services as authorized by section 3109 of title 5, at rates not to exceed the daily rate prescribed for grade GS–18 of the General Schedule under section 5332 of title 5 for persons in Government service employed intermittently.

(Pub. L. 95–91, title VI, §623, Aug. 4, 1977, 91 Stat. 598.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

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

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

§7234. Advisory committees

The Secretary is authorized to establish in accordance with chapter 10 of title 5 such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay.

(Pub. L. 95–91, title VI, §624, Aug. 4, 1977, 91 Stat. 598; Pub. L. 105–28, §2(b)(1), July 18, 1997, 111 Stat. 245; Pub. L. 117–286, §4(a)(266), Dec. 27, 2022, 136 Stat. 4335.)

EDITORIAL NOTES

AMENDMENTS

2022—Pub. L. 117–286 substituted "chapter 10 of title 5" for "the Federal Advisory Committee Act".

1997—Pub. L. 105–28 struck out subsec. (a) designation and struck out subsec. (b) which read as follows: "Section 776 of title 15 shall be applicable to advisory committees chartered by the Secretary, or transferred to the Secretary or the Department under this chapter, except that where an advisory committee advises the Secretary on matters pertaining to research and development, the Secretary may determine that such meeting shall be closed because it involves research and development matters and comes within the exemption of section 552b(c)(4) of title 5."

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

DEPARTMENT OF ENERGY PROJECT REVIEW GROUPS NOT SUBJECT TO CHAPTER 10 OF TITLE 5, UNITED STATES CODE, BY REASON OF INCLUSION OF EMPLOYEES OF DEPARTMENT OF ENERGY MANAGEMENT AND OPERATING CONTRACTORS

Pub. L. 108–136, div. C, title XXXI, §3112, Nov. 24, 2003, 117 Stat. 1743, as amended by Pub. L. 117–286, §4(a)(267), Dec. 27, 2022, 136 Stat. 4335, provided that: "An officer or employee of a management and operating contractor of the Department of Energy, when serving as a member of a group reviewing or advising on matters related to any one or more management and operating contracts of the Department, shall be treated as an officer or employee of the Department for purposes of determining whether the group is an advisory committee within the meaning of section 1001 of title 5, United States Code."

§7235. Armed services personnel

(a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on August 4, 1977, in the Energy Research and

Development Administration and under chapter 869 of title 10. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

(Pub. L. 95–91, title VI, §625, Aug. 4, 1977, 91 Stat. 598; Pub. L. 95–509, title II, §210, Oct. 24, 1978, 92 Stat. 1779; Pub. L. 115–232, div. A, title VIII, §809(n)(3)(B), Aug. 13, 2018, 132 Stat. 1844.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 substituted "chapter 869 of title 10" for "chapter 641 of title 10".

1978—Subsec. (b). Pub. L. 95–509 struck out requirement that a detailed member be charged to the limitations applicable to the Department and prohibition of such member from being charged to any statutory or other limitation or strengths applicable to the Armed Forces.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of Title 10, Armed Forces.

§7236. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 101–189, div. C, title XXXI, §3142, Nov. 29, 1989, 103 Stat. 1680, which related to executive management training in the Department of Energy, was renumbered section 4621 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(i)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1778, and was formerly classified to section 2721 of Title 50, War and National Defense. See section 6251 of Title 10, Armed Forces.

§7237. Priority placement, job placement, retraining, and counseling programs for United States Department of Energy employees affected by reduction in force

(a) Definitions

(1) For the purposes of this section, the term "agency" means the United States Department of Energy.

(2) For the purposes of this section, the term "eligible employee" means any employee of the agency who—

(A) is scheduled to be separated from service due to a reduction in force under—

(i) regulations prescribed under section 3502 of title 5; or

(ii) procedures established under section 3595 of title 5; or

(B) is separated from service due to such a reduction in force, but does not include—

(i) an employee separated from service for cause on charges of misconduct or delinquency; or

(ii) an employee who, at the time of separation, meets the age and service requirements for an immediate annuity under subchapter III of chapter 83 or chapter 84 of title 5.

(b) Priority placement and retraining program

Not later than 30 days after September 30, 1996, the United States Department of Energy shall establish an agency-wide priority placement and retraining program for eligible employees.

(c) Filling vacancy from outside agency

The priority placement program established under subsection (b) shall include provisions under which a vacant position shall not be filled by the appointment or transfer of any individual from outside of the agency if—

(1) there is then available any eligible employee who applies for the position within 30 days of the agency issuing a job announcement and is qualified (or can be trained or retrained to become qualified within 90 days of assuming the position) for the position; and

(2) the position is within the same commuting area as the eligible employee's last-held position or residence.

(d) Job placement and counseling services

The head of the agency may establish a program to provide job placement and counseling services to eligible employees. A program established under subsection (d) may include, but is not limited to, such services as—

(1) career and personal counseling;

(2) training and job search skills; and

(3) job placement assistance, including assistance provided through cooperative arrangements with State and local employment services offices.

(Pub. L. 104–206, title III, §301, Sept. 30, 1996, 110 Stat. 2999.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1997, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7238. Temporary appointments for scientific and technical experts in Department of Energy research and development programs

(a) The Secretary, utilizing authority under other applicable law and the authority of this section, may appoint for a limited term, or on a temporary basis, scientists, engineers, and other technical and professional personnel on leave of absence from academic, industrial, or research institutions to work for the Department.

(b) The Department may pay, to the extent authorized for certain other Federal employees by section 5723 of title 5, travel expenses for any individual appointed for a limited term or on a temporary basis and transportation expenses of his or her immediate family and his or her household goods and personal effects from that individual's residence at the time of selection or assignment to his or her duty station. The Department may pay such travel expenses to the same extent for such an individual's return to the former place of residence from his or her duty station, upon separation from the Federal service following an agreed period of service. The Department may also pay a per diem allowance at a rate not to exceed the daily amounts prescribed under section 5702 of title 5 to such an individual, in lieu of transportation expenses of the immediate family and household goods and personal effects, for the period of his or her employment with the Department. Notwithstanding any

other provision of law, the employer's contribution to any retirement, life insurance, or health benefit plan for an individual appointed for a term of one year or less, which could be extended for no more than one additional year, may be made or reimbursed from appropriations available to the Department.

(Pub. L. 104–271, title III, §301, Oct. 9, 1996, 110 Stat. 3307.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Hydrogen Future Act of 1996, and not as part of the Department of Energy Organization Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

Pub. L. 104–271, §2, Oct. 9, 1996, 110 Stat. 3304, provided that: "For purposes of titles II and III [enacting this section and provisions set out as a note under section 12403 of this title]—

"(1) the term 'Department' means the Department of Energy; and

"(2) the term 'Secretary' means the Secretary of Energy."

§7239. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 106–65, div. C, title XXXI, §3164, Oct. 5, 1999, 113 Stat. 946, which related to the whistleblower protection program, was renumbered section 4602 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(i)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1776, and was formerly classified to section 2702 of Title 50, War and National Defense. See section 6242 of Title 10, Armed Forces.

PART C—GENERAL ADMINISTRATIVE PROVISIONS

§7251. General authority

To the extent necessary or appropriate to perform any function transferred by this chapter, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

(Pub. L. 95–91, title VI, §641, Aug. 4, 1977, 91 Stat. 598.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

IMPROVEMENT AND STREAMLINING OF THE MISSIONS AND OPERATIONS OF THE DEPARTMENT OF ENERGY AND NATIONAL NUCLEAR SECURITY ADMINISTRATION

Pub. L. 112–239, div. C, title XXXI, §3120, Jan. 2, 2013, 126 Stat. 2174, provided that:

"(a) IN GENERAL.—The Secretary of Energy and the Administrator for Nuclear Security shall review and, to the extent practicable, revise the Department of Energy Acquisition Regulation and other regulations, rules, directives, orders, and policies that apply to the administration, execution, and oversight of the missions and operations of the Department of Energy and the National Nuclear Security Administration to improve and streamline such administration, execution, and oversight.

"(b) IMPROVEMENT AND STREAMLINING.—In carrying out subsection (a), the Secretary and the Administrator shall review and, to the extent practicable, carry out the following actions:

"(1) Streamline business processes and structures to reduce unnecessary, burdensome, or duplicative approvals.

"(2) Delegate approval for work for others agreements and cooperative research and development agreements (except those that the Secretary or Administrator determine are high value or unique) to the lowest appropriate officials and streamline the approval processes.

"(3) Establish processes for ensuring routine or low-risk procurement and subcontracting decisions are made at the discretion of the management and operating contractors while ensuring that the Secretary or Administrator apply appropriate oversight.

"(4) Assess procurement thresholds as of the date of the enactment of this Act [Jan. 2, 2013] and take steps as appropriate to adjust such thresholds.

"(5) Eliminate duplicative or low-value reports and data calls and ensure consistency in management and cost-accounting data.

"(6) Actions to otherwise streamline, clarify, and eliminate redundancy in the regulations, rules, directives, orders, and policies described by subsection (a).

"(c) BRIEFING.—

"(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary and the Administrator shall provide to the appropriate congressional committees a briefing on the review conducted under subsection (a), including the status of such review and any actions taken or planned to be taken to improve and streamline the regulations, rules, directives, orders, and policies described in such subsection.

"(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term 'appropriate congressional committees' means—

"(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

"(B) the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives."

DEPARTMENT OF ENERGY SECURITY MANAGEMENT BOARD

Pub. L. 105–85, div. C, title XXXI, §3161, Nov. 18, 1997, 111 Stat. 2048, required the Secretary of Energy to establish the Department of Energy Security Management Board, and provided for its duties which related to the security functions of the Department, and its membership, appointments, personnel, compensation, expenses, and termination on Oct. 31, 2000, prior to repeal by Pub. L. 106–65, div. C, title XXXI, §3142(h)(1), Oct. 5, 1999, 113 Stat. 933.

§7252. Delegation

Except as otherwise expressly prohibited by law, and except as otherwise provided in this chapter, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate.

(Pub. L. 95–91, title VI, §642, Aug. 4, 1977, 91 Stat. 599.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91

Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REORGANIZATION OF FIELD ACTIVITIES AND MANAGEMENT OF NATIONAL SECURITY FUNCTIONS

Pub. L. 104–206, title III, §302, Sept. 30, 1996, 110 Stat. 2999, provided that: "None of the funds appropriated by this or any other Act may be used to implement section 3140 of H.R. 3230 as reported by the Committee of Conference on July 30, 1996 [Pub. L. 104–201, set out below]. The Secretary of Energy shall develop a plan to reorganize the field activities and management of the national security functions of the Department of Energy and shall submit such plan to the Congress not later than 120 days after the date of enactment of this Act [Sept. 30, 1996]. The plan will specifically identify all significant functions performed by the Department's national security operations and area offices and make recommendations as to where those functions should be performed."

Pub. L. 104–201, div. C, title XXXI, §3140, Sept. 23, 1996, 110 Stat. 2833, which was formerly set out as a note under this section, was renumbered section 4102 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(d)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1757, and classified to section 2512 of Title 50, War and National Defense, and was repealed and restated as section 6103 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1340, 1458.

§7253. Reorganization

(a) Subject to subsection (b), the Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this chapter, or to the transfer of functions vested by this chapter in any organizational unit or component.

(b) The authority of the Secretary to establish, abolish, alter, consolidate, or discontinue any organizational unit or component of the National Nuclear Security Administration is governed by the provisions of section 2409 of title 50.

(c) The authority of the Secretary under subsection (a) does not apply to the National Nuclear Security Administration. The corresponding authority that applies to the Administration is set forth in section 2402(e) [1] of title 50.

(Pub. L. 95–91, title VI, §643, Aug. 4, 1977, 91 Stat. 599; Pub. L. 106–377, §1(a)(2) [title III, §314(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–81; Pub. L. 106–398, §1 [div. C, title XXXI, §3159(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–470; Pub. L. 112–239, div. C, title XXXI, §3132(e), Jan. 2, 2013, 126 Stat. 2187.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Section 2402(e) of title 50, referred to in subsec. (c), probably means the subsec. (e) of section 2402 of title 50 which relates to reorganization authority and was added by Pub. L. 106–398, §1 [div. C, title XXXI, §3159(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–469 and redesignated section 2402(f) of title 50 by Pub. L. 107–107, div. A, title X, §1048(i)(12), Dec. 28, 2001, 115 Stat. 1230.

AMENDMENTS

2013—Subsecs. (b), (c). Pub. L. 112–239 redesignated subsec. (b) relating to nonapplicability of authority

of Secretary to National Nuclear Security Administration as (c).

2000—Subsec. (a). Pub. L. 106–398, §1 [div. C, title XXXI, §3159(b)(1)], which directed amendment of section by substituting "(a) Except as provided in subsection (b), the Secretary" for "The Secretary", could not be executed because the words "The Secretary" did not appear after execution of the amendment by Pub. L. 106–377, §1(a)(2) [title III, §314(b)(1)]. See below.

Pub. L. 106–377, §1(a)(2) [title III, §314(b)(1)], designated existing provisions as subsec. (a) and substituted "Subject to subsection (b), the Secretary" for "The Secretary".

Subsec. (b). Pub. L. 106–398, §1 [div. C, title XXXI, §3159(b)(2)], added subsec. (b) relating to nonapplicability of authority of Secretary under subsec. (a) of this section to National Nuclear Security Administration.

Pub. L. 106–377, §1(a)(2) [title III, §314(b)(2)], added subsec. (b) relating to authority of Secretary as to National Nuclear Security Administration.

[1] *See References in Text note below.*

§7254. Rules and regulations

The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.

(Pub. L. 95–91, title VI, §644, Aug. 4, 1977, 91 Stat. 599.)

§7255. Subpoena

For the purpose of carrying out the provisions of this chapter, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 49 of title 15 with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this chapter. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.], the Commission shall have the same powers and authority as the Secretary has under this section.

(Pub. L. 95–91, title VI, §645, Aug. 4, 1977, 91 Stat. 599; Pub. L. 95–621, title V, §508(a), Nov. 9, 1978, 92 Stat. 3408.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§3301 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1978—Pub. L. 95–621 inserted provision giving the Commission the same powers and authority as the Secretary under this section for purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978.

§7256. Contracts, leases, etc., with public agencies and private organizations and persons

(a) General authority

The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Limitation on authority; appropriations

Notwithstanding any other provision of this subchapter, no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Leasing of excess Department of Energy property

The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that—

(1) is located at a facility of the Department of Energy to be closed or reconfigured;
(2) at the time the lease is entered into, is not needed by the Department of Energy; and
(3) is under the control of the Department of Energy.

(d) Terms of lease

(1) A lease entered into under subsection (c) may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.

(2) A lease entered into under subsection (c) may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the leasehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.

(e) Environmental concerns

(1) Before entering into a lease under subsection (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency (with respect to property located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

(2) Before entering into a lease under subsection (c), the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the appropriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (c) without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

(f) Retention and use of rentals; report

To the extent provided in advance in appropriations Acts, the Secretary may retain and use money rentals received by the Secretary directly from a lease entered into under subsection (c) in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually submit to the Congress a report on amounts retained and amounts used under this subsection.

(g) Additional authorities

(1) In addition to authority granted to the Secretary under any other provision of law, the Secretary

may exercise the same authority to enter into transactions (other than contracts, cooperative agreements, and grants), subject to the same terms and conditions as the Secretary of Defense under section 2371 [1] of title 10 (other than subsections (b) and (f) of that section).

(2) In applying section 2371 [1] of title 10 to the Secretary under paragraph (1)—

(A) the term "basic" shall be replaced by the term "research";

(B) the term "applied" shall be replaced by the term "development"; and

(C) the terms "advanced research projects" and "advanced research" shall be replaced by the term "demonstration projects".

(3) The authority of the Secretary under paragraph (1) shall not be subject to—

(A) section 5908 of this title; or

(B) section 2182 of this title.

(4)(A) The Secretary shall use such competitive, merit-based selection procedures in entering into transactions under paragraph (1), as the Secretary determines in writing to be practicable.

(B) A transaction under paragraph (1) shall relate to a research, development, or demonstration project only if the Secretary determines in writing that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

(5) PROTECTION FROM DISCLOSURE.—

(A) IN GENERAL.—The Secretary may protect from disclosure any information developed pursuant to a transaction under paragraph (1) that would be protected from disclosure under section 552(b)(4) of title 5, if obtained from a person other than a Federal agency—

(i) for up to 5 years after the date on which the information is developed; or

(ii) for up to 30 years after the date on which the information is developed, if the Secretary determines that the nature of the technology under the transaction, including nuclear technology, could reasonably require an extended period of protection from disclosure to reach commercialization.

(B) EXTENSION DURING TERM.—The Secretary may extend the period of protection from disclosure during the term of any transaction described in subparagraph (A) in accordance with that subparagraph.

(6)(A) Not later than 90 days after August 8, 2005, the Secretary shall issue guidelines for transactions under paragraph (1).

(B) The guidelines shall be published in the Federal Register for public comment in accordance with rulemaking procedures of the Department.

(C) The Secretary shall not have authority to carry out transactions under paragraph (1) until the guidelines for transactions required under subparagraph (A) are final.

(7) The annual report of the head of an executive agency under section 2371(h) [1] of title 10 shall be submitted to Congress.

(8)(A) In this paragraph, the term "nontraditional Government contractor" has the meaning given the term "nontraditional defense contractor" in section 845(f) [1] of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

(B) Not later than 1 year after the date on which the final guidelines are published under paragraph (6), the Comptroller General of the United States shall submit to Congress a report describing—

(i) the use by the Department of authorities under this section, including the ability to attract nontraditional Government contractors; and

(ii) whether additional safeguards are necessary to carry out the authorities.

(9) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate.

(10) Notwithstanding any other provision of law, the authority to enter into transactions under

paragraph (1) shall terminate on September 30, 2030.

(Pub. L. 95–91, title VI, §646, Aug. 4, 1977, 91 Stat. 599; Pub. L. 103–160, div. C, title XXXI, §3154, Nov. 30, 1993, 107 Stat. 1952; Pub. L. 109–58, title X, §1007, Aug. 8, 2005, 119 Stat. 932; Pub. L. 111–383, div. C, title XXXI, §3118, Jan. 7, 2011, 124 Stat. 4514; Pub. L. 113–66, div. C, title XXXI, §3119, Dec. 26, 2013, 127 Stat. 1059; Pub. L. 116–260, div. Z, title IX, §9006(a), Dec. 27, 2020, 134 Stat. 2599; Pub. L. 117–58, div. D, title III, §40322(c), Nov. 15, 2021, 135 Stat. 1019.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2371 of title 10, referred to in subsec. (g)(1), (2), was renumbered section 4021 of title 10 by Pub. L. 116–283, §1841(b)(1), as amended by Pub. L. 117–81, §1701(u)(2)(B), Dec. 27, 2021, 135 Stat. 2151.

Section 2371(h) of title 10, referred to in subsec. (g)(7), was repealed by Pub. L. 113–291, div. A, title X, §1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.

Section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note), referred to in subsec. (g)(8)(A), was repealed by Pub. L. 114–92, div. A, title VIII, §815(c), Nov. 25, 2015, 129 Stat. 896. See section 4022(e) of Title 10, Armed Forces.

AMENDMENTS

2021—Subsec. (g)(5). Pub. L. 117–58 inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. (A) heading, struck out ", for up to 5 years after the date on which the information is developed," before "any information", substituted "agency—" and cls. (i) and (ii) for "agency.", and added subpar. (B).

2020—Subsec. (g)(10). Pub. L. 116–260 substituted "September 30, 2030" for "September 30, 2020".

2013—Subsec. (g)(10). Pub. L. 113–66 substituted "September 30, 2020" for "September 30, 2015".

2011—Subsec. (g)(10). Pub. L. 111–383 substituted "September 30, 2015" for "September 30, 2010".

2005—Subsec. (g). Pub. L. 109–58 added subsec. (g).

1993—Subsecs. (c) to (f). Pub. L. 103–160 added subsecs. (c) to (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117–58, including authority of Secretary of Labor, see section 18851 of this title.

SMALL BUSINESS CONTRACTING

Pub. L. 109–13, div. A, title VI, §6022(a), (b), May 11, 2005, 119 Stat. 285, provided that:

"(a) Not later than September 30, 2005, the Department of Energy and the Small Business Administration shall enter into a memorandum of understanding setting forth an appropriate methodology for measuring the achievement of the Department of Energy with respect to awarding contracts to small businesses.

"(b) The methodology set forth in the memorandum of understanding entered into under subsection (a) shall, at a minimum, include—

"(1) a method of counting the achievement of the Department of Energy in awards of—

"(A) prime contracts; and

"(B) subcontracts to small businesses awarded by Department of Energy management and operating, management and integration, and other facility management prime contractors; and

"(2) uniform criteria that could be used by prime contractors when measuring the value and number of subcontracts awarded to small businesses."

PILOT PROGRAM RELATING TO USE OF PROCEEDS OF DISPOSAL OR UTILIZATION OF CERTAIN DEPARTMENT OF ENERGY ASSETS

Pub. L. 105–85, div. C, title XXXI, §3138, Nov. 18, 1997, 111 Stat. 2039, which was formerly set out as a note under this section, was renumbered section 4833 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(13)(A)–(C), Nov. 24, 2003, 117 Stat. 1786, and classified to section 2813 of Title 50, War and National Defense, and was repealed and restated as section 6354 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1454, 1458.

CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 103–160, div. C, title XXXI, §3159, Nov. 30, 1993, 107 Stat. 1956, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(16), Oct. 5, 1994, 108 Stat. 2857, provided that:

"(a) GOAL.—Except as provided in subsection (c), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Energy in carrying out national security programs of the Department in each of fiscal years 1994 through 2000 for the total combined amount obligated for contracts and subcontracts entered into with—

"(1) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals;

"(2) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and

"(3) minority institutions (as defined in section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3))), which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1))).

"(b) AMOUNT.—(1) Except as provided in paragraph (2), the requirements of subsection (a) for any fiscal year apply to the combined total of the funds obligated for contracts entered into by the Department of Energy pursuant to competitive procedures for such fiscal year for purposes of carrying out national security programs of the Department.

"(2) In computing the combined total of funds under paragraph (1) for a fiscal year, funds obligated for such fiscal year for contracts for naval reactor programs shall not be included.

"(c) APPLICABILITY.—Subsection (a) does not apply—

"(1) to the extent to which the Secretary of Energy determines that compelling national security considerations require otherwise; and

"(2) if the Secretary notifies the Congress of such a determination and the reasons for the determination."

SMALL BUSINESS CONCERNS PARTICIPATION IN PROGRAMS FUNDED BY DEPARTMENT OF ENERGY ACT OF 1978—CIVILIAN APPLICATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 95–238, title II, §204, Feb. 25, 1978, 92 Stat. 59, as amended by Pub. L. 96–470, title II, §203(f), Oct. 19, 1980, 94 Stat. 2243, provided that:

"(a) In carrying out the programs for which funds are authorized by this Act [see Tables for classification], the Secretary of Energy shall provide a realistic and adequate opportunity for small business concerns to participate in such programs to the optimum extent feasible consistent with the size and nature of the projects and activities involved.

"(b) The Secretary of Energy shall submit annually to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding year, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicating the steps currently taken to assure such participation in the future. Such report shall also contain such information as may be required by section 308 of the Act of December 31, 1975 (42 U.S.C. 5878a; 89 Stat. 1074)."

[For termination, effective May 15, 2000, of reporting provisions in section 204(b) of Pub. L. 95–238, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 21st item on page 89 of House Document No. 103–7.]

[1] See References in Text note below.

§§7256a, 7256b. Transferred

EDITORIAL NOTES

CODIFICATION

Section 7256a, Pub. L. 99–145, title XV, §1534, Nov. 8, 1985, 99 Stat. 774; Pub. L. 100–180, div. C, title I, §3131(a), Dec. 4, 1987, 101 Stat. 1238, which related to costs not allowed under covered contracts, was renumbered section 4801 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1783, and was formerly classified to section 2781 of Title 50, War and National Defense. See section 6321 of Title 10, Armed Forces.

Section 7256b, Pub. L. 101–189, div. C, title XXXI, §3151, Nov. 29, 1989, 103 Stat. 1682, which related to the prohibition of bonuses to contractors operating defense nuclear facilities, was renumbered section 4802 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1783, and was formerly classified to section 2782 of Title 50, War and National Defense. See section 6322 of Title 10, Armed Forces.

§7256c. Milestone-based demonstration projects

(a) In general

Acting under section 7256(g) of this title, notwithstanding paragraph (10) of such section, the Secretary of Energy (in this section referred to as the "Secretary") may carry out demonstration projects as a milestone-based demonstration project that requires particular technical and financial milestones to be met before a participant is awarded grants by the Department through a competitive award process.

(b) Requirements

In carrying out milestone-based demonstration projects under the authority in paragraph (1), the Secretary shall, for each relevant project—

(1) request proposals from eligible entities, as determined by the Secretary, including—

(A) a business plan, that may include a plan for scalable manufacturing and a plan for addressing supply chain gaps;

(B) a plan for raising private sector investment; and

(C) proposed technical and financial milestones, including estimated project timelines and total costs; and

(2) award funding of a predetermined amount to projects that successfully meet proposed milestones under paragraph (1)(C) or for expenses deemed reimbursable by the Secretary, in accordance with terms negotiated for an individual award;

(3) require cost sharing in accordance with section 16352 of this title; and

(4) communicate regularly with selected eligible entities and, if the Secretary deems appropriate, exercise small amounts of flexibility for technical and financial milestones as projects mature.

(c) Awards

For the program established under subsection (a)—

(1) an award recipient shall be responsible for all costs until milestones are achieved, or reimbursable expenses are reviewed and verified by the Department; and

(2) should an awardee not meet the milestones described in subsection (a), the Secretary or their designee may end the partnership with an award recipient and use the remaining funds in the ended agreement for new or existing projects carried out under this section.

(d) Project management

In carrying out projects under this program and assessing the completion of their milestones in accordance with subsection (b), the Secretary shall consult with experts that represent diverse perspectives and professional experiences, including those from the private sector, to ensure a complete and thorough review.

(e) Report

In accordance with section 16391a(a) of this title, the Secretary shall report annually on any demonstration projects carried out using the authorities under this section.

(Pub. L. 116–260, div. Z, title IX, §9005, Dec. 27, 2020, 134 Stat. 2599.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Act of 2020, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7257. Acquisition, construction, etc., of laboratories, research and testing sites, etc.

The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

(Pub. L. 95–91, title VI, §647, Aug. 4, 1977, 91 Stat. 599.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

PILOT PROGRAM FOR PROJECT MANAGEMENT OVERSIGHT REGARDING DEPARTMENT OF ENERGY CONSTRUCTION PROJECTS

Pub. L. 106–65, div. C, title XXXI, §3175, Oct. 5, 1999, 113 Stat. 950, provided that:

"(a) REQUIREMENT.—(1) The Secretary of Energy shall carry out a pilot program on use of project management oversight services (in this section referred to as 'PMO services') for construction projects of the Department of Energy.

"(2) The purpose of the pilot program shall be to provide a basis for determining whether or not the use of competitively procured, external PMO services for those construction projects would permit the Department to control excessive costs and schedule delays associated with those construction projects that have large capital costs.

"(b) PROJECTS COVERED BY PROGRAM.—(1) Subject to paragraph (2), the Secretary shall carry out the pilot program at construction projects selected by the Secretary. The projects shall include one or more construction projects authorized pursuant to section 3101 [113 Stat. 915] and one construction project authorized pursuant to section 3102 [113 Stat. 917].

"(2) Each project selected by the Secretary shall be a project having capital construction costs anticipated to be not less than $25,000,000.

"(c) SERVICES UNDER PROGRAM.—The PMO services used under the pilot program shall include the following services:

"(1) Monitoring the overall progress of a project.

"(2) Determining whether or not a project is on schedule.

"(3) Determining whether or not a project is within budget.

"(4) Determining whether or not a project conforms with plans and specifications approved by the Department.

"(5) Determining whether or not a project is being carried out efficiently and effectively.

"(6) Any other management oversight services that the Secretary considers appropriate for purposes of the pilot program.

"(d) PROCUREMENT OF SERVICES UNDER PROGRAM.—Any PMO services procured under the pilot program shall be acquired—

"(1) on a competitive basis; and

"(2) from among commercial entities that—

"(A) do not currently manage or operate facilities at a location where the pilot program is being conducted; and

"(B) have an expertise in the management of large construction projects.

"(e) REPORT.—Not later than February 1, 2000, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program. The report shall include the assessment of the Secretary as to the feasibility and desirability of using PMO services for construction projects of the Department."

LABORATORY FUNDING PLAN

Pub. L. 106–60, title III, §310, Sept. 29, 1999, 113 Stat. 496, which provided that no funds in an Energy and Water Development Appropriations Act were to be expended after December 31 of each year under certain contracts unless the funds were expended pursuant to a Laboratory Funding Plan approved by the Secretary of Energy, and which also provided for directives, approval, and exceptions by the Secretary, was repealed by Pub. L. 108–7, div. D, title III, §310, Feb. 20, 2003, 117 Stat. 155.

TERMINATION OR CHANGES IN ACTIVITIES OF GOVERNMENT-OWNED AND CONTRACTOR-OPERATED FACILITIES, NATIONAL LABORATORIES, ETC.; REPORTS BY SECRETARY OF ENERGY CONCERNING PROPOSALS PRIOR TO IMPLEMENTATION; CONTENTS; SUBMISSION DATE

Pub. L. 95–238, title I, §104(c), Feb. 25, 1978, 92 Stat. 53, provided that: "As part of the Department of Energy's responsibility to keep the Congress fully and currently informed, the Secretary shall make the following reports:

"(i) any proposal by the Secretary of the Department of Energy to terminate or make major changes in activities of the Government-owned and contractor-operated facilities, the national laboratories, energy research centers and the operations offices managing such laboratories, shall not be implemented until the Secretary transmits the proposal, together with all pertinent data, to the Committee on Science and Technology [now Committee on Science, Space, and Technology] of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and waits a period of thirty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report is received by such committees; and

"(ii) by January 31, 1978, the Secretary shall file a full and complete report on each such proposal which he has implemented, as described in the preceding paragraph, and any major program structure change with the Committee on Science and Technology [now Committee on Science, Space, and Technology] of the House of Representatives and the Committee on Energy and Natural Resources of the Senate."

§§7257a to 7257c. Transferred

EDITORIAL NOTES

CODIFICATION

Section 7257a, Pub. L. 101–510, div. C, title XXXI, §3132, Nov. 5, 1990, 104 Stat. 1832, which related to laboratory-directed research and development programs, was renumbered section 4811 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(6)(A)–(C), Nov. 24, 2003, 117 Stat. 1784, and was formerly classified to section 2791 of Title 50, War and National Defense. See section 6331 of Title 10, Armed Forces.

Section 7257b, Pub. L. 104–201, div. C, title XXXI, §3136(b), Sept. 23, 1996, 110 Stat. 2831; Pub. L. 107–314, div. D, title XLVIII, §4812(c), formerly Pub. L. 105–85, div. C, title XXXI, §3137(c), Nov. 18, 1997, 111 Stat. 2039, renumbered Pub. L. 108–136, div. C, title XXXI, §3141(k)(7)(A)(i)–(iii), Nov. 24, 2003, 117 Stat. 1784, which related to annual reports by the Secretary of Energy with respect to expenditures of the Department of Energy Laboratory Directed Research and Development Program, was renumbered section 4812A(b) of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(7)(B)(i)–(iii), Nov. 24, 2003, 117 Stat. 1784, 1785, and was formerly classified to section 2793 of Title 50, War and National Defense. See section 6336 of Title 10, Armed Forces.

Section 7257c, Pub. L. 105–85, div. C, title XXXI, §3137, Nov. 18, 1997, 111 Stat. 2038, which related to limitations on the use of funds for laboratory directed research and development purposes, was renumbered section 4812 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(7)(A)(i)–(iii), Nov. 24, 2003, 117 Stat. 1784, and was formerly classified to section 2792 of Title 50, War and National Defense. See section 6335 of Title 10, Armed Forces.

§7257d. Expanded research by Secretary of Energy

(a) Detection and identification research

(1) In general

In conjunction with the working group under section 247d–6(a) of this title, the Secretary of Energy and the Administrator of the National Nuclear Security Administration shall expand, enhance, and intensify research relevant to the rapid detection and identification of pathogens likely to be used in a bioterrorism attack or other agents that may cause a public health emergency.

(2) Authorized activities

Activities carried out under paragraph (1) may include—

(A) the improvement of methods for detecting biological agents or toxins of potential use in a biological attack and the testing of such methods under variable conditions;

(B) the improvement or pursuit of methods for testing, verifying, and calibrating new detection and surveillance tools and techniques; and

(C) carrying out other research activities in relevant areas.

(3) Report

Not later than 180 days after June 12, 2002, the Administrator of the National Nuclear Security Administration shall submit to the Committee on Energy and Natural Resources and the Committee on Armed Services of the Senate, and the Committee on Energy and Commerce and the Committee on Armed Services of the House of Representatives, a report setting forth the programs and projects that will be funded prior to the obligation of funds appropriated under subsection (b).

(b) Authorization

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary in each of fiscal years 2002 through 2006.

(Pub. L. 107–188, title I, §152, June 12, 2002, 116 Stat. 630.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7258. Facilities construction

(a) Employees and dependents stationed at remote locations

As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

(1) Emergency medical services and supplies;

(2) Food and other subsistence supplies;

(3) Messing facilities;

(4) Audio-visual equipment, accessories, and supplies for recreation and training;

(5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) Living and working quarters and facilities; and

(7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) Medical treatment at reasonable prices

The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

(Pub. L. 95–91, title VI, §648, Aug. 4, 1977, 91 Stat. 600.)

§7259. Use of facilities

(a) Facilities of United States and foreign governments

With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) Facilities under custody of Secretary

In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in section 102(3) of title 40.

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

(Pub. L. 95–91, title VI, §649, Aug. 4, 1977, 91 Stat. 600.)

EDITORIAL NOTES

CODIFICATION

In subsec. (b), "section 102(3) of title 40" substituted for "section 3(e) of the Federal Property and Administrative Services Act of 1949" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§7259a. Activities of Department of Energy facilities

(a) Research and activities on behalf of non-department persons and entities

(1) The Secretary of Energy may conduct research and other activities referred to in paragraph (2) at facilities of the Department of Energy on behalf of other departments and agencies of the Government, agencies of State and local governments, and private persons and entities.

(2) The research and other activities that may be conducted under paragraph (1) are those which the Secretary is authorized to conduct by law, including research and activities authorized under the following provisions of law:

(A) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(B) The Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.].

(C) The Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.).

(b) Charges

(1) The Secretary shall impose on the department, agency, or person or entity for which research and other activities are carried out under subsection (a) a charge for such research and activities in carrying out such research and activities, which shall include—

(A) the direct cost incurred in carrying out such research and activities; and

(B) the overhead cost, including site-wide indirect costs, associated with such research and activities.

(2)(A) Subject to subparagraph (B), the Secretary shall also impose on the department, agency, or person or entity concerned a Federal administrative charge (which includes any depreciation and imputed interest charges) in an amount not to exceed 3 percent of the full cost incurred in carrying out the research and activities concerned.

(B) The Secretary may waive the imposition of the Federal administrative charge required by subparagraph (A) in the case of research and other activities conducted on behalf of small business concerns, institutions of higher education, non-profit entities, and State and local governments.

(3) Not later than 2 years after October 17, 1998, the Secretary shall terminate any waiver of charges under section 33 of the Atomic Energy Act of 1954 (42 U.S.C. 2053) that were made before such date, unless the Secretary determines that such waiver should be continued.

(c) Pilot program of reduced facility overhead charges

(1) The Secretary may, with the cooperation of participating contractors of the contractor-operated facilities of the Department, carry out a pilot program under which the Secretary and such contractors reduce the facility overhead charges imposed under this section for research and other activities conducted under this section.

(2) The Secretary shall carry out the pilot program at contractor-operated facilities selected by the Secretary in consultation with the contractors concerned.

(3) The Secretary shall determine the facility overhead charges to be imposed under the pilot program at a facility based on a joint review by the Secretary and the contractor for the facility of all items included in the overhead costs of the facility in order to determine which items are appropriately incurred as facility overhead charges by the contractor in carrying out research and other activities at such facility under this section.

(4) The Secretary shall commence carrying out the pilot program under this subsection not later than October 1, 1999, and shall terminate the pilot program on September 30, 2003.

(5) Not later than January 31, 2003, the Secretary shall submit to Congress an interim report on the results of the pilot program under this subsection. The report shall include any recommendations for the extension or expansion of the pilot program, including the establishment of multiple rates of overhead charges for various categories of persons and entities seeking research and other activities in contractor-operated facilities of the Department.

(d) Applicability with respect to user fee practice

This section does not apply to the practice of the Department of Energy with respect to user fees at Department facilities.

(Pub. L. 105–261, div. C, title XXXI, §3137, Oct. 17, 1998, 112 Stat. 2248.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a)(2)(A), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (a)(2)(B), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, which is classified principally to chapter 73 (§5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (a)(2)(C), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7260. Field offices

The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him.

(Pub. L. 95–91, title VI, §650, Aug. 4, 1977, 91 Stat. 601.)

§7261. Acquisition of copyrights, patents, etc.

The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

(Pub. L. 95–91, title VI, §651, Aug. 4, 1977, 91 Stat. 601.)

§7261a. Protection of sensitive technical information

(a) Property rights in inventions and discoveries; timely determination; reports to Congressional committees

(1) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a)(ii) or (iv) of title 35, or pursuant to section 2182 of this title or section 5908 of this title in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy and the contractor requests waiver of any or all of the Government's property rights, the Secretary of Energy may decide to waive the Government's rights and assign the rights in such invention or discovery.

(2) Such decision shall be made within 150 days after the date on which a complete request for waiver of such rights has been submitted to the Secretary by the contractor. For purposes of this

paragraph, a complete request includes such information, in such detail and form, as the Secretary by regulation prescribes as necessary to allow the Secretary to take into consideration the matters described in subsection (b) in making the decision.

(3) If the Secretary fails to make the decision within such 150-day period, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate, within 10 days after the end of the 150-day period, a report on the reasons for such failure. The submission of such report shall not relieve the Secretary of the requirement to make the decision under this section. The Secretary shall, at the end of each 30-day period after submission of the first report during which the Secretary continues to fail to make the decision required by this section, submit another report on the reasons for such failure to the committees listed in this paragraph.

(b) Matters to be considered

In making a decision under this section, the Secretary shall consider, in addition to the applicable policies of section 2182 of this title or subsections (c) and (d) of section 5908 of this title—

(1) whether national security will be compromised;

(2) whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(3) whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(4) whether failure to assert such a claim will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(Pub. L. 99–661, div. C, title I, §3131, Nov. 14, 1986, 100 Stat. 4062; Pub. L. 100–180, div. C, title I, §3135(a), Dec. 4, 1987, 101 Stat. 1240.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 and also as part of the National Defense Authorization Act for Fiscal Year 1987, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–180 designated existing provisions as par. (1), struck out at end "Such decision shall be made within a reasonable time (which shall usually be six months from the date of the request by the contractor for assignment of such rights).", and added pars. (2) and (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. C, title I, §3135(b), Dec. 4, 1987, 101 Stat. 1241, provided that: "Paragraphs (2) and (3) of section 3131(a) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 [subsec. (a)(2), (3) of this section] (as added by subsection (a)) shall apply with respect to waiver requests submitted by contractors under that section after March 1, 1988."

§7261b. Technology transfer to small businesses

(1) The Secretary of Energy shall establish a program to facilitate and encourage the transfer of technology to small businesses and shall issue guidelines relating to the program not later than May 1, 1993.

(2) For the purposes of this section, the term "small business" means a business concern that meets the applicable size standards prescribed pursuant to section 632(a) of title 15.

(Pub. L. 102–484, div. C, title XXXI, §3135(b), Oct. 23, 1992, 106 Stat. 2641.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7261c. Technology partnerships ombudsman

(a) Appointment of ombudsman

The Secretary of Energy shall direct the director of each national laboratory of the Department of Energy, and may direct the director of each facility under the jurisdiction of the Department of Energy, to appoint a technology partnership ombudsman to hear and help resolve complaints from outside organizations regarding the policies and actions of each such laboratory or facility with respect to technology partnerships (including cooperative research and development agreements), patents, and technology licensing.

(b) Qualifications

An ombudsman appointed under subsection (a) shall be a senior official of the national laboratory or facility who is not involved in day-to-day technology partnerships, patents, or technology licensing, or, if appointed from outside the laboratory or facility, function as such a senior official.

(c) Duties

Each ombudsman appointed under subsection (a) shall—

(1) serve as the focal point for assisting the public and industry in resolving complaints and disputes with the national laboratory or facility regarding technology partnerships, patents, and technology licensing;

(2) promote the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low-cost resolution of complaints and disputes, when appropriate; and

(3) report quarterly on the number and nature of complaints and disputes raised, along with the ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information, to—

(A) the Secretary;

(B) the Administrator for Nuclear Security;

(C) the Director of the Office of Dispute Resolution of the Department of Energy; and

(D) the employees of the Department responsible for the administration of the contract for the operation of each national laboratory or facility that is a subject of the report, for consideration in the administration and review of that contract.

(Pub. L. 106–404, §11, Nov. 1, 2000, 114 Stat. 1749.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Technology Transfer Commercialization Act of 2000, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7262. Repealed. Pub. L. 104–206, title V, §502, Sept. 30, 1996, 110 Stat. 3002

Section, Pub. L. 95–91, title VI, §652, Aug. 4, 1977, 91 Stat. 601, authorized Secretary to accept gifts, bequests, and devises of property for purpose of aiding or facilitating work of Department.

EDITORIAL NOTES

CODIFICATION

Pub. L. 104–206, which directed the repeal of 42 U.S.C. 7262, was executed by repealing section 652 of Pub. L. 95–91, which was classified to this section, to reflect the probable intent of Congress.

§7263. Capital fund

The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

(Pub. L. 95–91, title VI, §653, Aug. 4, 1977, 91 Stat. 601.)

§7264. Seal of Department

The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

(Pub. L. 95–91, title VI, §654, Aug. 4, 1977, 91 Stat. 602.)

§7265. Regional Energy Advisory Boards

(a) Establishment; membership

The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

(b) Observers

Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act [42 U.S.C. 3181 et seq.] shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.

(c) Recommendations of Board

Each Board established pursuant to subsection (a) may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.

(d) Notice of reasons not to adopt recommendations

If any Regional Advisory Board makes specific recommendations pursuant to subsection (c), the Secretary shall, if such recommendations are not adopted in the implementation of the program, notify the Board in writing of his reasons for not adopting such recommendations.

(Pub. L. 95–91, title VI, §655, Aug. 4, 1977, 91 Stat. 602.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Public Works and Economic Development Act, referred to in subsec. (b), is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552. Title V of the Public Works and Economic Development Act was classified generally to subchapter V (§3181 et seq.) of chapter 38 of this title prior to repeal by Pub. L. 97–35, title XVIII, §1821(a)(8), Aug. 13, 1981, 95 Stat. 766. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§7266. Designation of conservation officers

The Secretary of Defense, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of the Interior, the United States Postal Service, and the Administrator of General Services shall each designate one Assistant Secretary or Assistant Administrator, as the case may be, as the principal conservation officer of such Department or of the Administration. Such designated principal conservation officer shall be principally responsible for planning and implementation of energy conservation programs by such Department or Administration and principally responsible for coordination with the Department of Energy with respect to energy matters. Each agency, Department or Administration required to designate a principal conservation officer pursuant to this section shall periodically inform the Secretary of the identity of such conservation officer, and the Secretary shall periodically publish a list identifying such officers.

(Pub. L. 95–91, title VI, §656, Aug. 4, 1977, 91 Stat. 602.)

§7267. Annual report

The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following October 1, 1977, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the

information required by section 774 of title 15, section 6325(c) of this title, section 10224(c) of this title, section 5877 of this title, and section 5914 [1] of this title, and shall include:

(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, including a comprehensive summary of data pertaining to all fuel and energy needs of residents of the United States residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within such areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities;

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to increase efficiency; and further such summary shall include a description of the activities the Department is performing in support of environmental, social, economic and institutional, biomedical, physical and safety research, development, demonstration, and monitoring activities necessary to guarantee that technological programs, funded by the Department, are undertaken in a manner consistent with and capable of maintaining or improving the quality of the environment and of mitigating any undesirable environmental and safety impacts;

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal/State, and local governments and nongovernmental entities to achieve the purposes of this chapter;

(6) a summary of cooperative and voluntary efforts that have been mobilized to promote conservation and recycling, together with plans for such efforts in the succeeding fiscal year, and recommendations for changes in laws and regulations needed to encourage more conservation and recycling by all segments of the Nation's populace;

(7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

(8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or controlled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

(Pub. L. 95–91, title VI, §657, Aug. 4, 1977, 91 Stat. 603; Pub. L. 104–66, title I, §1052(g), Dec. 21, 1995, 109 Stat. 718.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 5914 of this title, referred to in text, was omitted from the Code.

This chapter, referred to in par. (5), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91

Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1995—Pub. L. 104–66 inserted "section 6325(c) of this title, section 10224(c) of this title," after "section 774 of title 15," in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 3rd item on page 88 identifies a reporting provision which, as subsequently amended, is contained in this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

[1] *See References in Text note below.*

§7268. Leasing report

The Secretary of the Interior shall submit to the Congress not later than one year after August 4, 1977, a report on the organization of the leasing operations of the Federal Government, together with any recommendations for reorganizing such functions may deem necessary or appropriate.

(Pub. L. 95–91, title VI, §658, Aug. 4, 1977, 91 Stat. 604.)

§7269. Transfer of funds

The Secretary, when authorized in an appropriation Act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

(Pub. L. 95–91, title VI, §659, Aug. 4, 1977, 91 Stat. 604.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

COSTS OF DEFINED BENEFIT PENSION PLANS FOR CONTRACTOR EMPLOYEES

Pub. L. 111–85, title III, §308, Oct. 28, 2009, 123 Stat. 2872, provided that:

"(a) In any fiscal year in which the Secretary of Energy determines that additional funds are needed to reimburse the costs of defined benefit pension plans for contractor employees, the Secretary may transfer not more than 1 percent from each appropriation made available in this and subsequent Energy and Water Development Appropriation Acts to any other appropriation available to the Secretary in the same Act for such reimbursements.

"(b) Where the Secretary recovers the costs of defined benefit pension plans for contractor employees through charges for the indirect costs of research and activities at facilities of the Department of Energy, if the indirect costs attributable to defined benefit pension plan costs in a fiscal year are more than charges in fiscal year 2008, the Secretary shall carry out a transfer of funds under this section.

"(c) In carrying out a transfer under this section, the Secretary shall use each appropriation made available to the Department in that fiscal year as a source for the transfer, and shall reduce each appropriation by an equal percentage, except that appropriations for which the Secretary determines there exists a need for additional funds for pension plan costs in that fiscal year, as well as appropriations made available for the

Power Marketing Administrations, the title XVII [probably means title XVII of Pub. L. 109–58 (42 U.S.C. 16511 et seq.)] loan guarantee program, and the Federal Energy Regulatory Commission, shall not be subject to this requirement.

"(d) Each January, the Secretary shall report to the Committees on Appropriations of the House of Representatives and the Senate on the state of defined benefit pension plan liabilities in the Department for the preceding year.

"(e) This transfer authority does not apply to supplemental appropriations, and is in addition to any other transfer authority provided in this or any other Act. The authority provided under this section shall expire on September 30, 2015.

"(f) The Secretary shall notify the Committees on Appropriations of the House of Representatives and the Senate in writing not less than 30 days in advance of each transfer authorized by this section."

§7269a. Repealed. Pub. L. 109–289, div. B, title II, §20319, as added Pub. L. 110–5, §2, Feb. 15, 2007, 121 Stat. 21.

Section, Pub. L. 102–377, title III, §302, Oct. 2, 1992, 106 Stat. 1339, authorized transfer of funds between appropriations for Department of Energy activities.

§7269b. Transfer of unexpended appropriation balances

The unexpended balances of prior appropriations provided for activities in this Act or subsequent Energy and Water Development Appropriations Acts may on and after October 2, 1992, be transferred to appropriation accounts for such activities established pursuant to this title.[1] Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

(Pub. L. 102–377, title III, §303, Oct. 2, 1992, 106 Stat. 1339.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 102–377, Oct. 2, 1992, 106 Stat. 1332. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

[1] *See References in Text note below.*

§7269c. Funding for Department of Energy activities not included in Fossil Energy account

In this Act and future Acts, up to 4 percent of program direction funds available to the National Energy Technology Laboratory may be used to support Department of Energy activities not included in this Fossil Energy account: *Provided further,* That in this Act and future Acts, the salaries for Federal employees performing research and development activities at the National Energy Technology Laboratory can continue to be funded from any appropriate DOE program accounts.

(Pub. L. 110–161, div. C, title III, Dec. 26, 2007, 121 Stat. 1958.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is div. C of Pub. L. 110–161, Dec. 26, 2007, 121 Stat. 1937, known as the Energy and Water Development and Related Agencies Appropriations Act, 2008. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section appears under the headings "Department of Energy", "Energy Programs", and "Fossil Energy Research and Development" in title III of div. C of Pub. L. 110–161. It was enacted as part of the Energy and Water Development and Related Agencies Appropriations Act, 2008, and also as part of the Consolidated Appropriations Act, 2008, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7270. Authorization of appropriations

Appropriations to carry out the provisions of this chapter shall be subject to annual authorization.

(Pub. L. 95–91, title VI, §660, Aug. 4, 1977, 91 Stat. 604.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7270a. Guards for Strategic Petroleum Reserve facilities

Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act [42 U.S.C. 6231 et seq.]) or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities, may—

(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and

(2) arrest without warrant any person for an offense against the United States—

(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

(i) has committed or is committing a felony; and

(ii) is in or is fleeing from the immediate area of the felony; and

(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

(Pub. L. 95–91, title VI, §661, as added Pub. L. 100–531, §1(a), Oct. 25, 1988, 102 Stat. 2652.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871. Part B of title I of the Act is classified generally to part B (§6231 et seq.) of subchapter I of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§7270b. Trespass on Strategic Petroleum Reserve facilities

(a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231–6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.

(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than $5,000, imprisonment for not more than one year, or both.

(Pub. L. 95–91, title VI, §662, as added Pub. L. 100–531, §1(a), Oct. 25, 1988, 102 Stat. 2652.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871. Part B of title I of the Act is classified generally to part B (§6231 et seq.) of subchapter I of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§7270c. Annual assessment and report on vulnerability of facilities to terrorist attack

(a) The Secretary shall, on an annual basis, conduct a comprehensive assessment of the vulnerability of Department facilities to terrorist attack.

(b) Not later than January 31 each year, the Secretary shall submit to Congress a report on the assessment conducted under subsection (a) during the preceding year. Each report shall include the results of the assessment covered by such report, together with such findings and recommendations as the Secretary considers appropriate.

(Pub. L. 95–91, title VI, §663, as added Pub. L. 107–107, div. C, title XXXI, §3154(a), Dec. 28, 2001, 115 Stat. 1377.)

§7271. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 95–509, title II, §208, Oct. 24, 1978, 92 Stat. 1779, which related to single annual requests by the Secretary for authorizations of appropriations for programs involving the common defense and security of the United States, was renumbered section 4731 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(j)(7), Nov. 24, 2003, 117 Stat. 1782, and was classified to section 2771 of Title 50, War and National Defense, prior to repeal by Pub. L. 112–239, div. C, title XXXI, §3131(u)(1), Jan. 2, 2013, 126 Stat. 2184.

§7271a. Repealed. Pub. L. 105–85, div. C, title XXXI, §3152(h), Nov. 18, 1997, 111 Stat. 2042

Section, Pub. L. 101–189, div. C, title XXXI, §3143, Nov. 29, 1989, 103 Stat. 1681, related to major

Department of Energy national security programs.

§7271b. Repealed. Pub. L. 106–65, div. C, title XXXII, §3294(f), Oct. 5, 1999, 113 Stat. 970

Section, Pub. L. 104–201, div. C, title XXXI, §3155, Sept. 23, 1996, 110 Stat. 2841, related to requirement for annual five-year budget for national security programs of Department of Energy.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

§7271c. Repealed. Pub. L. 105–85, div. C, title XXXI, §3152(b), Nov. 18, 1997, 111 Stat. 2042

Section, Pub. L. 104–201, div. C, title XXXI, §3156, Sept. 23, 1996, 110 Stat. 2841, related to requirements for Department of Energy weapons activities budgets for fiscal years after fiscal year 1997.

§§7271d to 7273a. Transferred

EDITORIAL NOTES

CODIFICATION

Section 7271d, Pub. L. 107–314, div. C, title XXXI, §3143, Dec. 2, 2002, 116 Stat. 2733, which related to requirements for specific funding requests for new or modified nuclear weapons, was renumbered section 4209 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(e)(10), Nov. 24, 2003, 117 Stat. 1759, and was formerly classified to section 2529 of Title 50, War and National Defense. See section 6120 of Title 10, Armed Forces.

Section 7272, Pub. L. 96–540, title II, §210, Dec. 17, 1980, 94 Stat. 3202, which prohibited the use of funds for purposes related to the licensing of defense activities or facilities of the Department of Energy by the Nuclear Regulatory Commission, was renumbered section 4103 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(d)(4)(A)–(C)(ii), Nov. 24, 2003, 117 Stat. 1757, and was formerly classified to section 2513 of Title 50, War and National Defense. See section 6106 of Title 10, Armed Forces.

Section 7273, Pub. L. 96–540, title II, §211, Dec. 17, 1980, 94 Stat. 3203, which related to restrictions on the use of funds to pay penalties under the Clean Air Act, was renumbered section 4722 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(j)(5)(A)–(C)(ii), Nov. 24, 2003, 117 Stat. 1781, 1782, and was formerly classified to section 2762 of Title 50, War and National Defense. See section 6302 of Title 10, Armed Forces.

Section 7273a, Pub. L. 99–661, div. C, title I, §3132, Nov. 14, 1986, 100 Stat. 4063, which related to restrictions on the use of funds to pay penalties under environmental laws, was renumbered section 4721 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(j)(4)(A)–(C), Nov. 24, 2003, 117 Stat. 1781, and was formerly classified to section 2761 of Title 50, War and National Defense. See section 6301 of Title 10, Armed Forces.

§7273b. Security investigations

(1) No funds appropriated to the Department of Energy may be obligated or expended for the conduct of an investigation by the Department of Energy or any other Federal department or agency for purposes of determining whether to grant a security clearance to an individual or a facility unless the Secretary of Energy determines both of the following:

(A) That a current, complete investigation file is not available from any other department or agency of the Federal government with respect to that individual or facility.

(B) That no other department or agency of the Federal government is conducting an investigation with respect to that individual or facility that could be used as the basis for determining whether to grant the security clearance.

(2) For purposes of paragraph (1)(A), a current investigation file is a file on an investigation that has been conducted within the past five years.

(Pub. L. 101–510, div. C, title XXXI, §3104(d), Nov. 5, 1990, 104 Stat. 1828.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7273c. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 105–85, div. C, title XXXI, §3133, Nov. 18, 1997, 111 Stat. 2036; Pub. L. 105–261, div. A, title X, §1069(b)(3), div. C, title XXXI, §3131, Oct. 17, 1998, 112 Stat. 2136, 2246, which related to international cooperative stockpile stewardship, was renumbered section 4301 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(f)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1762, and was classified to section 2561 of Title 50, War and National Defense, prior to repeal by Pub. L. 111–84, div. C, title XXXI, §3117(a), Oct. 28, 2009, 123 Stat. 2709.

§7274. Environmental impact statements relating to defense facilities of Department of Energy

(1) The Secretary may not proceed with the preparation of an environmental impact statement relating to the construction or operation of a defense facility of the Department of Energy if the estimated cost of preparing such statement exceeds $250,000 unless—

(A) the Secretary has notified the Committees on Armed Services of the Senate and the House of Representatives of his intent to prepare such statement and a period of thirty days has expired after the date on which such notice was received by such committees; or

(B) the Secretary has received from each such committee, before the expiration of such thirty-day period, a written notice that the committee agrees with the decision of the Secretary regarding the preparation of such statement.

(2) The provisions of paragraph (1) shall not apply in the case of any environmental impact statement on which the Secretary began preparation before December 4, 1981.

(Pub. L. 97–90, title II, §212(b), Dec. 4, 1981, 95 Stat. 1171.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1982, and not as part of the Department of Energy Organization Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE REPORT REQUIREMENT

Pub. L. 101–510, div. C, title XXXI, §3133, Nov. 5, 1990, 104 Stat. 1832, directed Secretary of Energy, not later than 30 days after the end of each quarter of fiscal years 1991 and 1992, to submit to Congress a brief report on Department of Energy's compliance with National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), which was to contain a brief description of each proposed action to be taken by the Department of Energy, the environmental impact of which was not clearly insignificant, and a description of the steps taken or proposed to be taken by the Department of Energy to assess the environmental impact of the proposed action, and if the Secretary found that the proposed action of the Department of Energy would have no significant impact, the Secretary was to include the rationale for that determination.

§§7274a to 7274d. Transferred

EDITORIAL NOTES

CODIFICATION

Section 7274a, Pub. L. 101–189, div. C, title XXXI, §3141, Nov. 29, 1989, 103 Stat. 1679; Pub. L. 105–85, div. C, title XXXI, §3152(g), Nov. 18, 1997, 111 Stat. 2042, which related to a defense waste cleanup technology program, was renumbered section 4406 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(g)(7)(A)–(C), Nov. 24, 2003, 117 Stat. 1765, and was formerly classified to section 2586 of Title 50, War and National Defense. See section 6176 of Title 10, Armed Forces.

Section 7274b, Pub. L. 101–189, div. C, title XXXI, §3156, Nov. 29, 1989, 103 Stat. 1683, which related to the submission of reports in connection with permanent closures of Department of Energy defense nuclear facilities, was renumbered section 4422 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(g)(12)(A)–(C), Nov. 24, 2003, 117 Stat. 1766, and was formerly classified to section 2602 of Title 50, War and National Defense. See section 6191 of Title 10, Armed Forces.

Section 7274c, Pub. L. 101–510, div. C, title XXXI, §3134, Nov. 5, 1990, 104 Stat. 1833, which related to the submission of reports on environmental restoration expenditures, was renumbered section 4407 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(g)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1765, and was formerly classified to section 2587 of Title 50, War and National Defense. See section 6178 of Title 10, Armed Forces.

Section 7274d, Pub. L. 102–190, div. C, title XXXI, §3131, Dec. 5, 1991, 105 Stat. 1571, which related to worker protection at nuclear weapons facilities, was renumbered section 4641 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(i)(12)(A)–(C), Nov. 24, 2003, 117 Stat. 1779, and was formerly classified to section 2731 of Title 50, War and National Defense. See section 6261 of Title 10, Armed Forces.

§7274e. Scholarship and fellowship program for environmental restoration and waste management

(a) Establishment

The Secretary of Energy shall conduct a scholarship and fellowship program for the purpose of enabling individuals to qualify for employment in environmental restoration and waste management positions in the Department of Energy. The scholarship and fellowship program shall be known as the "Marilyn Lloyd Scholarship and Fellowship Program".

(b) Eligibility

To be eligible to participate in the scholarship and fellowship program, an individual must—

(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]);

(2) be pursuing a program of education that leads to an appropriate higher education degree in a

qualifying field of study, as determined by the Secretary;

(3) sign an agreement described in subsection (c);

(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

(5) meet such other requirements as the Secretary prescribes.

(c) Agreement

An agreement between the Secretary and a participant in the scholarship and fellowship program established under this section shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Secretary's agreement to provide the participant with educational assistance for a specified number of school years (not exceeding 5) during which the participant is pursuing a program of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

(2) The participant's agreement (A) to accept such educational assistance, (B) to maintain enrollment and attendance in the program of education until completed, (C) while enrolled in such program, to maintain satisfactory academic progress as prescribed by the institution of higher education in which the participant is enrolled, and (D) after completion of the program of education, to serve as a full-time employee in an environmental restoration or waste management position in the Department of Energy for a period of 12 months for each school year or part thereof for which the participant is provided a scholarship or fellowship under the program established under this section.

(d) Repayment

(1) Any person participating in a scholarship or fellowship program established under this section shall agree to pay to the United States the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), if the person—

(A) does not complete the course of education as agreed to pursuant to subsection (c), or completes the course of education but declines to serve in a position in the Department of Energy as agreed to pursuant to subsection (c); or

(B) is voluntarily separated from service or involuntarily separated for cause from the Department of Energy before the end of the period for which the person has agreed to continue in the service of the Department of Energy.

(2) If an employee fails to fulfill his agreement to pay to the Government the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), a sum equal to the amount of the educational assistance (plus such interest) is recoverable by the Government from the person or his estate by—

(A) in the case of a person who is an employee, setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(B) such other method as is provided by law for the recovery of amounts owing to the Government.

(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) For purposes of repayment under this section, the total amount of educational assistance provided to a person under the program shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

(e) Preference for cooperative education students

In evaluating applicants for award of scholarships and fellowships under the program, the Secretary of Energy may give a preference to an individual who is enrolled in, or accepted for enrollment in, an educational institution that has a cooperative education program with the

Department of Energy.

(f) Coordination of benefits

A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the student for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(g) Award of scholarships and fellowships

(1) Subject to paragraph (2), the Secretary shall award at least 20 scholarships (for undergraduate students) and 20 fellowships (for graduate students) during fiscal year 1992.

(2) The requirement to award 20 scholarships and 20 fellowships under paragraph (1) applies only to the extent there is a sufficient number of applicants qualified for such awards.

(h) Report to Congress

Not later than January 1, 1993, the Secretary of Energy shall submit to Congress a report on activities undertaken under the program and recommendations for future activities under the program.

(i) Funding

Of the funds authorized to be appropriated pursuant to section 3101(9)(B), $1,000,000 may be used for the purpose of carrying out this section.

(Pub. L. 102–190, div. C, title XXXI, §3132, Dec. 5, 1991, 105 Stat. 1572; Pub. L. 103–337, div. C, title XXXI, §3156(b)(1), Oct. 5, 1994, 108 Stat. 3092; Pub. L. 105–244, title I, §102(a)(13)(F), Oct. 7, 1998, 112 Stat. 1620.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 3101(9)(B), referred to in subsec. (i), is section 3101(9)(B) of Pub. L. 102–190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1564, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–244 substituted "section 101 of the Higher Education Act of 1965" for "section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))".

1994—Subsec. (a). Pub. L. 103–337 inserted at end "The scholarship and fellowship program shall be known as the 'Marilyn Lloyd Scholarship and Fellowship Program'."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. C, title XXXI, §3156(b)(2), Oct. 5, 1994, 108 Stat. 3092, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on January 3, 1995."

§7274f. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 102–190, div. C, title XXXI, §3134, Dec. 5, 1991, 105 Stat. 1575, which related to the Defense Environmental Restoration and Waste Management Account, was renumbered section 4401 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(g)(2), Nov. 24, 2003, 117 Stat. 1764, and was formerly classified to section 2581 of Title 50, War and National Defense. See section 6171 of Title 10, Armed Forces.

§7274g. Environmental restoration and waste management five-year plan and budget reports

(a) Five-year plan

(1) Not later than September 1 of each year, the Secretary of Energy shall issue a plan for environmental restoration and waste management activities to be conducted, during the five-year period beginning on October 1 of the next calendar year, at all facilities owned or operated by the Department of Energy except defense nuclear facilities. The plan also shall contain a description of environmental restoration and waste management activities conducted during the fiscal year in which the plan is submitted and of such activities to be conducted during the fiscal year beginning on October 1 of the same calendar year. Such five-year plan shall be designed to complete environmental restoration at all such Department of Energy facilities not later than the year 2019.

(2) The Secretary shall prepare each annual five-year plan in a preliminary form at least four months before the date on which that plan is required to be issued under paragraph (1). The preliminary plan shall contain the matters referred to in paragraph (4) (other than the matters referred to in subparagraph (J) of that paragraph). The Secretary shall provide the preliminary plan to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public for coordination, review, and comment.

(3) At the same time the Secretary issues an annual five-year plan under paragraph (1), the Secretary shall submit the plan to the President and Congress, publish a notice of the issuance of the plan in the Federal Register, and make the plan available to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public.

(4) The annual five-year plan, and the actions and other matters contained in the plan, shall be in accordance with all laws, regulations, permits, orders, and agreements. The plan shall include, with respect to the Department of Energy facilities required by paragraph (1) to be covered by the plan, the following matters:

(A) A description of the actions, including identification of specific projects, necessary to maintain or achieve compliance with Federal, State, or local environmental laws, regulations, permits, orders, and agreements.

(B) A description of the actions, including identification of specific projects, to be taken at each Department of Energy facility in order to implement environmental restoration activities planned for each such facility.

(C) A description of research and development activities for the expeditious and efficient environmental restoration of such facilities.

(D) A description of the technologies and facilities necessary to carry out the environmental restoration activities.

(E) A description of the waste management activities, including identification of specific projects, necessary to continue to operate the Department of Energy facilities or to decontaminate and decommission the facilities, as the case may be.

(F) A description of research and development activities for waste management.

(G) A description of the technologies and facilities necessary to carry out the waste

management activities.

(H) A description of activities and practices that the Secretary is undertaking or plans to undertake to minimize the generation of waste.

(I) The estimated costs of, and personnel required for, each project, action, or activity contained in the plan.

(J) A description of the respects in which the plan differs from the preliminary form of that plan issued pursuant to paragraph (2), together with the reasons for any differences.

(K) A discussion of the implementation of the preceding annual five-year plan.

(L) Such other matters as the Secretary finds appropriate and in the public interest.

(5) The Secretary shall consult with the Administrator of the Environmental Protection Agency, Governors and Attorneys General of affected States, and appropriate representatives of affected Indian tribes in the preparation of the plan and the preliminary form of the plan pursuant to paragraphs (1) and (2). The Secretary shall include as an appendix to the plan (A) all comments submitted on the preliminary form of the plan by the Administrator, Governors and Attorneys General of affected States, and affected Indian tribes, and (B) a summary of comments submitted by the public.

(6) The first annual five-year plan issued pursuant to this section shall be issued in 1992.

(b) Treatment of plans under section 4332

The development and adoption of any part of any plan (including any preliminary form of any such plan) under subsection (a) shall not be considered a major Federal action for the purposes of subparagraph (C), (E), or (F) of section 4332(2) of this title. Nothing in this subsection shall affect the Department of Energy's ongoing preparation of a programmatic environmental impact statement on environmental restoration and waste management.

(c) Grants

The Secretary of Energy is authorized to award grants to, and enter into cooperative agreements with, affected States and affected Indian tribes to assist such States and tribes in participating in the development of the annual five-year plan (including the preliminary form of such plan).

(d) Funding

Of the funds authorized to be appropriated pursuant to section 3103, $20,000,000 may be used for the purpose of carrying out subsection (c).

(e) Budget reports

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the President shall submit to Congress a description of proposed activities and funding levels contained in the annual five-year plan (issued, pursuant to subsection (a)(1), in the year preceding the year in which the budget is submitted to Congress) that are not included in the budget or are included in the budget in a different form or at a different funding level, together with the reasons for such differences.

(Pub. L. 102–190, div. C, title XXXI, §3135, Dec. 5, 1991, 105 Stat. 1575; Pub. L. 103–337, div. C, title XXXI, §3160(a), Oct. 5, 1994, 108 Stat. 3094.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3103, referred to in subsec. (d), is section 3103 of Pub. L. 102–190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1566, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337, §3160(a)(1), substituted "all facilities owned or operated by the Department of Energy except defense nuclear facilities" for "(A) defense nuclear facilities and (B) all other facilities owned or operated by the Department of Energy" in first sentence and inserted "such" after "restoration at all" in third sentence.

Subsec. (a)(4). Pub. L. 103–337, §3160(a)(2), substituted "The plan shall include, with respect to the Department of Energy facilities required by paragraph (1) to be covered by the plan, the following matters:" for "The plan shall contain the following matters:" in introductory provisions.

Subsec. (a)(6), (7). Pub. L. 103–337, §3160(a)(3), (4), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: "The Secretary shall include in the annual five-year plan issued in 1992 a discussion of the feasibility and need, if any, for the establishment of a contingency fund in the Department of Energy to provide funds necessary to meet the requirements in environmental laws, to remove an immediate threat to worker or public health and safety, to prevent or improve a condition where postponement of activity would lead to deterioration of the environment, and to undertake additional environmental restoration activities at Department of Energy defense nuclear facilities that are not provided for in the budgets for fiscal years in which it is necessary to meet such requirements or undertake such activities."

STATUTORY NOTES AND RELATED SUBSIDIARIES

PUBLIC PARTICIPATION IN PLANNING

Pub. L. 103–337, div. C, title XXXI, §3160(e), Oct. 5, 1994, 108 Stat. 3095, which was formerly set out as a note under this section, was renumbered section 4408 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(g)(9), Nov. 24, 2003, 117 Stat. 1765, and classified to section 2588 of Title 50, War and National Defense, and was repealed and restated as section 6179 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1393, 1458.

§§7274h, 7274i. Transferred

EDITORIAL NOTES

CODIFICATION

Section 7274h, Pub. L. 102–484, div. C, title XXXI, §3161, Oct. 23, 1992, 106 Stat. 2644; Pub. L. 103–337, div. A, title X, §1070(c)(2), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(7)(A), (f)(6)(A)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 107–107, div. A, title X, §1048(h)(1), Dec. 28, 2001, 115 Stat. 1229, which related to the Department of Energy's workforce restructuring plan for defense nuclear facilities, was renumbered section 4604 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(i)(5)(A)–(C), Nov. 24, 2003, 117 Stat. 1777, and was formerly classified to section 2704 of Title 50, War and National Defense. See section 6243 of Title 10, Armed Forces.

Section 7274i, Pub. L. 102–484, div. C, title XXXI, §3162, Oct. 23, 1992, 106 Stat. 2646, which related to a program to monitor Department of Energy workers exposed to hazardous and radioactive substances, was renumbered section 4643 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(i)(14)(A)–(C), Nov. 24, 2003, 117 Stat. 1779, 1780, and was formerly classified to section 2733 of Title 50, War and National Defense. See section 6263 of Title 10, Armed Forces.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SEMIANNUAL REPORT TO CONGRESS OF LOCAL IMPACT ASSISTANCE

Pub. L. 105–85, div. C, title XXXI, §3153(f), Nov. 18, 1997, 111 Stat. 2044, which was formerly set out as a note under section 7274h of this title, was renumbered section 4851 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(15)(A)–(C)(ii), Nov. 24, 2003, 117 Stat. 1786, and was classified to section 2821 of Title 50, War and National Defense, prior to repeal by Pub. L. 112–239, div. C, title XXXI, §3131(q)(2), Jan. 2, 2013, 126 Stat. 2183.

§7274j. Repealed. Pub. L. 108–136, div. C, title XXXI, §3141(m)(2), Nov. 24,

2003, 117 Stat. 1787

Section, Pub. L. 102–484, div. C, title XXXI, §3163, Oct. 23, 1992, 106 Stat. 2647; Pub. L. 104–106, div. A, title XV, §1504(c)(2), Feb. 10, 1996, 110 Stat. 514, related to definitions for purposes of former sections 7274h to 7274j of this title.

§7274k. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 103–160, div. C, title XXXI, §3153, Nov. 30, 1993, 107 Stat. 1950; Pub. L. 103–337, div. C, title XXXI, §3160(b)–(d), Oct. 5, 1994, 108 Stat. 3094; Pub. L. 104–201, div. C, title XXXI, §3152, Sept. 23, 1996, 110 Stat. 2839; Pub. L. 105–85, div. C, title XXXI, §3160, Nov. 18, 1997, 111 Stat. 2048, which related to baseline environmental management reports, was renumbered section 4404 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(g)(5), Nov. 24, 2003, 117 Stat. 1765, and was classified to former section 2584 of Title 50, War and National Defense, prior to repeal by Pub. L. 113–66, div. C, title XXXI, §3146(e)(5), Dec. 26, 2013, 127 Stat. 1076.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REQUIREMENT TO DEVELOP FUTURE USE PLANS FOR ENVIRONMENTAL MANAGEMENT PROGRAMS

Pub. L. 104–201, div. C, title XXXI, §3153, Sept. 23, 1996, 110 Stat. 2839, which was formerly set out as a note under this section, was renumbered section 4402 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(g)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1764, and classified to section 2582 of Title 50, War and National Defense, and was repealed and restated as section 6173 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1386, 1458.

ACCELERATED SCHEDULE FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACTIVITIES

Pub. L. 104–106, div. C, title XXXI, §3156, Feb. 10, 1996, 110 Stat. 625, which was formerly set out as a note under this section, was renumbered section 4405 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(g)(6)(A)–(C), Nov. 24, 2003, 117 Stat. 1765, and classified to section 2585 of Title 50, War and National Defense, and was repealed and restated as section 6175 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1388, 1458.

§7274*l*. Authority to transfer certain Department of Energy property

(a) Authority to transfer

(1) Notwithstanding any other provision of law, the Secretary of Energy may transfer, for consideration, all right, title, and interest of the United States in and to the property referred to in subsection (b) to any person if the Secretary determines that such transfer will mitigate the adverse economic consequences that might otherwise arise from the closure of a Department of Energy facility.

(2) The amount of consideration received by the United States for a transfer under paragraph (1) may be less than the fair market value of the property transferred if the Secretary determines that the receipt of such lesser amount by the United States is in accordance with the purpose of such transfer under this section.

(3) The Secretary may require any additional terms and conditions with respect to a transfer of property under paragraph (1) that the Secretary determines appropriate to protect the interests of the United States.

(b) Covered property

Property referred to in subsection (a) is the following property of the Department of Energy that is located at a Department of Energy facility to be closed or reconfigured:

(1) The personal property and equipment at the facility that the Secretary determines to be excess to the needs of the Department of Energy.

(2) Any personal property and equipment at the facility (other than the property and equipment referred to in paragraph (1)) the replacement cost of which does not exceed an amount equal to 110 percent of the costs of relocating the property or equipment to another facility of the Department of Energy.

(Pub. L. 103–160, div. C, title XXXI, §3155, Nov. 30, 1993, 107 Stat. 1953.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7274*l*–1. Vesting title in property interests related to energy development, demonstration, and deployment programs funded under Department of Energy appropriations

(a) Hereafter, for energy development, demonstration, and deployment programs funded under Department of Energy appropriations (other than those for the National Nuclear Security Administration and Office of Environmental Management) provided for fiscal year 2022, the current fiscal year, or any fiscal year thereafter (including by Acts other than appropriations Acts), the Secretary may vest unconditional title or other property interests acquired under projects in an award recipient, subrecipient, or successor in interest, including the United States, at the conclusion of the award period for projects receiving an initial award in fiscal year 2022 or later.

(b) Upon vesting unconditional title pursuant to subsection (a) in an award recipient, subrecipient, or successor in interest other than the United States, the United States shall have no liabilities or obligations to the property.

(c) For purposes of this section, the term "property interest" does not include any interest in intellectual property developed using funding provided under a project.

(Pub. L. 117–328, div. D, title III, §309, Dec. 29, 2022, 136 Stat. 4645.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy and Water Development and Related Agencies Appropriations Act, 2023, and also as part of the Consolidated Appropriations Act, 2023, and not as part of the Department of Energy Organization Act which comprises this chapter.

§§7274m to 7274*o*. Transferred

EDITORIAL NOTES

CODIFICATION

Section 7274m, Pub. L. 103–337, div. C, title XXXI, §3163, Oct. 5, 1994, 108 Stat. 3097, which related to safety oversight and enforcement at defense nuclear facilities, was renumbered section 4642 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(i)(13)(A)–(C), Nov. 24, 2003, 117 Stat. 1779, and was formerly classified to section 2732 of Title 50, War and National Defense. See section 6262 of Title 10, Armed Forces.

Section 7274n, Pub. L. 104–201, div. C, title XXXI, §3143, Sept. 23, 1996, 110 Stat. 2836, which related to projects to accelerate closure activities at defense nuclear facilities, was renumbered section 4421 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(g)(11)(A)–(C), Nov. 24, 2003, 117 Stat. 1766, and was classified to former section 2601 of Title 50, War and National Defense, prior to repeal by Pub. L. 113–66, div. C, title XXXI, §3146(e)(10), Dec. 26, 2013, 127 Stat. 1077.

Section 7274o, Pub. L. 104–201, div. C, title XXXI, §3159, Sept. 23, 1996, 110 Stat. 2842; Pub. L. 105–85, div. A, title XIII, §1305(c), (d), Nov. 18, 1997, 111 Stat. 1954; Pub. L. 106–65, div. C, title XXXI, §3163(f), Oct. 5, 1999, 113 Stat. 946, which related to reports on critical difficulties at nuclear weapons laboratories and nuclear weapons production plants, was renumbered section 4213 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(e)(14), Nov. 24, 2003, 117 Stat. 1760, and was formerly classified to section 2533 of Title 50, War and National Defense. See section 6124 of Title 10, Armed Forces.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SUBMITTAL OF ANNUAL REPORT ON STATUS OF SECURITY FUNCTIONS AT NUCLEAR WEAPONS FACILITIES

Pub. L. 105–85, div. C, title XXXI, §3162, Nov. 18, 1997, 111 Stat. 2049, as amended by Pub. L. 106–65, div. C, title XXXI, §3142(h)(2), Oct. 5, 1999, 113 Stat. 934, which was formerly set out as a note under section 7274m of this title, was renumbered section 4506 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(7)(A)–(C), Nov. 24, 2003, 117 Stat. 1773, and classified to section 2657 of Title 50, War and National Defense, and was repealed and restated as section 6226 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1405, 1458.

EMPLOYEE INCENTIVES FOR EMPLOYEES AT CLOSURE PROJECT FACILITIES

Pub. L. 106–398, §1 [div. C, title XXXI, §3136], Oct. 30, 2000, 114 Stat. 1654, 1654A–458, which was formerly set out as a note under section 7274n of this title, was renumbered section 4603 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(i)(4)(A)–(C), Nov. 24, 2003, 117 Stat. 1777, and was classified to section 2703 of Title 50, War and National Defense, prior to repeal by Pub. L. 113–66, div. C, title XXXI, §3146(g)(3)(A), Dec. 26, 2013, 127 Stat. 1079.

§7274p. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 105–85, div. A, title XIII, §1305, Nov. 18, 1997, 111 Stat. 1952, which related to advice to President and Congress regarding safety, security, and reliability of United States nuclear weapons stockpile, was renumbered section 4218 of div. D of Pub. L. 107–314 by Pub. L. 112–239, div. C, title XXXI, §3164(a)(1)–(3), Jan. 2, 2013, 126 Stat. 2206, and was formerly classified to section 2538 of Title 50, War and National Defense. See section 6126 of Title 10, Armed Forces.

§7274q. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 105–85, div. C, title XXXI, §3158, Nov. 18, 1997, 111 Stat. 2046; Pub. L. 108–7, div. D, title V, §506, Feb. 20, 2003, 117 Stat. 158, which related to transfers of real property at certain Department of Energy facilities, was renumbered section 4831 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(11), Nov. 24, 2003, 117 Stat. 1785, and was formerly classified to section 2811 of Title 50, War and National Defense. See section 6351 of Title 10, Armed Forces.

§7274r. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 108–7, div. D, title III, §308, Feb. 20, 2003, 117 Stat. 154, which related to research, development, and demonstration activities with respect to engineering and manufacturing capabilities at covered nuclear weapons production plants, was transferred and is listed in a similar provisions note under the heading Activities at Covered Nuclear Weapons Facilities under former section 2812 of Title 50, War and National Defense.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ENGINEERING AND MANUFACTURING RESEARCH, DEVELOPMENT, AND DEMONSTRATION BY PLANT MANAGERS OF CERTAIN NUCLEAR WEAPONS PRODUCTION PLANTS

Pub. L. 106–398, §1 [div. C, title XXXI, §3156], Oct. 30, 2000, 114 Stat. 1654, 1654A–467, which was formerly set out as a note under this section, was renumbered section 4832 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(12), Nov. 24, 2003, 117 Stat. 1785, and classified to section 2812 of Title 50, War and National Defense, and was repealed and restated as section 6352 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1454, 1458.

§7274s. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 107–314, div. C, title XXXI, §3141, Dec. 2, 2002, 116 Stat. 2730, which related to annual assessments and reports to the President and Congress regarding the condition of the United States nuclear weapons stockpile, was renumbered section 4205 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(e)(6)(A)–(C), Nov. 24, 2003, 117 Stat. 1759, and was formerly classified to section 2525 of Title 50, War and National Defense. See section 6117 of Title 10, Armed Forces.

§7275. Definitions

As used in sections 7275 to 7276c of this title:

(1) The term "Administrator" means the Administrator of the Western Area Power Administration.

(2) The term "integrated resource planning" means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

(3) The term "least cost option" means an option for providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.

(4) The term "long-term firm power service contract" means any contract for the sale by

Western Area Power Administration of firm capacity, with or without energy, which is to be delivered over a period of more than one year.

(5) The terms "customer" or "customers" means any entity or entities purchasing firm capacity with or without energy, from the Western Area Power Administration under a long-term firm power service contract. Such terms include parent-type entities and their distribution or user members.

(6) For any customer, the term "applicable integrated resource plan" means the integrated resource plan approved by the Administrator under sections 7275 to 7276c of this title for that customer.

(Pub. L. 98–381, title II, §201, as added Pub. L. 102–486, title I, §114, Oct. 24, 1992, 106 Stat. 2799.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 7275, Pub. L. 98–381, title II, §201, Aug. 17, 1984, 98 Stat. 1340, related to energy conservation program of Western Area Power Administration, prior to the general amendment of title II of Pub. L. 98–381 by section 114 of Pub. L. 102–486.

§7276. Regulations to require integrated resource planning

(a) Regulations

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer purchasing electric energy under a long-term firm power service contract with the Western Area Power Administration to implement, within 3 years after October 24, 1992, integrated resource planning in accordance with the requirements of sections 7275 to 7276c of this title.

(b) Certain small customers

Notwithstanding subsection (a), for customers with total annual energy sales or usage of 25 Gigawatt Hours or less which are not members of a joint action agency or a generation and transmission cooperative with power supply responsibility, the Administrator may establish different regulations and apply such regulations to customers that the Administrator finds have limited economic, managerial, and resource capability to conduct integrated resource planning. The regulations under this subsection shall require such customers to consider all reasonable opportunities to meet their future energy service requirements using demand-side techniques, new renewable resources and other programs that will provide retail customers with electricity at the lowest possible cost, and minimize, to the extent practicable, adverse environmental effects.

(Pub. L. 98–381, title II, §202, as added Pub. L. 102–486, title I, §114, Oct. 24, 1992, 106 Stat. 2800.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 7276, Pub. L. 98–381, title II, §202, Aug. 17, 1984, 98 Stat. 1341, related to regulations of Western Area Power Administration, including amendment of regulations after notice and comment, evaluation of energy conservation programs, and allowance by Western for incorporation of elements of such programs, prior to the general amendment of title II of Pub. L. 98–381 by section 114 of Pub. L. 102–486.

§7276a. Technical assistance

The Administrator may provide technical assistance to customers to, among other things, conduct integrated resource planning, implement applicable integrated resource plans, and otherwise comply with the requirements of sections 7275 to 7276c of this title. Technical assistance may include publications, workshops, conferences, one-to-one assistance, equipment loans, technology and resource assessment studies, marketing studies, and other mechanisms to transfer information on energy efficiency and renewable energy options and programs to customers. The Administrator shall give priority to providing technical assistance to customers that have limited capability to conduct integrated resource planning.

(Pub. L. 98–381, title II, §203, as added Pub. L. 102–486, title I, §114, Oct. 24, 1992, 106 Stat. 2800.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7276b. Integrated resource plans

(a) Review by Western Area Power Administration

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to submit an integrated resource plan to the Administrator within 12 months after such regulations are amended. The regulation shall require a revision of such plan to be submitted every 5 years after the initial submission. The Administrator shall review the initial plan in accordance with a schedule established by the Administrator (which schedule will provide for the review of all initial plans within 24 months after such regulations are amended), and each revision thereof within 120 days after his receipt of the plan or revision and determine whether the customer has in the development of the plan or revision, complied with sections 7275 to 7276c of this title. Plan amendments may be submitted to the Administrator at any time and the Administrator shall review each such amendment within 120 days after receipt thereof to determine whether the customer in amending its plan has complied with sections 7275 to 7276c of this title. If the Administrator determines that the customer, in developing its plan, revision, or amendment, has not complied with the requirements of sections 7275 to 7276c of this title, the customer shall resubmit the plan at any time thereafter. Whenever a plan or revision or amendment is resubmitted the Administrator shall review the plan or revision or amendment within 120 days after his receipt thereof to determine whether the customer has complied with sections 7275 to 7276c of this title.

(b) Criteria for approval of integrated resource plans

The Administrator shall approve an integrated resource plan submitted as required under subsection (a) if, in developing the plan, the customer has:

(1) Identified and accurately compared all practicable energy efficiency and energy supply

resource options available to the customer.

(2) Included a 2-year action plan and a 5-year action plan which describe specific actions the customer will take to implement its integrated resource plan.

(3) Designated "least-cost options" to be utilized by the customer for the purpose of providing reliable electric service to its retail consumers and explained the reasons why such options were selected.

(4) To the extent practicable, minimized adverse environmental effects of new resource acquisitions.

(5) In preparation and development of the plan (and each revision or amendment of the plan) has provided for full public participation, including participation by governing boards.

(6) Included load forecasting.

(7) Provided methods of validating predicted performance in order to determine whether objectives in the plan are being met.

(8) Met such other criteria as the Administrator shall require.

(c) Use of other integrated resource plans

Where a customer or group of customers are implementing integrated resource planning under a program responding to Federal, State, or other initiatives, including integrated resource planning considered and implemented pursuant to section 2621(d) of title 16, in evaluating that customer's integrated resource plan under sections 7275 to 7276c of this title, the Administrator shall accept such plan as fulfillment of the requirements of sections 7275 to 7276c of this title to the extent such plan substantially complies with the requirements of sections 7275 to 7276c of this title.

(d) Compliance with integrated resource plans

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to fully comply with the applicable integrated resource plan and submit an annual report to the Administrator (in such form and containing such information as the Administrator may require) describing the customer's progress to the goals established in such plan. After the initial review under subsection (a) the Administrator shall periodically conduct reviews of a representative sample of applicable integrated resource plans and the customer's implementation of the applicable integrated resource plan to determine if the customers are in compliance with their plans. If the Administrator finds a customer out-of-compliance, the Administrator shall impose a surcharge under this section on all electric energy purchased by the customer from the Western Area Power Administration or reduce such customer's power allocation by 10 percent, unless the Administrator finds that a good faith effort has been made to comply with the approved plan.

(e) Enforcement

(1) No approved plan

If an integrated resource plan for any customer is not submitted before the date 12 months after the guidelines are amended as required under this section or if the plan is disapproved by the Administrator and a revised plan is not resubmitted by the date 9 months after the date of such disapproval, the Administrator shall impose a surcharge of 10 percent of the purchase price on all power obtained by that customer from the Western Area Power Administration after such date. The surcharge shall remain in effect until an integrated resource plan is approved for that customer. If the plan is not submitted for more than one year after the required date, the surcharge shall increase to 20 percent for the second year (or any portion thereof prior to approval of the plan) and to 30 percent thereafter until the plan is submitted or the contract for the purchase of power by such customer from the Western Area Power Administration terminates.

(2) Failure to comply with approved plan

After approval by the Administrator of an applicable integrated resource plan for any customer,

the Administrator shall impose a 10 percent surcharge on all power purchased by such customer from the Western Area Power Administration whenever the Administrator determines that such customer's activities are not consistent with the applicable integrated resource plan. The surcharge shall remain in effect until the Administrator determines that the customer's activities are consistent with the applicable integrated resource plan. The surcharge shall be increased to 20 percent if the customer's activities are out of compliance for more than one year and to 30 percent after more than 2 years, except that no surcharge shall be imposed if the customer demonstrates, to the satisfaction of the Administrator, that a good faith effort has been made to comply with the approved plan.

(3) Reduction in power allocation

In the case of any customer subject to a surcharge under paragraph (1) or (2), in lieu of imposing such surcharge the Administrator may reduce such customer's power allocation from the Western Area Power Administration by 10 percent. The Administrator shall provide by regulation the terms and conditions under which a power allocation terminated under this subsection may be reinstated.

(f) Integrated resource planning cooperatives

With the approval of the Administrator, customers within any State or region may form integrated resource planning cooperatives for the purposes of complying with sections 7275 to 7276c of this title, and such customers shall be allowed an additional 6 months to submit an initial integrated resource plan to the Administrator.

(g) Customers with more than 1 contract

If more than one long-term firm power service contract exists between the Administrator and a customer, only one integrated resource plan shall be required for that customer under sections 7275 to 7276c of this title.

(h) Program review

Within 1 year after January 1, 1999, and at appropriate intervals thereafter, the Administrator shall initiate a public process to review the program established by this section. The Administrator is authorized at that time to revise the criteria set forth in subsection (b) to reflect changes, if any, in technology, needs, or other developments.

(Pub. L. 98–381, title II, §204, as added Pub. L. 102–486, title I, §114, Oct. 24, 1992, 106 Stat. 2800.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7276c. Miscellaneous provisions

(a) Environmental impact statement

The provisions of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] shall apply to actions of the Administrator implementing sections 7275 to 7276c of this title in the same manner and to the same extent as such provisions apply to other major Federal actions significantly affecting the quality of the human environment.

(b) Annual reports

The Administrator shall include in the annual report submitted by the Western Area Power Administration (1) a description of the activities undertaken by the Administrator and by customers under sections 7275 to 7276c of this title and (2) an estimate of the energy savings and renewable

resource benefits achieved as a result of such activities.

(c) State regulated investor-owned utilities

Any State regulated electric utility (as defined in section 2602(18) of title 16) shall be exempt from the provisions of sections 7275 to 7276c of this title.

(d) Rural Electrification Administration requirements

Nothing in sections 7275 to 7276c of this title shall require a customer to take any action inconsistent with a requirement imposed by the Rural Electrification Administration [1]

(Pub. L. 98–381, title II, §205, as added Pub. L. 102–486, title I, §114, Oct. 24, 1992, 106 Stat. 2803.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

[1] So in original. Probably should be followed by a period.

§7276d. Property protection program for power marketing administrations

The Administrators of the Western Area Power Administration, the Southwestern Power Administration, and the Southeastern Power Administration may each carry out programs to reduce vandalism, theft, and destruction of property that is under their jurisdiction.

(Pub. L. 107–78, §1, Nov. 28, 2001, 115 Stat. 808.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Department of Energy Organization Act which comprises this chapter.

§7276e. Provision of rewards

In carrying out a program under this section and section 7276d of this title, each Administrator referred to in section 7276d of this title is authorized to provide rewards (including cash rewards) to individuals who provide information or evidence leading to the arrest and prosecution of individuals causing damage to, or loss of, Federal property under their jurisdiction. The amount of any one such reward paid to any individual may not exceed a value of $1,000.

(Pub. L. 107–78, §2, Nov. 28, 2001, 115 Stat. 808.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Department of Energy Organization Act which comprises this chapter.

§7276f. Western Area Power Administration; deposit and availability of discretionary offsetting collections

Notwithstanding section 3302 of title 31, section 825s of title 16, and section 392a of title 43, funds collected by the Western Area Power Administration from the sale of power and related services that are applicable to the repayment of the annual expenses of this account in this and subsequent fiscal years shall be credited to this account as discretionary offsetting collections for the sole purpose of funding such expenses, with such funds remaining available until expended: *Provided further*, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred (excluding purchase power and wheeling expenses).

(Pub. L. 111–85, title III, Oct. 28, 2009, 123 Stat. 2870.)

EDITORIAL NOTES

REFERENCES IN TEXT

"This account" and "this appropriation", referred to in text, mean funds appropriated under the heading " CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION" of title III of the Energy and Water Development and Related Agencies Appropriations Act, 2010, Pub. L. 111–85.

CODIFICATION

Section was enacted as part of the Energy and Water Development and Related Agencies Appropriations Act, 2010, and not as part of the Department of Energy Organization Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

PURCHASE POWER AND WHEELING EXPENSES

Pub. L. 113–76, div. D, title III, Jan. 17, 2014, 128 Stat. 171, provided: "That for purposes of this appropriation in this [Act] [div. D of Pub. L. 113–76, see Tables for classification] and subsequent Acts, purchase power and wheeling expenses includes the cost of voluntary purchases of power allowances in compliance with state greenhouse gas programs existing at the time of enactment of this Act [Jan. 17, 2014]."

§7276g. Western Area Power Administration; deposit and availability of funds related to Falcon and Amistad Dams

Notwithstanding the provisions of section 2 of the Act of June 18, 1954 (68 Stat. 255) as amended, and section 3302 of title 31, all funds collected by the Western Area Power Administration from the sale of power and related services from the Falcon and Amistad Dams that are applicable to the repayment of the annual expenses of the hydroelectric facilities of these Dams and associated Western Area Power Administration activities in this and subsequent fiscal years shall be credited to this account as discretionary offsetting collections for the sole purpose of funding such expenses, with such funds remaining available until expended: *Provided further*, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred.

(Pub. L. 111–85, title III, Oct. 28, 2009, 123 Stat. 2871.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2 of the Act of June 18, 1954 (68 Stat. 255), referred to in text, probably means section 2 of act June 18, 1954, ch. 310, 68 Stat. 256, which is not classified to the Code.

"This account" and "this appropriation", referred to in text, mean funds appropriated under the heading " FALCON AND AMISTAD OPERATING AND MAINTENANCE FUND" of title III of the Energy and Water Development and Related Agencies Appropriations Act, 2010, Pub. L. 111–85.

CODIFICATION

Section was enacted as part of the Energy and Water Development and Related Agencies Appropriations Act, 2010, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7277. Report concerning review of United States coal imports

(a) In general

The Energy Information Administration shall issue a report quarterly, and provide an annual summary of the quarterly reports to the Congress, on the status of United States coal imports. Such quarterly reports may be published as a part of the Quarterly Coal Report published by the Energy Information Administration.

(b) Contents

Each report required by this section shall—

(1) include current and previous year data on the quantity, quality (including heating value, sulfur content, and ash content), and delivered price of all coals imported by domestic electric utility plants that imported more than 10,000 tons during the previous calendar year into the United States;

(2) identify the foreign nations exporting the coal, the domestic electric utility plants receiving coal from each exporting nation, the domestically produced coal supplied to such plants, and the domestic coal production, by State, displaced by the imported coal;

(3) identify (to the extent allowed under disclosure policy), at regional and State levels of aggregation, transportation modes and costs for delivery of imported coal from the exporting country port of origin to the point of consumption in the United States; and

(4) specifically highlight and analyze any significant trends of unusual variations in coal imports.

(c) Date of reports

The first report required by this section shall be submitted to Congress in March 1986. Subsequent reports shall be submitted within 90 days after the end of each quarter.

(d) Limitation

Information and data required for the purpose of this section shall be subject to the law regarding the collection and disclosure of such data.

(Pub. L. 99–58, title II, §202, July 2, 1985, 99 Stat. 107.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Policy and Conservation Amendments Act of 1985, and also as part of the National Coal Imports Reporting Act of 1985, and not as part of the Department of Energy Organization Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 99–58, title II, §201, July 2, 1985, 99 Stat. 107, provided that: "This title [enacting this section and provisions set out as a note below] may be cited as the 'National Coal Imports Reporting Act of 1985'."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section requiring submittal of reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 14th item on page 90 of House Document No. 103–7.

ANALYSIS OF UNITED STATES COAL IMPORT MARKET; REPORT BY SECRETARY OF ENERGY TO CONGRESS

Pub. L. 99–58, title II, §203, July 2, 1985, 99 Stat. 108, provided that:

"(a) IN GENERAL.—The Secretary of Energy shall, through the Energy Information Administration, conduct a comprehensive analysis of the coal import market in the United States and report the findings of such analysis to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives, within nine months of the date of enactment of this Act [July 2, 1985].

"(b) CONTENTS.—The report required by this section shall—

"(1) contain a detailed analysis of potential domestic markets for foreign coals, by producing nation, between 1985 and 1995;

"(2) identify potential domestic consuming sectors of imported coal and evaluate the magnitude of any potential economic disruptions for each impacted State, including analysis of direct and indirect employment impact in the domestic coal industry and resulting income loss to each State;

"(3) identify domestically produced coal that potentially could be replaced by imported coal;

"(4) identify contractual commitments of domestic utilities expiring between 1985 and 1995 and describe spot buying practices of domestic utilities, fuel cost patterns, plant modification costs required to burn foreign coals, proximity of navigable waters to utilities, demand for compliance coal, availability of less expensive purchased power from Canada, and State and local considerations;

"(5) evaluate increased coal consumption by domestic electric utilities resulting from increased power sales and analyze the potential coal import market represented by this increased coal consumption, including consumption by existing coal-fired plants, new coal-fired plants projected up to the year 1995, and plants planning to convert to coal by 1995;

"(6) identify existing authorities available to the Federal Government relating to coal imports, assess the potential impact of exercising each of these authorities, and describe executive branch plans and strategies to address coal imports;

"(7) identify and characterize the coal export policies of all major coal exporting nations, including the United States, Australia, Canada, Colombia, Poland, and South Africa, with specific analysis of—

"(A) direct or indirect Government subsidies to coal exporters;

"(B) health, safety, and environmental regulations imposed on each coal producer; and

"(C) trade policies relating to coal exports;

"(8) evaluate the excess capacity of foreign producers, potential development of new export-oriented coal mines in foreign nations, operating costs of foreign coal mines, capacity of ocean vessels to transport foreign coal, and constraints on importing coal into the United States because of port and harbor availability;

"(9) identify specifically the participation of all United States corporations involved in mining and exporting coal from foreign nations; and

"(10) identify the policies governing coal imports of all coal-importing industrialized nations (including the United States, Japan, and European nations) by considering such factors as import duties or tariffs, import quotas, and other governmental restrictions or trade policies impacting coal imports."

§7278. Availability of appropriations for Department of Energy for transportation, uniforms, security, and price support and loan guarantee programs; transfer of funds; acceptance of contributions

Appropriations for the Department of Energy under this title [1] in this and subsequent Energy and Water Development Appropriations Acts, on and after October 2, 1992, shall be available for hire of passenger motor vehicles; hire, maintenance and operation of aircraft; purchase, repair and cleaning of uniforms; and reimbursement to the General Services Administration for security guard services. From these appropriations, transfers of sums may on and after October 2, 1992, be made to other agencies of the United States Government for the performance of work for which this appropriation is made. None of the funds made available to the Department of Energy under this Act or subsequent

Energy and Water Development Appropriations Acts shall be used to implement or finance authorized price support or loan guarantee programs unless specific provision is made for such programs in an appropriation Act. The Secretary is authorized on and after October 2, 1992, to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, private, or foreign.

(Pub. L. 102–377, title III, §301, Oct. 2, 1992, 106 Stat. 1338.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 102–377, Oct. 2, 1992, 106 Stat. 1332. For complete classification of title III to Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

[1] *See References in Text note below.*

§7278a. Availability of funds for energy and water development for multiyear contracts, grants, or cooperative agreements of $1,000,000 or less

Notwithstanding section 301(c) of this Act, none of the funds made available under the heading "Department of Energy—Energy Programs—Science" in this or any subsequent Energy and Water Development and Related Agencies appropriations Act for any fiscal year may be used for a multiyear contract, grant, cooperative agreement, or Other Transaction Agreement of $1,000,000 or less unless the contract, grant, cooperative agreement, or Other Transaction Agreement is funded for the full period of performance as anticipated at the time of award.

(Pub. L. 114–113, div. D, title III, §306, Dec. 18, 2015, 129 Stat. 2418.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 301(c) of this Act, referred to in text, means section 301(c) of Pub. L. 114–113, div. D, title III, Dec. 18, 2015, 129 Stat. 2416, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Energy and Water Development and Related Agencies Appropriations Act, 2016, and also as part of the Consolidated Appropriations Act, 2016, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7279. Identification in budget materials of amounts for certain Department of Energy pension obligations

The Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for a fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) specific identification, as a budgetary line item, of the amounts required to meet the pension obligations of the Department of Energy for contractor employees at each facility of the Department of Energy operated using amounts authorized to be appropriated for the Department of Energy.

(Pub. L. 111–84, div. C, title XXXI, §3143, Oct. 28, 2009, 123 Stat. 2716.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2010, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7279a. Future-years energy program annual submission and budgeting

(a) Submission to Congress

The Secretary of Energy shall submit to Congress each year, at the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years energy program reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years energy program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years. A future-years energy program shall be included in the fiscal year 2014 budget submission to Congress and every fiscal year thereafter.

(b) Elements

Each future-years energy program shall contain the following:

(1) The estimated expenditures and proposed appropriations necessary to support programs, projects, and activities of the Secretary of Energy during the 5-fiscal year period covered by the program, expressed in a level of detail comparable to that contained in the budget submitted by the President to Congress under section 1105 of title 31.

(2) The estimated expenditures and proposed appropriations shaped by high-level, prioritized program and budgetary guidance that is consistent with the administration's policies and out year budget projections and reviewed by the Department of Energy's (DOE) senior leadership to ensure that the future-years energy program is consistent and congruent with previously established program and budgetary guidance.

(3) A description of the anticipated workload requirements for each DOE national laboratory during the 5-fiscal year period.

(c) Consistency in budgeting

(1) The Secretary of Energy shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary of Energy in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years energy program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the administration included pursuant to paragraph (5) of section 1105(a) of such title in the budget submitted to Congress under that section for any fiscal year.

(Pub. L. 112–74, div. B, title III, §304, Dec. 23, 2011, 125 Stat. 876.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy and Water Development and Related Agencies Appropriations Act, 2012, and also as part of the Consolidated Appropriations Act, 2012, and not as part of the Department of Energy Organization Act which comprises this chapter.

SUBCHAPTER VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

§7291. Transfer and allocations of appropriations and personnel

(a) Except as otherwise provided in this chapter, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this chapter, subject to section 1531 of title 31, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function [1] transferred by this chapter, personnel occupying those positions on October 1, 1977, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312–5316) on October 1, 1977, shall be subject to the provisions of section 7293 of this title.

(Pub. L. 95–91, title VII, §701, Aug. 4, 1977, 91 Stat. 605.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

In subsec. (a), "section 1531 of title 31" substituted for "section 202 of the Budget and Accounting Procedures Act of 1950 [31 U.S.C. 581c]" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

[1] *So in original. Probably should be "functions".*

§7292. Effect on personnel

(a) Full-time and part-time personnel holding permanent positions

Except as otherwise provided in this chapter, the transfer pursuant to this subchapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this subchapter shall not cause any such employee to be separated or reduced in grade or compensation for one year after August 4, 1977, except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be performing continuing functions may at the employee's option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of employees who exercise the option to be so converted.

(b) Person who held position compensated in accordance with chapter 53 of title 5

Any person who, on October 1, 1977, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is

appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

(c) Employees holding reemployment rights acquired under section 786 of title 15

Employees transferred to the Department holding reemployment rights acquired under section 786 of title 15 [1] or any other provision of law or regulation may exercise such rights only within one hundred twenty days from October 1, 1977, or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee.

(Pub. L. 95–91, title VII, §702, Aug. 4, 1977, 91 Stat. 605.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

This subchapter, referred to in subsec. (a), was in the original "this title" meaning title VII of Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 605, which enacted this subchapter and section 916 of Title 7, Agriculture, amended sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 to 5316 of Title 5, Government Organization and Employees, section 1701z–8 of Title 12, Banks and Banking, and sections 766, 790a, and 790d of Title 15, Commerce and Trade, repealed sections 2036 and 5818 of this title and sections 763, 768 and 786 of Title 15, enacted provisions set out as a note under 2201 of this title, and repealed provisions set out as a note under section 761 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Section 786 of title 15, referred to in subsec. (c), was repealed by Pub. L. 95–91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12026. REINSTATEMENT RIGHTS OF CERTAIN EMPLOYEES OF DEPARTMENT OF ENERGY

Ex. Ord. No. 12026, Dec. 5, 1977, 42 F.R. 61849, provided:

By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, the service of an employee of the Atomic Energy Commission or of the Energy Research and Development Administration pursuant to a Regular or Regular (Conditional) appointment, other than such service in an attorney position, who was transferred to the Department of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 *et seq*.) shall be considered as Career or Career-Conditional service, respectively, for purposes of eligibility for reinstatement in the competitive Civil Service.

JIMMY CARTER.

[1] *See References in Text note below.*

§7293. Agency terminations

Except as otherwise provided in this chapter, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this chapter, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein

which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall terminate.

(Pub. L. 95–91, title VII, §703, Aug. 4, 1977, 91 Stat. 606.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7294. Incidental transfers

The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this chapter, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this chapter, as he may deem necessary to accomplish the purposes of this chapter.

(Pub. L. 95–91, title VII, §704, Aug. 4, 1977, 91 Stat. 606.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7295. Savings provisions

(a) Orders, determinations, rules, etc., in effect prior to effective date of this chapter

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter to the Department or the Commission after August 4, 1977, and

(2) which are in effect on October 1, 1977,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Proceedings or applications for licenses, permits, etc., pending at effective date of this chapter; regulations

(1) The provisions of this chapter shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending on October 1, 1977, before any

department, agency, commission, or component thereof, functions of which are transferred by this chapter; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this chapter had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Suits commenced prior to effective date of this chapter

Except as provided in subsection (e)—

(1) the provisions of this chapter shall not affect suits commenced prior to October 1, 1977, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this chapter had not been enacted.

(d) Suits, actions, etc., commenced by or against any officer or agency or cause of action by or against any department or agency

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter.

(e) Suits with officers, departments, or agencies as parties

If, before October 1, 1977, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

(Pub. L. 95–91, title VIII, §705, Aug. 4, 1977, 91 Stat. 606.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7296. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, neither the remainder of this chapter nor the application of such provision to other persons or circumstances shall be affected thereby.

(Pub. L. 95–91, title VII, §706, Aug. 4, 1977, 91 Stat. 607.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter.

For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7297. Cross references

With respect to any functions transferred by this chapter and exercised after October 1, 1977, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this chapter vests such functions.

(Pub. L. 95–91, title VII, §707, Aug. 4, 1977, 91 Stat. 607.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7298. Presidential authority

Except as provided in subchapter IV, nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before October 1, 1977; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(Pub. L. 95–91, title VII, §708, Aug. 4, 1977, 91 Stat. 607.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7299. Transition

With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this chapter.

(Pub. L. 95–91, title VII, §711, Aug. 4, 1977, 91 Stat. 609.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7300. Report to Congress; effect on personnel

The Civil Service Commission shall, as soon as practicable but not later than one year after October 1, 1977, prepare and transmit to the Congress a report on the effects on employees of the reorganization under this chapter which shall include—

(1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this chapter;

(2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this chapter;

(3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;

(4) an estimate of the personnel costs associated with such reorganization;

(5) the effects of such reorganization on labor management relations; and

(6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

(Pub. L. 95–91, title VII, §712, Aug. 4, 1977, 91 Stat. 609.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in introductory provisions and pars. (1) and (2), was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Functions vested by statute in United States Civil Service Commission transferred to Director of Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§7301. Environmental impact statements

The transfer of functions under subchapters III and IV of this chapter shall not affect the validity of any draft environmental impact statement published before October 1, 1977.

(Pub. L. 95–91, title VII, §713, Aug. 4, 1977, 91 Stat. 610.)

SUBCHAPTER VIII—ENERGY PLANNING

§7321. National Energy Policy Plan

(a) Preparation by President and submission to Congress; formulation and review

The President shall—

(1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this subchapter referred to as a "proposed Plan") as provided in subsection (b);

(2) seek the active participation by regional, State, and local agencies and instrumentalities and

the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;

(3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.

(b) Biennial transmittal to Congress; contents

Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall—

(1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to satisfy projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environmental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;

(2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.

(c) Submission of report to Congress; contents

The President shall submit to the Congress with the proposed Plan a report which shall include—

(1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;

(2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

(3) an evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of the Plan.

(d) Consultation with consumers, small businesses, etc.

The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.

(Pub. L. 95–91, title VIII, §801, Aug. 4, 1977, 91 Stat. 610.)

EXECUTIVE DOCUMENTS

ESTABLISHING A QUADRENNIAL ENERGY REVIEW

Memorandum for the Heads of Executive Departments and Agencies

Memorandum of President of the United States, Jan. 9, 2014, 79 F.R. 2577, provided:

Affordable, clean, and secure energy and energy services are essential for improving U.S. economic productivity, enhancing our quality of life, protecting our environment, and ensuring our Nation's security. Achieving these goals requires a comprehensive and integrated energy strategy resulting from interagency dialogue and active engagement of external stakeholders. To help the Federal Government better meet this responsibility, I am directing the undertaking of a Quadrennial Energy Review.

The initial focus for the Quadrennial Energy Review will be our Nation's infrastructure for transporting, transmitting, and delivering energy. Our current infrastructure is increasingly challenged by transformations in energy supply, markets, and patterns of end use; issues of aging and capacity; impacts of climate change; and cyber and physical threats. Any vulnerability in this infrastructure may be exacerbated by the increasing interdependencies of energy systems with water, telecommunications, transportation, and emergency response systems. The first Quadrennial Energy Review Report will serve as a roadmap to help address these challenges.

The Department of Energy has a broad role in energy policy development and the largest role in implementing the Federal Government's energy research and development portfolio. Many other executive departments and agencies also play key roles in developing and implementing policies governing energy resources and consumption, as well as associated environmental impacts. In addition, non-Federal actors are crucial contributors to energy policies. Because most energy and related infrastructure is owned by private entities, investment by and engagement of the private sector is necessary to develop and implement effective policies. State and local policies; the views of nongovernmental, environmental, faith-based, labor, and other social organizations; and contributions from the academic and non-profit sectors are also critical to the development and implementation of effective energy policies.

An interagency Quadrennial Energy Review Task Force, which includes members from all relevant executive departments and agencies (agencies), will develop an integrated review of energy policy that integrates all of these perspectives. It will build on the foundation provided in my Administration's *Blueprint for a Secure Energy Future* of March 30, 2011, and *Climate Action Plan* released on June 25, 2013. The Task Force will offer recommendations on what additional actions it believes would be appropriate. These may include recommendations on additional executive or legislative actions to address the energy challenges and opportunities facing the Nation.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

SECTION 1. *Establishing the Quadrennial Energy Review Task Force*. (a) There is established the Quadrennial Energy Review Task Force (Task Force), to be co-chaired by the Director of the Office of Science and Technology Policy and the Director of the Domestic Policy Council, which shall include the heads of each of the following, or their designated representatives:

(i) the Department of State;
(ii) the Department of the Treasury;
(iii) the Department of Defense;
(iv) the Department of the Interior;
(v) the Department of Agriculture;
(vi) the Department of Commerce;
(vii) the Department of Labor;
(viii) the Department of Health and Human Services;
(ix) the Department of Housing and Urban Development;
(x) the Department of Transportation;
(xi) the Department of Energy;
(xii) the Department of Veterans Affairs;
(xiii) the Department of Homeland Security;
(xiv) the Office of Management and Budget;
(xv) the National Economic Council;
(xvi) the National Security Staff;
(xvii) the Council on Environmental Quality;
(xviii) the Council of Economic Advisers;

(xix) the Environmental Protection Agency;
(xx) the Small Business Administration;
(xxi) the Army Corps of Engineers;
(xxii) the National Science Foundation; and
(xxiii) such agencies and offices as the President may designate.

(b) The Co-Chairs may invite independent regulatory agencies with energy-related responsibilities, including the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission, to participate in the Task Force, as determined to be appropriate by those agencies.

(c) The Co-Chairs shall regularly convene and preside at meetings of the Task Force and shall determine its agenda. Under the direction of the Co-Chairs, the Task Force shall:

(i) gather ideas and advice from State and local governments, tribes, large and small businesses, universities, national laboratories, nongovernmental and labor organizations, consumers, and other stakeholders and interested parties; and

(ii) coordinate the efforts of agencies and offices related to the development of the Quadrennial Energy Review Report, as described in sections 1 and 2 of this memorandum.

(d) The Secretary of Energy shall provide support to the Task Force, including support for coordination activities related to the preparation of the Quadrennial Energy Review Report, policy analysis and modeling, and stakeholder engagement.

(e) The Task Force shall submit a Quadrennial Energy Review Report to the President every 4 years beginning with a report delivered by January 31, 2015. Intermediate reports and other material may be prepared by the Task Force as required by the President.

SEC. 2. *The Quadrennial Energy Review Report*. The Task Force shall establish integrated guidance to strengthen U.S. energy policy. Building on the *Blueprint for a Secure Energy Future* and the *Climate Action Plan*, and taking into consideration applicable laws and regulations, the Task Force shall prepare a Quadrennial Energy Review Report that:

(a) provides an integrated view of, and recommendations for, Federal energy policy in the context of economic, environmental, occupational, security, and health and safety priorities, with attention in the first report given to the challenges facing the Nation's energy infrastructures;

(b) reviews the adequacy, with respect to energy policy, of existing executive and legislative actions, and recommends additional executive and legislative actions as appropriate;

(c) assesses and recommends priorities for research, development, and demonstration programs to support key energy-innovation goals; and

(d) identifies analytical tools and data needed to support further policy development and implementation.

SEC. 3. *Outreach*. In order to gather information and recommendations and to provide for a transparent process in developing the Quadrennial Energy Review Report, the Task Force shall engage with State and local governments, tribes, large and small businesses, universities, national laboratories, nongovernmental and labor organizations, and other stakeholders and interested parties. The Task Force shall develop an integrated outreach strategy that relies on both traditional meetings and the use of information technology.

SEC. 4. *General Provisions*. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to any agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) Nothing in this memorandum shall be construed to require the disclosure of confidential business information or trade secrets, classified information, law enforcement sensitive information, or other information that must be protected in the interest of national security or public safety.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Director of the Office of Science and Technology Policy is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§7322. Congressional review

(a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the

House of Representatives.

(b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate.

(Pub. L. 95–91, title VIII, §802, Aug. 4, 1977, 91 Stat. 611.)

SUBCHAPTER IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

§7341. Effective date

The provisions of this chapter shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after August 4, 1977, (1) any of the officers provided for in subchapters II and IV of this chapter may be nominated and appointed, as provided in those subchapters, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 7295(b)(2) of this title at any time after August 4, 1977. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this chapter, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection [1] until such time as funds for that purpose are otherwise available.

(Pub. L. 95–91, title IX, §901, Aug. 4, 1977, 91 Stat. 612.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12009

Ex. Ord. No. 12009, Sept. 13, 1977, 42 F.R. 46267, which prescribed Oct. 1, 1977, as the effective date of this chapter, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

[1] *So in original.*

§7342. Interim appointments

In the event that one or more officers required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on October 1, 1977, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was such an officer immediately prior to October 1, 1977, to act in such office until the office is filled as provided in this chapter. While so acting such persons shall receive compensation at the rates provided by this chapter for the respective offices in which they act.

(Pub. L. 95–91, title IX, §902, Aug. 4, 1977, 91 Stat. 612.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SUBCHAPTER X—SUNSET PROVISIONS

§7351. Submission of comprehensive review

Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Senate and House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 7270 of this title, for such programs for the fiscal year beginning October 1, 1982.

(Pub. L. 95–91, title X, §1001, Aug. 4, 1977, 91 Stat. 612.)

§7352. Contents of review

Each comprehensive review prepared for submission under section 7351 of this title shall include—

(1) the name of the component of the Department responsible for administering the program;

(2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;

(3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

(7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(8) a statement of the number and types of beneficiaries or persons served by the program;

(9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(10) an assessment of the impact of the program on the Nation's health and safety;

(11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;

(12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;

(13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and

(14) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

(Pub. L. 95–91, title X, §1002, Aug. 4, 1977, 91 Stat. 612.)

SUBCHAPTER XI—ENERGY TARGETS

§§7361 to 7364. Repealed. Pub. L. 102–486, title XVI, §1606, Oct. 24, 1992, 106 Stat. 3003

Section 7361, Pub. L. 96–294, title III, §301, June 30, 1980, 94 Stat. 712, related to preparation of energy targets.

Section 7362, Pub. L. 96–294, title III, §302, June 30, 1980, 94 Stat. 712, related to congressional consideration.

Section 7363, Pub. L. 96–294, title III, §303, June 30, 1980, 94 Stat. 714, set out energy target form and definitions.

Section 7364, Pub. L. 96–294, title III, §304, June 30, 1980, 94 Stat. 715, set out general provisions regarding targets.

SUBCHAPTER XII—RENEWABLE ENERGY INITIATIVES

EDITORIAL NOTES

CODIFICATION

This subchapter was enacted as part of title IV of the Energy Security Act, which title is known as the Renewable Energy Resources Act of 1980, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7371. Statement of purpose

The purpose of this subchapter is to establish incentives for the use of renewable energy resources, to improve and coordinate the dissemination of information to the public with respect to renewable energy resources, to encourage the use of certain cost effective solar energy systems and conservation measures by the Federal Government, to establish a program for the promotion of local energy self-sufficiency, to broaden the existing program for accelerating the procurement and use of photovoltaic systems, and to provide further encouragement for the development of small hydroelectric power projects.

(Pub. L. 96–294, title IV, §402, June 30, 1980, 94 Stat. 715.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 96–294, June 30, 1980, 94 Stat. 715, known as the Renewable Energy Resources Act of 1980. For complete classification of title IV to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Section 401 of title IV Pub. L. 96–294 provided that: "This title [enacting this subchapter, amending sections 8255, 8271, and 8274 to 8276 of this title and sections 2705 and 2708 of Title 16, Conservation, and enacting a provision set out as a note under section 2701 of Title 16] may be cited as the 'Renewable Energy Resources Act of 1980'."

§7372. "Secretary" and "renewable energy resource" defined

For purposes of this subchapter—

(1) the term "Secretary" means the Secretary of Energy; and

(2) the term "renewable energy resource" means any energy resource which has recently originated in the sun, including direct and indirect solar radiation and intermediate solar energy forms such as wind, ocean thermal gradients, ocean currents and waves, hydropower, photovoltaic energy, products of photosynthetic processes, organic wastes, and others.

(Pub. L. 96–294, title IV, §403, June 30, 1980, 94 Stat. 716.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 96–294, June 30, 1980, 94 Stat. 715, known as the Renewable Energy Resources Act of 1980, which enacted this subchapter, amended sections 8255, 8271, and 8274 to 8276 of this title and sections 2705 and 2708 of Title 16, Conservation, and enacted a provision set out as a note under section 2701 of Title 16. For complete classification of title IV to the Code, see Short Title note set out under section 7371 of this title and Tables.

§7373. Coordinated dissemination of information on renewable energy resources and conservation

In order to improve the effectiveness of Federal information dissemination activities in the fields of renewable energy resources and energy conservation with the objective of developing and promoting better public understanding of these resources and their potential uses, the Secretary shall—

(1) take affirmative steps to coordinate all of the activities of the Department of Energy, whether conducted by the Department itself or by other public or private entities with assistance from the Department, which are aimed at or involve the dissemination of information with respect to renewable energy resources or energy conservation, and

(2) report annually to the Congress on the status of such activities, including a description of how the information dissemination activities and services of the Department of Energy in the fields of renewable energy resources and energy conservation are being coordinated with similar or related activities and services of other Federal agencies.

(Pub. L. 96–294, title IV, §404, June 30, 1980, 94 Stat. 716.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in par. (2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 18th item on page 87 of House Document No. 103–7.

§7374. Energy self-sufficiency initiatives

(a) Establishment of 3-year pilot program

There is hereby established under the direction of the Secretary a 3-year pilot energy self-sufficiency program to demonstrate energy self-sufficiency through the use of renewable energy resources in one or more States in the United States.

(b) Establishment of subprograms to pilot programs; scope of subprograms

As a part of the pilot program, the Secretary shall establish such subprograms as the Secretary determines are necessary to achieve the purpose of this section, including subprograms—

(1) to promote the development and utilization of synergistic combinations of different renewable energy resources in specific projects aimed at reducing fossil fuel importation;

(2) to initiate and encourage energy self-sufficiency at appropriate levels of government;

(3) to stimulate private industry participation in the realization of the objective stated in subsection (a); and

(4) to stimulate the utilization of abandoned or underutilized industrial facilities for the generation of energy from any locally available renewable resource, such as municipal solid waste, agricultural waste, or forest products waste.

(c) Implementation of subprograms; preparation of plan of program and additional Federal actions

In carrying out the provisions of this section, the Secretary is authorized to assign to an existing office in the Department of Energy the responsibility of undertaking and carrying out the subprograms established under subsection (b). In addition, the Secretary shall prepare a detailed plan within one hundred eighty days of June 30, 1980, setting forth (1) the 3-year pilot program itself, and (2) any additional Federal actions needed to encourage and promote the adoption of programs for energy self-sufficiency.

(d) Submission of plan and implementation report to Congress

The Secretary shall submit to the Congress, within one year after June 30, 1980, the plan prepared under the second sentence of subsection (c) along with a report suggesting the legislative initiatives needed to fully implement such plan.

(Pub. L. 96–294, title IV, §406, June 30, 1980, 94 Stat. 716.)

§7375. Authorization of appropriations

(a) There is authorized to be appropriated for each of the fiscal years 1981 and 1982 not to exceed $10,000,000 for loans under section 402 of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2702], in addition to any amounts authorized for such loans by that Act; and the amounts appropriated pursuant to this subsection shall remain available until expended.

(b) There is authorized to be appropriated for each of the fiscal years 1981 and 1982 not to exceed $100,000,000 for loans under section 403 of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2703]; and the amounts appropriated pursuant to this subsection shall remain available until expended.

(c) There is authorized to be appropriated for the fiscal year 1981 not to exceed $10,000,000 to carry out section 7374 of this title (relating to energy self-sufficiency initiatives).

(Pub. L. 96–294, title IV, §409, June 30, 1980, 94 Stat. 719.)

EDITORIAL NOTES

REFERENCES IN TEXT

That Act, referred to in subsec. (a), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, known as the Public Utility Regulatory Policies Act of 1978. For complete classification of this Act to the Code, see Short Title

note set out under section 2601 of Title 16, Conservation, and Tables.

SUBCHAPTER XIII—DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS

EDITORIAL NOTES

CODIFICATION

This subchapter was enacted as part of part E (§§3161–3168) of title XXXI of div. C of the National Defense Authorization Act for Fiscal Year 1991, known as the Department of Energy Science Education Enhancement Act, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7381. Findings and purposes

(a) Findings

The Congress finds the following:

(1) Scientific, technical, and engineering competence is essential to the Nation's future well-being.

(2) The scientific, technical, and engineering capability at the Federal laboratories is unmatched throughout the world.

(3) Superb research, development, testing, and evaluation occur in Department of Energy research and development facilities.

(4) Department of Energy research and development facilities will play an increasing role in assuring that the United States remains competitive in world markets.

(5) Improvements in mathematics, science, and engineering education are needed desperately to provide the trained and educated citizenry essential to the future competitiveness of the United States.

(6) The future health and vitality of the economy of the United States is predicated on the availability of an adequate supply of scientists, mathematicians, and engineers to provide for growing needs and to replenish the workforce.

(7) United States college and university enrollment in science, mathematics, and engineering programs is sharply declining at undergraduate, graduate, and post-graduate levels.

(8) The Federal Government is the largest United States employer of research scientists, mathematicians, and engineers, and the Department of Energy has a growing need for scientists, mathematicians, and engineers at a time when these enrollments are declining.

(9) Women and minorities are grossly underrepresented in science and mathematics fields, and this group represents more than 80 percent of the projected increase in the national workforce through the year 2000.

(b) Purposes

The purposes of this subchapter are—

(1) to encourage the development and implementation of science, mathematics, and engineering education programs at the Department of Energy and at its research and development facilities as part of a national effort to improve science, mathematics, and engineering education; and

(2) to provide more efficient coordination among science, mathematics, and engineering education programs.

(Pub. L. 101–510, div. C, title XXXI, §3162, Nov. 5, 1990, 104 Stat. 1840.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original "this part", meaning part E of title XXXI of div. C of Pub. L. 101–510, which is classified principally to this subchapter. For complete classification of part E to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 101–510, div. C, title XXXI, §3161, Nov. 5, 1990, 104 Stat. 1840, provided that: "This part [part E (§§3161–3168) of title XXXI of div. C of Pub. L. 101–510, enacting this subchapter and amending section 7112 of this title] may be cited as the 'Department of Energy Science Education Enhancement Act'."

UNIVERSITY-BASED RESEARCH COLLABORATION PROGRAM

Pub. L. 105–85, div. C, title XXXI, §3155, Nov. 18, 1997, 111 Stat. 2044, which was formerly set out as a note under this section, was renumbered section 4814 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(k)(9)(A)–(C), Nov. 24, 2003, 117 Stat. 1785, and classified to section 2795 of Title 50, War and National Defense, and was repealed and restated as section 6338 of Title 10, Armed Forces, by Pub. L. 119–60, div. C, title XXXI, §3111(a), (b)(1), Dec. 18, 2025, 139 Stat. 1451, 1458.

PART A—SCIENCE EDUCATION ENHANCEMENT

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–69, title V, §5003(d)(1), Aug. 9, 2007, 121 Stat. 602, added heading.

§7381a. Science education programs

(a) Programs

The Secretary is authorized to establish programs to enhance the quality of mathematics, science, and engineering education. Any such programs shall be operated at or through the support of Department research and development facilities, shall use the scientific resources of the Department, and shall be consistent with the overall Federal plan for education and human resources in science and technology developed by the Federal Coordinating Council for Science, Engineering, and Technology.

(b) Organization of science, engineering, and mathematics education programs

(1) Director of Science, Engineering, and Mathematics Education

Notwithstanding any other provision of law, the Secretary, acting through the Under Secretary for Science (referred to in this subsection as the "Under Secretary"), shall appoint a Director of Science, Engineering, and Mathematics Education (referred to in this subsection as the "Director") with the principal responsibility for administering science, engineering, and mathematics education programs across all functions of the Department.

(2) Qualifications

The Director shall be an individual, who by reason of professional background and experience, is specially qualified to advise the Under Secretary on all matters pertaining to science, engineering, and mathematics education at the Department.

(3) Duties

The Director shall—

(A) oversee all science, engineering, and mathematics education programs of the Department;

(B) represent the Department as the principal interagency liaison for all science, engineering, and mathematics education programs, unless otherwise represented by the Secretary or the Under Secretary;

(C) prepare the annual budget and advise the Under Secretary on all budgetary issues for science, engineering, and mathematics education programs of the Department;

(D) increase, to the maximum extent practicable, the participation and advancement of women and underrepresented minorities at every level of science, technology, engineering, and mathematics education; and

(E) perform other such matters relating to science, engineering, and mathematics education as are required by the Secretary or the Under Secretary.

(4) Staff and other resources

The Secretary shall assign to the Director such personnel and other resources as the Secretary considers necessary to permit the Director to carry out the duties of the Director.

(5) Assessment

(A) In general

The Secretary shall offer to enter into a contract with the National Academy of Sciences under which the National Academy, not later than 5 years after, and not later than 10 years after, August 9, 2007, shall assess the performance of the science, engineering, and mathematics education programs of the Department.

(B) Considerations

An assessment under this paragraph shall be conducted taking into consideration, where applicable, the effect of science, engineering, and mathematics education programs of the Department on student academic achievement in science and mathematics.

(6) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(c) Relationship to other Department activities

The programs described in subsection (a) shall supplement and be coordinated with current activities of the Department, but shall not supplant them.

(d) Science, Engineering, and Mathematics Education Fund

The Secretary shall establish a Science, Engineering, and Mathematics Education Fund, using not less than 0.3 percent of the amount made available to the Department for research, development, demonstration, and commercial application for each fiscal year, to carry out sections 7381b, 7381c, and 7381c–1 of this title.

(e) Annual plan for allocation of education funding

The Secretary shall submit to Congress as part of the annual budget submission for a fiscal year a report describing the manner in which the Department has complied with subsection (d) for the prior fiscal year and the manner in which the Department proposes to comply with subsection (d) during the following fiscal year, including—

(1) the total amount of funding for research, development, demonstration, and commercial application activities for the corresponding fiscal year;

(2) the amounts set aside for the Science, Engineering, and Mathematics Education Fund under subsection (d) from funding for research activities, development activities, demonstration activities, and commercial application activities for the corresponding fiscal year; and

(3) a description of how the funds set aside under subsection (d) were allocated for the prior fiscal year and will be allocated for the following fiscal year.

(f) Programs for students from under-represented groups

In carrying out a program under subsection (a), the Secretary shall give priority to activities that are designed to encourage students from under-represented groups to pursue scientific and technical

careers.

(Pub. L. 101–510, div. C, title XXXI, §3164, Nov. 5, 1990, 104 Stat. 1841; Pub. L. 109–58, title XI, §§1102(a), 1105(a), Aug. 8, 2005, 119 Stat. 938, 939; Pub. L. 110–69, title V, §5003(a), Aug. 9, 2007, 121 Stat. 601.)

EDITORIAL NOTES

AMENDMENTS

2007—Subsecs. (b), (c). Pub. L. 110–69, §5003(a)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–69, §5003(a)(3), added subsec. (d) and struck out former subsec. (d). Former text read as follows: "The Secretary shall use not less than 0.3 percent of the amount made available to the Department for research, development, demonstration, and commercial application for fiscal year 2006 and each fiscal year thereafter to carry out activities authorized by this subchapter."

Pub. L. 110–69, §5003(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 110–69, §5003(a)(3), added subsec. (e).

Subsec. (f). Pub. L. 110–69, §5003(a)(1), redesignated subsec. (d) as (f).

2005—Subsec. (c). Pub. L. 109–58, §1102(a), added subsec. (c).

Subsec. (d). Pub. L. 109–58, §1105(a), added subsec. (d).

§7381b. Laboratory cooperative science centers and other authorized education activities

(a) Activities

The Secretary is authorized to:

(1) Support research appointments for college and university science and engineering students, and for faculty-student teams, at Department research and development facilities.

(2) Support research appointments for high school science teachers at Department research and development facilities.

(3) Support research apprenticeship appointments at Department research and development facilities for students underrepresented in science and technology careers.

(4) Support research experience programs at Department research and development facilities for nationally selected high school honor students.

(5) Operate mathematics and science education programs for elementary and secondary students at Department research and development facilities.

(6) Establish a museum-based science education program.

(7) Establish collaborative inner-city and rural partnership programs designed to meet the special mathematics and science education needs of students in inner-city and rural areas.

(8) Provide paid administrative leave for employees of the Department or Department research and development facilities who volunteer to interact with schools, colleges, universities, teachers, or students for the purpose of science, mathematics, and engineering education.

(9) Establish a talent pool of volunteer scientists, mathematicians, and engineers who have retired from the Department or Department research and development facilities to serve at schools and school districts for the purpose of (A) assisting teachers, with activities such as experiments, lectures, or the preparation of materials; (B) serving as counselors to students on science, mathematics, and engineering; and (C) otherwise assisting science, mathematics, and engineering classes. The Secretary, acting through Department research and development facilities, shall, wherever possible, identify and match schools and school districts with retired scientists, mathematicians, and engineers.

(10) Establish a Young Americans' Summer Science Camp Program to provide secondary school students with a hands-on science experience as well as exposure to working scientists and career counseling.

(11) Establish a program for mathematics and science teachers to provide teachers serving large

numbers of disadvantaged students with new strategies for mathematics and science instruction.

(12) Support graduate students and, through university-based cooperative programs, undergraduate students for the purpose of encouraging more students to pursue scientific and technical careers, with a particular focus on the recruitment of women and minority students.

(13) Establish a prefreshman enrichment program in which middle-school students attend summer workshops on mathematics, science, and engineering conducted by universities on their campuses.

(14) Support competitive events for students under the supervision of teachers, designed to encourage student interest and knowledge in science and mathematics.

(15) Support competitively-awarded, peer-reviewed programs to promote professional development for mathematics teachers and science teachers who teach in grades from kindergarten through grade 12 at Department research and development facilities.

(16) Support summer internships at Department research and development facilities, for mathematics teachers and science teachers who teach in grades from kindergarten through grade 12.

(17) Sponsor and assist in educational and training activities identified as critical skills needs for future workforce development at Department research and development facilities.

(b) Use of facilities

Any of the activities authorized by subsection (a) may be conducted through Department research and development facilities. The Secretary may designate facilities conducting such education activities as "Laboratory Cooperative Science Centers".

(c) Funding

The Secretary is authorized to accept non-Federal funds to finance education activities described in subsection (a).

(Pub. L. 101–510, div. C, title XXXI, §3165, Nov. 5, 1990, 104 Stat. 1841; Pub. L. 102–25, title VII, §704(d), Apr. 6, 1991, 105 Stat. 120; Pub. L. 109–58, title XI, §1102(b), Aug. 8, 2005, 119 Stat. 938.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (a)(14) to (17). Pub. L. 109–58, which directed amendment of this section by adding pars. (14) to (17) at the end, was executed by making the addition at the end of subsec. (a), to reflect the probable intent of Congress.

1991—Subsec. (a). Pub. L. 102–25, §704(d)(1), redesignated subpars. (J) to (M) as pars. (10) to (13), respectively.

Subsec. (b). Pub. L. 102–25, §704(d)(2), inserted "such" before "education activities" in second sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–25 applicable as if included in enactment of Pub. L. 101–510, see section 704(e) of Pub. L. 102–25, set out as a note under section 12321 of Title 10, Armed Forces.

§7381c. Education partnerships

(a) Education partnerships

The Secretary may authorize each Department research and development facility, to the extent practicable and consistent with the provisions of the laboratory's management and operating contract,

to enter into education partnership agreements with educational institutions in the United States (including local educational agencies, colleges, and universities) for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education.

(b) Types of assistance

Under a partnership agreement entered into with an educational institution under subsection (a) and as authorized by the Secretary, a Department research and development facility may provide assistance to the educational institution by—

(1) loaning or transferring equipment to the institution;

(2) transferring to the institution equipment determined by the director of the Department research and development facility to be surplus;

(3) making personnel of Department research and development facilities available to teach science courses or to assist in the development of science courses and materials for the institution;

(4) involving faculty and students of the institution in research programs of Department research and development facilities;

(5) cooperating with the institution in developing a program under which students may be given academic credit for work on research projects of Department research and development facilities;

(6) providing academic and career advice and assistance to students of the institution; and

(7) providing funds to educational institutions to hire personnel to facilitate interactions between local school systems, Department research and development facilities, and corporate and governmental entities.

(Pub. L. 101–510, div. C, title XXXI, §3166, Nov. 5, 1990, 104 Stat. 1843; Pub. L. 109–58, title XI, §1102(c), Aug. 8, 2005, 119 Stat. 938.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–58, §1102(c)(1), added par. (1) and struck out former par. (1) which read as follows: "loaning equipment to the institution;".

Subsec. (b)(7). Pub. L. 109–58, §1102(c)(2)–(4), added par. (7).

§7381c–1. Partnerships with historically Black colleges and universities, Hispanic-serving institutions, and tribal colleges

(a) Definitions

In this section:

(1) Hispanic-serving institution

The term "Hispanic-serving institution" has the meaning given the term in section 1101a(a) of title 20.

(2) Historically Black college or university

The term "historically Black college or university" has the meaning given the term "part B institution" in section 1061 of title 20.

(3) National Laboratory

The term "National Laboratory" has the meaning given the term in section 15801 of this title.

(4) Science facility

The term "science facility" has the meaning given the term "single-purpose research facility" in section 16182 of this title.

(5) Tribal college

The term "tribal college" has the meaning given the term "tribally controlled college or

university" in section 1801(a) of title 25.

(b) Education partnership

The Secretary shall require the director of each National Laboratory, and may require the head of any science facility, to increase the participation of historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges in any activity that increases the capacity of the historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges to train personnel in science or engineering.

(c) Activities

An activity described in subsection (b) includes—

(1) collaborative research;

(2) equipment transfer;

(3) training activities carried out at a National Laboratory or science facility; and

(4) mentoring activities carried out at a National Laboratory or science facility.

(d) Report

Not later than 2 years after August 8, 2005, the Secretary shall submit to Congress a report describing the activities carried out under this section.

(Pub. L. 101–510, div. C, title XXXI, §3167, as added Pub. L. 109–58, title XI, §1105(b)(2), Aug. 8, 2005, 119 Stat. 940; amended Pub. L. 110–315, title IX, §941(k)(2)(M), Aug. 14, 2008, 122 Stat. 3467.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 3167 of Pub. L. 101–510 was renumbered section 3168 and is classified to section 7381d of this title.

AMENDMENTS

2008—Subsec. (a)(5). Pub. L. 110–315 made technical amendment to reference in original act which appears in text as reference to section 1801(a) of title 25.

§7381c–2. Broadening participation for teachers and scientists

(a) In general

The Secretary shall—

(1) expand opportunities to increase the number of highly skilled science, technology, engineering, and mathematics (STEM) professionals working in disciplines relevant to the mission of the Department; and

(2) broaden the recruitment pool to increase participation from Historically Black Colleges or Universities (as defined in section 7381c–3(f) of this title), Hispanic-serving institutions (as defined in that section), Tribal Colleges or Universities (as defined in that section), minority-serving institutions (as defined in that section), institutions in eligible jurisdictions (as defined in that section), emerging research institutions, community colleges, and scientific societies in those disciplines.

(b) Plan

Not later than 1 year after August 9, 2022, the Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committees on Energy and Natural Resources and Commerce, Science, and Transportation of the Senate and make available to the public a plan for broadening participation of underrepresented groups in science, technology, engineering, and mathematics in programs supported by the Department, including—

(1) a plan for supporting relevant Federal research award grantees and leveraging the National

Science Foundation INCLUDES National Network and relevant partnerships, including partnerships maintained by other Federal research agencies;

(2) metrics for assessing the participation of underrepresented groups in programs supported by the Department;

(3) experienced and potential barriers to broadening participation of underrepresented groups in programs supported by the Department, including recommended solutions; and

(4) any other activities the Secretary determines appropriate.

(c) Authorization of appropriations

Of the amounts authorized to be appropriated under section 7381e of this title, not less than $2,000,000 is authorized to be appropriated each fiscal year for the activities described in this section.

(Pub. L. 101–510, div. C, title XXXI, §3167A, as added Pub. L. 117–167, div. B, title I, §10111(c)(1), Aug. 9, 2022, 136 Stat. 1456.)

§7381c–3. Expanding opportunities for highly skilled science, technology, engineering, and mathematics (STEM) professionals

(a) In general

The Secretary shall—

(1) expand opportunities and increase the number of highly skilled science, technology, engineering, and mathematics (STEM) professionals working in disciplines relevant to the mission of the Department; and

(2) broaden the recruitment pool to increase participation from and expand partnerships with Historically Black Colleges or Universities, Hispanic serving institutions, Tribal Colleges or Universities, minority-serving institutions, institutions in eligible jurisdictions, emerging research institutions, community colleges, and scientific societies in those disciplines.

(b) Plan and outreach strategy

(1) Plan

(A) In general

Not later than 180 days after August 9, 2022, the Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a 10-year educational plan to fund and expand new or existing programs administered by the Office of Science and sited at the National Laboratories and Department user facilities to expand educational and workforce development opportunities for underrepresented individuals, including—

(i) high school, undergraduate, and graduate students; and

(ii) recent graduates, teachers, and faculty in STEM fields.

(B) Contents

The plan under subparagraph (A) may include paid internships, fellowships, temporary employment, training programs, visiting student and faculty programs, sabbaticals, and research support.

(2) Outreach capacity

The Secretary shall include in the plan under paragraph (1) an outreach strategy to improve the advertising, recruitment, and promotion of educational and workforce development programs to community colleges, Historically Black Colleges or Universities, Hispanic-serving institutions, Tribal Colleges or Universities, minority-serving institutions, institutions in eligible jurisdictions, and emerging research institutions.

(c) Building research capacity

(1) In general

The Secretary shall develop programs that strengthen the research capacity relevant to Office of Science disciplines at emerging research institutions, including minority-serving institutions, Tribal Colleges or Universities, Historically Black Colleges or Universities, institutions in eligible jurisdictions (as defined in section 13503(b)(3)(A) of this title), institutions in communities with dislocated workers who were previously employed in manufacturing, energy production, including coal power plants, and mineral and material mining, and other institutions of higher education.

(2) Inclusions

The programs developed under paragraph (1) may include—

(A) enabling mutually beneficial and jointly managed partnerships between research-intensive institutions and emerging research institutions; and

(B) soliciting research proposals, fellowships, training programs, and research support directly from emerging research institutions.

(d) Traineeships

(1) In general

The Secretary shall establish a university-led Traineeship Program to address workforce development needs in STEM fields relevant to the Department.

(2) Focus

The focus of the Traineeship Program established under paragraph (1) shall be on—

(A) supporting workforce development and research experiences for underrepresented undergraduate and graduate students; and

(B) increasing participation from underrepresented populations.

(3) Inclusion

The traineeships under the Traineeship Program established under paragraph (1) shall include opportunities to build the next-generation workforce in research areas critical to maintaining core competencies across the programs of the Office of Science.

(e) Evaluation

(1) In general

The Secretary shall establish key performance indicators to measure and monitor progress of education and workforce programs and expand Departmental activities for data collection and analysis.

(2) Report

Not later than 2 years after August 9, 2022, and every 2 years thereafter, the Secretary shall submit to the Committee on Science, Space, and Technology and the Committee on Education and Labor of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Health, Education, Labor, and Pensions of the Senate a report summarizing progress toward meeting the key performance indicators established under paragraph (1).

(f) Definitions

In this section:

(1) Community college

The term "community college" means—

(A) a public institution of higher education, including additional locations, at which the highest awarded degree, or the predominantly awarded degree, is an associate degree; or

(B) any Tribal college or university.

(2) Dislocated worker

The term "dislocated worker" has the meaning given the term in section 3102 of title 29.

(3) Hispanic-serving institution

The term "Hispanic-serving institution" has the meaning given the term in section 1101a(a) of title 20.

(4) Historically Black College or University

The term "Historically Black College or University" has the meaning given the term "part B institution" in section 1061 of title 20.

(5) Institution in an eligible jurisdiction

The term "institution in an eligible jurisdiction" means an institution of higher education (as defined in section 1001 of title 20) that is located in an eligible jurisdiction (as defined in section 13503(b)(3)(A) of this title).

(6) Minority-serving institution

The term "minority-serving institution" includes the entities described in any of paragraphs (1) through (7) of section 1067q(a) of title 20.

(7) STEM

The term "STEM" means the subjects listed in section 2 of the STEM Education Act of 2015 (42 U.S.C. 6621 note; Public Law 114–59).

(8) Tribal College or University

The term "Tribal College or University" has the meaning given the term in section 1059c(b) of title 20.

(Pub. L. 101–510, div. C, title XXXI, §3167B, as added Pub. L. 117–167, div. B, title I, §10111(c)(1), Aug. 9, 2022, 136 Stat. 1457.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§7381d. Definitions

In this subchapter:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Department" means the Department of Energy.

(3) The term "Department research and development facilities" means all Department of Energy single-purpose and multipurpose National Laboratories and research and development facilities and programs, and any other facility or program operated by a contractor funded by the Department of Energy.

(4) The term "local educational agency" has the meaning given that term by section 2891(12) [1] of title 20.

(5) NATIONAL LABORATORY.—The term "National Laboratory" has the meaning given the term in section 15801 of this title.

(Pub. L. 101–510, div. C, title XXXI, §3168, formerly §3167, Nov. 5, 1990, 104 Stat. 1843; Pub. L. 105–245, title III, §309(b)(2)(D), Oct. 7, 1998, 112 Stat. 1853; renumbered §3168 and amended Pub. L. 109–58, title XI, §§1102(d), 1105(b)(1), Aug. 8, 2005, 119 Stat. 938, 939; Pub. L. 110–69, title V, §5003(c), Aug. 9, 2007, 121 Stat. 602.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2891(12) of title 20, referred to in par. (4), was in the original "section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))", Pub. L. 89–10, and was omitted in the general amendment of that Act by Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. See section 7801 of Title 20, Education.

PRIOR PROVISIONS

A prior section 3168 of Pub. L. 101–510 was renumbered section 3169 and is classified to section 7381e of this title.

AMENDMENTS

2007—Par. (5). Pub. L. 110–69 added par. (5).

2005—Par. (3). Pub. L. 109–58, §1102(d), substituted "by the Department of Energy" for "from the Office of Science of the Department of Energy".

1998—Par. (3). Pub. L. 105–245 substituted "Office of Science" for "Office of Energy Research".

[1] See References in Text note below.

§7381e. Authorization of appropriations

Out of funds authorized to be appropriated for the Office of Science of the Department of Energy in a fiscal year, there are authorized to be appropriated to the Secretary for carrying out university research support and other science, mathematics, and engineering education programs authorized by this part and administered by the Office of Science of the Department of Energy, $40,000,000 for each of fiscal years 2023 through 2027.

(Pub. L. 101–510, div. C, title XXXI, §3169, formerly §3168, Nov. 5, 1990, 104 Stat. 1843; Pub. L. 105–245, title III, §309(b)(2)(D), Oct. 7, 1998, 112 Stat. 1853; renumbered §3169, Pub. L. 109–58, title XI, §1105(b)(1), Aug. 8, 2005, 119 Stat. 939; Pub. L. 110–69, title V, §5003(d)(2), Aug. 9, 2007, 121 Stat. 603; Pub. L. 117–167, div. B, title I, §10111(b), Aug. 9, 2022, 136 Stat. 1456.)

EDITORIAL NOTES

AMENDMENTS

2022—Pub. L. 117–167 substituted "Out of funds authorized to be appropriated for the Office of Science of the Department of Energy in a fiscal year, there are" for "There are" and "each of fiscal years 2023 through 2027" for "fiscal year 1991".

2007—Pub. L. 110–69 substituted "this part" for "this subchapter".

1998—Pub. L. 105–245 substituted "Office of Science" for "Office of Energy Research".

PART B—SCIENCE, ENGINEERING, AND MATHEMATICS EDUCATION PROGRAMS

§7381g. Definitions

In this part:

(1) Director

The term "Director" means the Director of Science, Engineering, and Mathematics Education.

(2) National Laboratory

The term "National Laboratory" has the meaning given the term in section 15801 of this title.

(Pub. L. 101–510, div. C, title XXXI, §3170, as added Pub. L. 110–69, title V, §5003(d)(3), Aug. 9, 2007, 121 Stat. 603.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONSULTATION

Pub. L. 110–69, title V, §5003(b), Aug. 9, 2007, 121 Stat. 602, provided that: "The Secretary [of Energy] shall—

"(1) consult with the Secretary of Education and the Director of the National Science Foundation regarding activities authorized under subpart B of the Department of Energy Science Education Enhancement Act [this part] (as added by subsection (d)(3)) to improve science and mathematics education; and

"(2) otherwise make available to the Secretary of Education reports associated with programs authorized under that section."

SUBPART 1—[REPEALED]

EDITORIAL NOTES

CODIFICATION

Pub. L. 111–358, title IX, §901(c)(1), Jan. 4, 2011, 124 Stat. 4044, struck out heading for subpart 1 "PILOT PROGRAM OF GRANTS TO SPECIALTY SCHOOLS FOR SCIENCE AND MATHEMATICS".

§7381h. Repealed. Pub. L. 111–358, title IX, §901(a), Jan. 4, 2011, 124 Stat. 4044

Section, Pub. L. 101–510, div. C, title XXXI, §3171, as added Pub. L. 110–69, title V, §5003(d)(3), Aug. 9, 2007, 121 Stat. 603, related to pilot program of grants to specialty schools for science and mathematics.

SUBPART 2—[REPEALED]

EDITORIAL NOTES

CODIFICATION

Pub. L. 111–358, title IX, §901(c)(1), Jan. 4, 2011, 124 Stat. 4044, struck out heading for subpart 2 "EXPERIENTIAL-BASED LEARNING OPPORTUNITIES".

§7381j. Repealed. Pub. L. 111–358, title IX, §901(a), Jan. 4, 2011, 124 Stat. 4044

Section, Pub. L. 101–510, div. C, title XXXI, §3175, as added Pub. L. 110–69, title V, §5003(d)(3), Aug. 9, 2007, 121 Stat. 606, related to experiential-based learning opportunities.

SUBPART 3—NATIONAL LABORATORIES CENTERS OF EXCELLENCE IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS EDUCATION

§7381*l*. National Laboratories Centers of Excellence in Science, Technology, Engineering, and Mathematics education

(a) Definition of high-need public secondary school

In this section, the term "high-need public secondary school" means a secondary school—

(1) in which 40 percent or more of the students attending the school are children from low-income families; or

(2) designated with a school locale code of 41, 42, or 43, as determined by the Secretary of Education.

(b) Establishment

The Secretary shall establish at each of the National Laboratories a program to support a Center of Excellence in Science, Technology, Engineering, and Mathematics (referred to in this section as a "Center of Excellence") in at least 1 high-need public secondary school located in the region served by the National Laboratory to provide assistance in accordance with subsection (f).

(c) Collaboration

(1) In general

To comply with subsection (g), each high-need public secondary school selected as a Center of Excellence and the National Laboratory shall form a partnership with a school, department, or program of education at an institution of higher education.

(2) Nonprofit entities

The partnership may include a nonprofit entity with demonstrated experience and effectiveness in science or mathematics, as agreed to by other members of the partnership.

(d) Selection

(1) In general

The Secretary, acting through the Director, shall establish criteria to guide the National Laboratories in selecting the sites for Centers of Excellence.

(2) Process

A National Laboratory shall select a site for a Center of Excellence through an open, widely-publicized, and competitive process.

(e) Goals

The Secretary shall establish goals and performance assessments for each Center of Excellence authorized under subsection (b).

(f) Assistance

Consistent with sections 7381b and 7381c of this title, the Director shall make available necessary assistance for a program established under this section through the use of scientific and engineering staff of a National Laboratory, including the use of staff—

(1) to assist teachers in teaching a course at a Center of Excellence in Science, Technology, Engineering, and Mathematics; and

(2) to use National Laboratory scientific equipment in the teaching of the course.

(g) Special rules

A Center of Excellence in a region shall ensure—

(1) provision of clinical practicum, student teaching, or internship experiences for science, technology, and mathematics teacher candidates as part of the teacher preparation program of the Center of Excellence;

(2) provision of supervision and mentoring for teacher candidates in the teacher preparation program; and

(3) to the maximum extent practicable, provision of professional development for veteran teachers in the public secondary schools in the region.

(h) Evaluation

The Secretary shall consider the results of performance assessments required under subsection (e) in determining the contract award fee of a National Laboratory management and operations contractor.

(i) Plan

The Director shall—

(1) develop an evaluation and accountability plan for the activities funded under this section that objectively measures the impact of the activities; and

(2) disseminate information obtained from those measurements.

(j) No effect on similar programs

Nothing in this section displaces or otherwise affects any similar program being carried out as of August 9, 2007, at any National Laboratory under any other provision of law.

(Pub. L. 101–510, div. C, title XXXI, §3181, as added Pub. L. 110–69, title V, §5003(d)(3), Aug. 9, 2007, 121 Stat. 607; amended Pub. L. 114–95, title IX, §9215(w), Dec. 10, 2015, 129 Stat. 2171.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114–95 substituted "in which 40 percent or more of the students attending the school are children from low-income families" for "with a high concentration of low-income individuals (as defined in section 6537 of title 20)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

SUBPART 4—SUMMER INSTITUTES

§7381n. Summer institutes

(a) Definitions

In this section:

(1) Eligible partner

The term "eligible partner" means—

(A) the science, engineering, or mathematics department at an institution of higher education, acting in coordination with a school, department, or program of education at an institution of higher education that provides training for teachers and principals; or

(B) a nonprofit entity with expertise in providing professional development for science, technology, engineering, or mathematics teachers.

(2) Summer institute

The term "summer institute" means an institute, operated during the summer, that—

(A) is hosted by a National Laboratory or an eligible partner;

(B) is operated for a period of not less than 2 weeks;

(C) includes, as a component, a program that provides direct interaction between students and

faculty, including personnel of 1 or more National Laboratories who have scientific expertise;

(D) provides for follow-up training, during the academic year, that is conducted in the classroom; and

(E) provides hands-on science, technology, engineering, or mathematics laboratory experience for not less than 2 days.

(b) Summer institute programs authorized

(1) Programs at the National Laboratories

The Secretary, acting through the Director, shall establish or expand programs of summer institutes at each of the National Laboratories to provide additional training to strengthen the science, technology, engineering, and mathematics teaching skills of teachers employed at public schools for kindergarten through grade 12, in accordance with the activities authorized under paragraphs (3) and (4).

(2) Programs with eligible partners

(A) In general

The Secretary, acting through the Director, shall identify and provide assistance as described in subparagraph (C) to eligible partners to establish or expand programs of summer institutes that provide additional training to strengthen the science, technology, engineering, and mathematics teaching skills of teachers employed at public schools for kindergarten through grade 12, in accordance with paragraphs (3) and (4).

(B) Selection criteria

In identifying eligible partners under subparagraph (A), the Secretary shall require that partner institutions describe—

(i) how the partner institution has the capability to administer the program in accordance with this section, which may include a description of any existing programs at the institution of the applicant that are targeted at education of science and mathematics teachers and the number of teachers graduated annually from the programs; and

(ii) how the partner institution will assist the National Laboratory in carrying out the activities described in paragraphs (3) and (4).

(C) Assistance

Consistent with sections 7381b and 7381c of this title, the Director shall make available funds authorized under this section to carry out a program using scientific and engineering staff of the National Laboratories, during which the staff—

(i) assists in providing training to teachers at summer institutes; and

(ii) uses National Laboratory scientific equipment in the training.

(3) Required activities

Funds authorized under this section shall be used for—

(A) creating opportunities for enhanced and ongoing professional development for teachers that improves the science, technology, engineering, and mathematics content knowledge of the teachers;

(B) training to improve the ability of science, technology, engineering, and mathematics teachers to translate content knowledge and recent developments in pedagogy into classroom practice, including training to use curricula that are—

(i) based on scientific research; and

(ii) aligned with challenging State academic content standards;

(C) training on the use and integration of technology in the classrooms; and

(D) supplemental and follow-up professional development activities as described in subsection (a)(2)(D).

(4) Additional uses of funds

Funds authorized under this section may be used for—

(A) training and classroom materials to assist in carrying out paragraph (3);

(B) expenses associated with scientific and engineering staff at the National Laboratories assisting in providing training to teachers at summer institutes;

(C) instruction in the use and integration of data and assessments to inform and instruct classroom practice; and

(D) stipends and travel expenses for teachers participating in the program.

(c) Priority

To the maximum extent practicable, the Director shall ensure that each summer institute program authorized under subsection (b) provides training to—

(1) teachers from a wide range of school districts;

(2) teachers from high-need school districts; and

(3) teachers from groups underrepresented in the fields of science, technology, engineering, and mathematics teaching, including women and members of minority groups.

(d) Coordination and consultation

The Director shall consult and coordinate with the Secretary of Education and the Director of the National Science Foundation regarding the implementation of the programs authorized under subsection (b).

(e) Evaluation and accountability plan

(1) In general

The Director shall develop an evaluation and accountability plan for the activities funded under this section that measures the impact of the activities.

(2) Contents

The evaluation and accountability plan shall include—

(A) measurable objectives to increase the number of science, technology, and mathematics teachers who participate in the summer institutes involved; and

(B) measurable objectives for improved student academic achievement on State science, mathematics, and to the maximum extent applicable, technology and engineering assessments.

(3) Report to Congress

The Secretary shall submit to Congress with the annual budget submission of the Secretary a report on how the activities assisted under this section improve the science, technology, engineering, and mathematics teaching skills of participating teachers.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $15,000,000 for fiscal year 2008;

(2) $20,000,000 for fiscal year 2009;

(3) $25,000,000 for fiscal year 2010; and

(4) $25,000,000 for each of fiscal years 2011 through 2013.

(Pub. L. 101–510, div. C, title XXXI, §3185, as added Pub. L. 110–69, title V, §5003(d)(3), Aug. 9, 2007, 121 Stat. 609; amended Pub. L. 111–358, title IX, §901(b), Jan. 4, 2011, 124 Stat. 4044.)

EDITORIAL NOTES

AMENDMENTS

2011—Subsec. (f)(4). Pub. L. 111–358 added par. (4).

SUBPART 5—[REPEALED]

EDITORIAL NOTES

CODIFICATION

Pub. L. 111–358, title IX, §901(c)(1), Jan. 4, 2011, 124 Stat. 4044, struck out heading for subpart 5 "NATIONAL ENERGY EDUCATION DEVELOPMENT".

§7381p. Repealed. Pub. L. 111–358, title IX, §901(a), Jan. 4, 2011, 124 Stat. 4044

Section, Pub. L. 101–510, div. C, title XXXI, §3191, as added Pub. L. 110–69, title V, §5003(d)(3), Aug. 9, 2007, 121 Stat. 611, related to national energy education development.

SUBPART 6—ADMINISTRATION

§7381r. Mentoring program

(a) In general

As part of the programs established under subparts 3 and 4, the Director shall establish a program to recruit and provide mentors for women and underrepresented minorities who are interested in careers in science, engineering, and mathematics.

(b) Pairing

The program shall pair mentors with women and minorities who are in programs of study at specialty schools for science and mathematics, Centers of Excellence, and summer institutes established under subparts 3 and 4, respectively.

(c) Program evaluation

The Secretary shall annually—

(1) use metrics to evaluate the success of the programs established under subsection (a); and

(2) submit to Congress a report that describes the results of each evaluation.

(Pub. L. 101–510, div. C, title XXXI, §3195, as added Pub. L. 110–69, title V, §5003(d)(3), Aug. 9, 2007, 121 Stat. 611; amended Pub. L. 111–358, title IX, §901(c)(2), Jan. 4, 2011, 124 Stat. 4044.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subparts 3 and 4, referred to in subsec. (b), relate to Centers of Excellence and summer institutes, respectively. Prior to amendment by Pub. L. 111–358, subsec. (b) also contained reference to subpart 1, which related to specialty schools for science and mathematics and was repealed by Pub. L. 111–358, title IX, §901(c)(1), Jan. 4, 2011, 124 Stat. 4044. See 2011 Amendment note below.

AMENDMENTS

2011—Pub. L. 111–358 substituted "subparts 3 and 4" for "subparts 1, 3, and 4" in subsecs. (a) and (b).

SUBCHAPTER XIV—ALBERT EINSTEIN DISTINGUISHED EDUCATOR FELLOWSHIPS

EDITORIAL NOTES

CODIFICATION

This subchapter was enacted as part A (§§511–518) of title V of the Improving America's Schools Act of 1994, known as the Albert Einstein Distinguished Educator Fellowship Act of 1994, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7382. Findings

The Congress finds that—

(1) the Department of Energy has unique and extensive mathematics and science capabilities that contribute to mathematics and science education programs throughout the Nation;

(2) a need exists to increase understanding, communication, and cooperation between the Congress, the Department of Energy, other Federal agencies, and the mathematics and science education community;

(3) elementary and secondary school mathematics and science teachers can provide practical insight to the legislative and executive branches in establishing and operating education programs; and

(4) a pilot program that placed elementary and secondary school mathematics and science teachers in professional staff positions in the Senate and the House of Representatives has proven successful and demonstrated the value of expanding the program.

(Pub. L. 103–382, title V, §512, Oct. 20, 1994, 108 Stat. 4042.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 103–382, title V, §511, Oct. 20, 1994, 108 Stat. 4042, provided that: "This part [part A (§§511–518) of title V of Pub. L. 103–382, enacting this subchapter] may be cited as the 'Albert Einstein Distinguished Educator Fellowship Act of 1994'."

§7382a. Purpose; designation

(a) Purpose

The purpose of this subchapter is to establish within the Department of Energy a national fellowship program for elementary and secondary school mathematics and science teachers.

(b) Designation

A recipient of a fellowship under this subchapter shall be known as an "Albert Einstein Fellow".

(Pub. L. 103–382, title V, §513, Oct. 20, 1994, 108 Stat. 4042.)

§7382b. Definitions

As used in this subchapter—

(1) the term "elementary school" has the meaning provided by section 7801 of title 20;

(2) the term "local educational agency" has the meaning provided by section 7801 of title 20;

(3) the term "secondary school" has the meaning provided by section 7801 of title 20;

(4) the term "Secretary" means the Secretary of Energy.

(Pub. L. 103–382, title V, §514, Oct. 20, 1994, 108 Stat. 4042; Pub. L. 107–110, title X, §1076(bb), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 114–95, title IX, §9215(h), Dec. 10, 2015, 129 Stat. 2167.)

EDITORIAL NOTES

AMENDMENTS

2015—Pars. (1) to (3). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

2002—Pars. (1) to (3). Pub. L. 107–110 substituted "7801" for "8801".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

§7382c. Fellowship Program

(a) In general

(1) Establishment

The Secretary shall establish the Albert Einstein Distinguished Educator Fellowship Program (hereafter in this subchapter referred to as the "Program") to provide 12 elementary or secondary school mathematics or science teachers with fellowships in each fiscal year in accordance with this subchapter.

(2) Order of priority

The Secretary may reduce the number of fellowships awarded under this subchapter for any fiscal year in which the amount appropriated for the Program is insufficient to support 12 fellowships. If the number of fellowships awarded under this subchapter is reduced for any fiscal year, then the Secretary shall award fellowships based on the following order of priority:

(A) Three fellowships in the Department of Energy.
(B) Two fellowships in the Senate.
(C) Two fellowships in the House of Representatives.
(D) One fellowship in each of the following entities:
(i) The Department of Education.
(ii) The National Institutes of Health.
(iii) The National Science Foundation.
(iv) The National Aeronautics and Space Administration.
(v) The Office of Science and Technology Policy.

(3) Terms of fellowships

Each fellowship awarded under this subchapter shall be awarded for a period of ten months that, to the extent practicable, coincide with the academic year.

(4) Eligibility

To be eligible for a fellowship under this subchapter, an elementary or secondary school mathematics or science teacher must demonstrate—

(A) that such teacher would bring unique and valuable contributions to the Program;
(B) that such teacher is recognized for excellence in mathematics or science education; and
(C)(i) a sabbatical leave from teaching will be granted in order to participate in the Program; or
(ii) the teacher will return to a teaching position comparable to the position held prior to participating in the Program.

(b) Administration

The Secretary shall—

(1) provide for the development and administration of an application and selection process for fellowships under the Program, including a process whereby final selections of fellowship recipients are made in accordance with subsection (c);

(2) provide for the publication of information on the Program in appropriate professional publications, including an invitation for applications from teachers listed in the directories of national and State recognition programs;

(3) select from the pool of applicants 12 elementary and secondary school mathematics teachers and 12 elementary and secondary school science teachers;

(4) develop a program of orientation for fellowship recipients under this subchapter; and

(5) not later than August 31 of each year in which fellowships are awarded, prepare and submit an annual report and evaluation of the Program to the appropriate Committees of the Senate and the House of Representatives.

(c) Selection

(1) In general

The Secretary shall arrange for the 24 semifinalists to travel to Washington, D.C., to participate in interviews in accordance with the selection process described in paragraph (2).

(2) Final selection

(A) Not later than May 1 of each year preceding each year in which fellowships are to be awarded, the Secretary shall select and announce the names of the fellowship recipients.

(B) The Secretary shall provide for the development and administration of a process to select fellowship recipients from the pool of semifinalists as follows:

(i) The Secretary shall select three fellowship recipients who shall be assigned to the Department of Energy.

(ii) The Majority Leader of the Senate and the Minority Leader of the Senate, or their designees, shall each select a fellowship recipient who shall be assigned to the Senate.

(iii) The Speaker of the House of Representatives and the Minority Leader of the House of Representatives, or their designees, shall each select a fellowship recipient who shall be assigned to the House of Representatives.

(iv) Each of the following individuals, or their designees, shall select one fellowship recipient who shall be assigned within the department, office, agency, or institute such individual administers:

(I) The Secretary of Education.

(II) The Director of the National Institutes of Health.

(III) The Director of the National Science Foundation.

(IV) The Administrator of the National Aeronautics and Space Administration.

(V) The Director of the Office of Science and Technology Policy.

(Pub. L. 103–382, title V, §515, Oct. 20, 1994, 108 Stat. 4042.)

§7382d. Fellowship awards

(a) Fellowship recipient compensation

Each recipient of a fellowship under this subchapter shall be paid during the fellowship period at a rate of pay that shall not exceed the minimum annual rate payable for a position under GS–13 of the General Schedule.

(b) Local educational agency

The Secretary shall seek to ensure that no local educational agency penalizes a teacher who elects to participate in the Program.

(Pub. L. 103–382, title V, §516, Oct. 20, 1994, 108 Stat. 4044.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5, Government Organization and Employees.

§7382e. Waste management education research consortium (WERC)

(a) [1] In general

The Secretary is authorized to establish a partnership of Department of Energy laboratories, academic institutions, and private sector industries to conduct environmentally-related education programs, including programs involving environmentally conscious manufacturing and waste management activities that have undergraduate and graduate educational training as a component.

(Pub. L. 103–382, title V, §517, Oct. 20, 1994, 108 Stat. 4044.)

[1] So in original. No subsec. (b) has been enacted.

§7382f. Authorization of appropriations

(a) In general

There are authorized to be appropriated for the Program $700,000 for fiscal year 1995, and such sums as may be necessary for each of the four succeeding fiscal years.

(b) WERC program

There are authorized to be appropriated for the WERC program under section 7382e of this title such sums as may be necessary for fiscal year 1995 and each of the four succeeding fiscal years.

(Pub. L. 103–382, title V, §518, Oct. 20, 1994, 108 Stat. 4044.)

SUBCHAPTER XV—MATTERS RELATING TO SAFEGUARDS, SECURITY, AND COUNTERINTELLIGENCE

EDITORIAL NOTES

CODIFICATION

This subchapter was enacted as part of subtitle D (§§3141–3156) of title XXXI of div. C of the National Defense Authorization Act for Fiscal Year 2000, known as the Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7383. Commission on Safeguards, Security, and Counterintelligence at Department of Energy Facilities

(a) Establishment

There is hereby established a commission to be known as the Commission on Safeguards, Security, and Counterintelligence at Department of Energy Facilities (in this section referred to as the "Commission").

(b) Membership and organization

(1) The Commission shall be composed of nine members appointed from among individuals in the public and private sectors who have significant experience in matters related to the security of nuclear weapons and materials, the classification of information, or counterintelligence matters, as follows:

(A) Two shall be appointed by the chairman of the Committee on Armed Services of the Senate, in consultation with the ranking member of that Committee.

(B) One shall be appointed by the ranking member of the Committee on Armed Services of the Senate, in consultation with the chairman of that Committee.

(C) Two shall be appointed by the chairman of the Committee on Armed Services of the House of Representatives, in consultation with the ranking member of that Committee.

(D) One shall be appointed by the ranking member of the Committee on Armed Services of the House of Representatives, in consultation with the chairman of that Committee.

(E) One shall be appointed by the Secretary of Defense.

(F) One shall be appointed by the Director of the Federal Bureau of Investigation.

(G) One shall be appointed by the Director of Central Intelligence.

(2) Members of the Commission shall be appointed for four year terms, except as follows:

(A) One member initially appointed under paragraph (1)(A) shall serve a term of two years, to be designated at the time of appointment.

(B) One member initially appointed under paragraph (1)(C) shall serve a term of two years, to be designated at the time of appointment.

(C) The member initially appointed under paragraph (1)(E) shall serve a term of two years.

(3) Any vacancy in the Commission shall be filled in the same manner as the original appointment and shall not affect the powers of the Commission.

(4)(A) After five members of the Commission have been appointed under paragraph (1), the chairman of the Committee on Armed Services of the Senate, in consultation with the chairman of the Committee on Armed Services of the House of Representatives, shall designate the chairman of the Commission from among the members appointed under paragraph (1)(A).

(B) The chairman of the Commission may be designated once five members of the Commission have been appointed under paragraph (1).

(5) The initial members of the Commission shall be appointed not later than 60 days after October 5, 1999.

(6) The members of the Commission shall establish procedures for the activities of the Commission, including procedures for calling meetings, requirements for quorums, and the manner of taking votes.

(7) The Commission shall meet not less often than once every three months.

(8) The Commission may commence its activities under this section upon the designation of the chairman of the Commission under paragraph (4).

(c) Duties

(1) The Commission shall, in accordance with this section, review the safeguards, security, and counterintelligence activities (including activities relating to information management, computer security, and personnel security) at Department of Energy facilities to—

(A) determine the adequacy of those activities to ensure the security of sensitive information, processes, and activities under the jurisdiction of the Department against threats to the disclosure of such information, processes, and activities; and

(B) make recommendations for actions the Commission determines as being necessary to ensure that such security is achieved and maintained.

(2) The activities of the Commission under paragraph (1) shall include the following:

(A) An analysis of the sufficiency of the Design Threat Basis documents as a basis for the

allocation of resources for safeguards, security, and counterintelligence activities at the Department facilities in light of applicable guidance with respect to such activities, including applicable laws, Department of Energy orders, Presidential Decision Directives, and Executive orders.

(B) Visits to Department facilities to assess the adequacy of the safeguards, security, and counterintelligence activities at such facilities.

(C) Evaluations of specific concerns set forth in Department reports regarding the status of safeguards, security, or counterintelligence activities at particular Department facilities or at facilities throughout the Department.

(D) Reviews of relevant laws, Department orders, and other requirements relating to safeguards, security, and counterintelligence activities at Department facilities.

(E) Any other activities relating to safeguards, security, and counterintelligence activities at Department facilities that the Secretary of Energy considers appropriate.

(d) Reports

(1) Not later than February 15 each year, the Commission shall submit to the Secretary of Energy and to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the activities of the Commission during the preceding year. The report shall be submitted in unclassified form, but may include a classified annex.

(2) Each report—

(A) shall describe the activities of the Commission during the year covered by the report;

(B) shall set forth proposals for any changes in safeguards, security, or counterintelligence activities at Department of Energy facilities that the Commission considers appropriate in light of such activities; and

(C) may include any other recommendations for legislation or administrative action that the Commission considers appropriate.

(e) Personnel matters

(1)(A) Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(B) All members of the Commission who are officers or employees of the United States shall serve without compensation by reason of their service on the Commission.

(2) The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Commission.

(3)(A) The Commission may, without regard to the civil service laws and regulations, appoint and terminate such personnel as may be necessary to enable the Commission to perform its duties.

(B) The Commission may fix the compensation of the personnel of the Commission without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates.

(4) Any officer or employee of the United States may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) The members and employees of the Commission shall hold security clearances appropriate for the matters considered by the Commission in the discharge of its duties under this section.

(f) Applicability of chapter 10 of title 5

The provisions of chapter 10 of title 5 shall not apply to the activities of the Commission.

(g) Funding

(1) From amounts authorized to be appropriated by sections 3101 and 3103, the Secretary of

Energy shall make available to the Commission not more than $1,000,000 for the activities of the Commission under this section.

(2) Amounts made available to the Commission under this subsection shall remain available until expended.

(Pub. L. 106–65, div. C, title XXXI, §3142, Oct. 5, 1999, 113 Stat. 931; Pub. L. 117–286, §4(a)(268), Dec. 27, 2022, 136 Stat. 4335.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 3101 and 3103, referred to in subsec. (g), are sections 3101 and 3103 of Pub. L. 106–65, div. C, title XXXI, Oct. 5, 1999, 113 Stat. 915, 919, which are not classified to the Code.

CODIFICATION

Section is comprised of section 3142 of Pub. L. 106–65. Subsec. (h)(1) of section 3142 of Pub. L. 106–65 repealed section 3161 of Pub. L. 105–85, formerly set out as a note under section 7251 of this title. Subsec. (h)(2) of section 3142 of Pub. L. 106–65 amended section 2657 of Title 50, War and National Defense.

AMENDMENTS

2022—Subsec. (f). Pub. L. 117–286 substituted "chapter 10 of title 5" for "FACA" in heading and "chapter 10 of title 5" for "the Federal Advisory Committee Act (5 U.S.C. App.)" in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 3001 of Title 50, War and National Defense.

SHORT TITLE

Pub. L. 106–65, div. C, title XXXI, §3141, Oct. 5, 1999, 113 Stat. 931, provided that: "This subtitle [subtitle D, §§3141–3156, of title XXXI of div. C of Pub. L. 106–65, enacting this subchapter and section 2282b of this title, amending sections 2165, 2274, 2275, 2277, and 2282a of this title, enacting provisions set out as notes under sections 2165 and 2282b of this title and section 435 of Title 50, War and National Defense, amending provisions set out as a note under section 7274m of this title, and repealing provisions set out as a note under section 7251 of this title] may be cited as the 'Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999'."

§§7383a to 7383d. Transferred

EDITORIAL NOTES

CODIFICATION

Section 7383a, Pub. L. 106–65, div. C, title XXXI, §3143, Oct. 5, 1999, 113 Stat. 934, which related to background investigations of certain personnel at Department of Energy facilities, was renumbered section 4503 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(4)(A)–(C), Nov. 24, 2003, 117 Stat. 1772, and was formerly classified to section 2653 of Title 50, War and National Defense. See section 6223 of Title 10, Armed Forces.

Section 7383b, Pub. L. 106–65, div. C, title XXXI, §3145, Oct. 5, 1999, 113 Stat. 935, which related to protection of classified information during laboratory-to-laboratory exchanges, was renumbered section 4524 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(14), Nov. 24, 2003, 117 Stat. 1775, and

was formerly classified to section 2674 of Title 50, War and National Defense. See section 6234 of Title 10, Armed Forces.

Section 7383c, Pub. L. 106–65, div. C, title XXXI, §3146, Oct. 5, 1999, 113 Stat. 935, which related to restrictions on access to national laboratories by foreign visitors from sensitive countries, was renumbered section 4502 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1771, and was formerly classified to section 2652 of Title 50, War and National Defense. See section 6222 of Title 10, Armed Forces.

Section 7383d, Pub. L. 106–65, div. C, title XXXI, §3150, Oct. 5, 1999, 113 Stat. 939, which related to notice to congressional committees of certain security and counterintelligence failures within nuclear energy defense programs, was renumbered section 4505 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(6), Nov. 24, 2003, 117 Stat. 1773, and was formerly classified to section 2656 of Title 50, War and National Defense. See section 6225 of Title 10, Armed Forces.

§7383e. Repealed. Pub. L. 114–113, div. M, title VII, §701(e), Dec. 18, 2015, 129 Stat. 2930

Section, Pub. L. 106–65, div. C, title XXXI, §3151, Oct. 5, 1999, 113 Stat. 939, related to annual report by the President on espionage by the People's Republic of China.

§§7383f to 7383h–1. Transferred

EDITORIAL NOTES

CODIFICATION

Section 7383f, Pub. L. 106–65, div. C, title XXXI, §3152, Oct. 5, 1999, 113 Stat. 940, which related to the submission of annual reports on counterintelligence and security practices at national laboratories, was renumbered section 4507 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1773, and was classified to section 2658 of Title 50, War and National Defense, prior to repeal by Pub. L. 113–66, div. C, title XXXI, §3132(a)(1), Dec. 26, 2013, 127 Stat. 1068.

Section 7383g, Pub. L. 106–65, div. C, title XXXI, §3153, Oct. 5, 1999, 113 Stat. 940, which related to the submission of annual reports on security vulnerabilities of national laboratory computers, was renumbered section 4508 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(9)(A)–(C), Nov. 24, 2003, 117 Stat. 1774, and was classified to section 2659 of Title 50, War and National Defense, prior to repeal by Pub. L. 114–113, div. M, title VII, §701(f), Dec. 18, 2015, 129 Stat. 2930.

Section 7383h, Pub. L. 106–65, div. C, title XXXI, §3154, Oct. 5, 1999, 113 Stat. 941; Pub. L. 106–398, §1 [div. C, title XXXI, §3135], Oct. 30, 2000, 114 Stat. 1654, 1654A–456, which related to a counterintelligence polygraph program for defense-related activities of the Department of Energy, was renumbered section 4504A of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(5)(B)(i)–(iii), Nov. 24, 2003, 117 Stat. 1773, and was classified to section 2655 of Title 50, War and National Defense, prior to repeal by Pub. L. 107–314, div. D, title XLV, §4504(c), formerly Pub. L. 107–107, div. C, title XXXI, §3152(c), Dec. 28, 2001, 115 Stat. 1377; renumbered Pub. L. 107–314, div. D, title XLV, §4504(c), and amended Pub. L. 108–136, div. C, title XXXI, §3141(h)(5)(A), Nov. 24, 2003, 117 Stat. 1772.

Section 7383h–1, Pub. L. 107–107, div. C, title XXXI, §3152, Dec. 28, 2001, 115 Stat. 1376, which related to a new counterintelligence polygraph program for the Department of Energy, was renumbered section 4504 of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(h)(5)(A)(i)–(iii), Nov. 24, 2003, 117 Stat. 1772, and was formerly classified to section 2654 of Title 50, War and National Defense. See section 6224 of Title 10, Armed Forces.

§7383i. Definitions of national laboratory and nuclear weapons production facility

For purposes of this subchapter:

(1) The term "national laboratory" means any of the following:

(A) The Lawrence Livermore National Laboratory, Livermore, California.
(B) The Los Alamos National Laboratory, Los Alamos, New Mexico.
(C) The Sandia National Laboratories, Albuquerque, New Mexico and Livermore, California.

(2) The term "nuclear weapons production facility" means any of the following:
(A) The Kansas City Plant, Kansas City, Missouri.
(B) The Pantex Plant, Amarillo, Texas.
(C) The Y–12 Plant, Oak Ridge, Tennessee.
(D) The tritium operations at the Savannah River Site, Aiken, South Carolina.
(E) The Nevada Test Site, Nevada.

(Pub. L. 106–65, div. C, title XXXI, §3155, Oct. 5, 1999, 113 Stat. 942.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle D of title XXXI of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 931, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Short Title note set out under section 7383 of this title and Tables.

§7383j. Definition of Restricted Data

In this subchapter, the term "Restricted Data" has the meaning given that term in section 2014(y) of this title.

(Pub. L. 106–65, div. C, title XXXI, §3156, Oct. 5, 1999, 113 Stat. 942.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle D of title XXXI of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 931, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Short Title note set out under section 7383 of this title and Tables.

SUBCHAPTER XVI—ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

EDITORIAL NOTES

CODIFICATION

This subchapter was enacted as title XXXVI of div. C of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, known as the Energy Employees Occupational Illness Compensation Program Act of 2000, and not as part of the Department of Energy Organization Act which comprises this chapter.

§7384. Findings; sense of Congress

(a) Findings

The Congress finds the following:

(1) Since World War II, Federal nuclear activities have been explicitly recognized under Federal law as activities that are ultra-hazardous. Nuclear weapons production and testing have involved unique dangers, including potential catastrophic nuclear accidents that private insurance carriers have not covered and recurring exposures to radioactive substances and beryllium that, even in small amounts, can cause medical harm.

(2) Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.

(3) Many previously secret records have documented unmonitored exposures to radiation and beryllium and continuing problems at these sites across the Nation, at which the Department of Energy and its predecessor agencies have been, since World War II, self-regulating with respect to nuclear safety and occupational safety and health. No other hazardous Federal activity has been permitted to be carried out under such sweeping powers of self-regulation.

(4) The policy of the Department of Energy has been to litigate occupational illness claims, which has deterred workers from filing workers' compensation claims and has imposed major financial burdens for such employees who have sought compensation. Contractors of the Department have been held harmless and the employees have been denied workers' compensation coverage for occupational disease.

(5) Over the past 20 years, more than two dozen scientific findings have emerged that indicate that certain of such employees are experiencing increased risks of dying from cancer and non-malignant diseases. Several of these studies have also established a correlation between excess diseases and exposure to radiation and beryllium.

(6) While linking exposure to occupational hazards with the development of occupational disease is sometimes difficult, scientific evidence supports the conclusion that occupational exposure to dust particles or vapor of beryllium can cause beryllium sensitivity and chronic beryllium disease. Furthermore, studies indicate than 98 percent of radiation-induced cancers within the nuclear weapons complex have occurred at dose levels below existing maximum safe thresholds.

(7) Existing information indicates that State workers' compensation programs do not provide a uniform means of ensuring adequate compensation for the types of occupational illnesses and diseases that relate to the employees at those sites.

(8) To ensure fairness and equity, the civilian men and women who, over the past 50 years, have performed duties uniquely related to the nuclear weapons production and testing programs of the Department of Energy and its predecessor agencies should have efficient, uniform, and adequate compensation for beryllium-related health conditions and radiation-related health conditions.

(9) On April 12, 2000, the Secretary of Energy announced that the Administration intended to seek compensation for individuals with a broad range of work-related illnesses throughout the Department of Energy's nuclear weapons complex.

(10) However, as of October 2, 2000, the Administration has failed to provide Congress with the necessary legislative and budget proposals to enact the promised compensation program.

(b) Sense of Congress

It is the sense of Congress that—

(1) a program should be established to provide compensation to covered employees;

(2) a fund for payment of such compensation should be established on the books of the Treasury;

(3) payments from that fund should be made only after—

(A) the identification of employees of the Department of Energy (including its predecessor agencies), and of contractors of the Department, who may be members of the group of covered employees;

(B) the establishment of a process to receive and administer claims for compensation for

disability or death of covered employees;

(C) the submittal by the President of a legislative proposal for compensation of such employees that includes the estimated annual budget resources for that compensation; and

(D) consideration by the Congress of the legislative proposal submitted by the President; and

(4) payments from that fund should commence not later than fiscal year 2002.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3602], Oct. 30, 2000, 114 Stat. 1654, 1654A–495.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2023 AMENDMENT

Pub. L. 118–31, div. E, title LV, §5501(a), Dec. 22, 2023, 137 Stat. 956, provided that: "This section [amending sections 7384l and 7385s–16 of this title] may be cited as the 'Beryllium Testing Fairness Act'."

SHORT TITLE

Pub. L. 106–398, §1 [div. C, title XXXVI, §3601], Oct. 30, 2000, 114 Stat. 1654, 1654A–495, provided that: "This title [enacting this subchapter] may be cited as the 'Energy Employees Occupational Illness Compensation Program Act of 2000'."

UPDATE OF REPORT ON RESIDUAL CONTAMINATION OF FACILITIES

Pub. L. 108–375, div. C, title XXXI, §3169, Oct. 28, 2004, 118 Stat. 2191, provided that:

"(a) UPDATE OF REPORT.—Not later than December 31, 2006, the Director of the National Institute for Occupational Safety and Health shall submit to Congress an update to the report required by section 3151(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 42 U.S.C. 7384 note).

"(b) ELEMENTS.—The update shall—

"(1) for each facility for which such report found that insufficient information was available to determine whether significant residual contamination was present, determine whether significant residual contamination was present;

"(2) for each facility for which such report found that significant residual contamination remained present as of the date of the report, determine the date on which such contamination ceased to be present;

"(3) for each facility for which such report found that significant residual contamination was present but for which the Director has been unable to determine the extent to which such contamination is attributable to atomic weapons-related activities, identify the specific dates of coverage attributable to such activities and, in so identifying, presume that such contamination is attributable to such activities until there is evidence of decontamination of residual contamination identified with atomic weapons-related activities;

"(4) for each facility for which such report found significant residual contamination, determine whether it is at least as likely as not that such contamination could have caused an employee who was employed at such facility only during the residual contamination period to contract a cancer or beryllium illness compensable under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384l et seq.]; and

"(5) if new information that pertains to the report has been made available to the Director since that report was submitted, identify and describe such information.

"(c) PUBLICATION.—The Director shall ensure that the report referred to in subsection (a) is published in the Federal Register not later than 15 days after being released."

STUDY OF RESIDUAL CONTAMINATION OF FACILITIES

Pub. L. 107–107, div. C, title XXXI, §3151(b), Dec. 28, 2001, 115 Stat. 1375, provided that:

"(1) The National Institute for Occupational Safety and Health shall, with the cooperation of the Department of Energy and the Department of Labor, carry out a study on the following matters:

"(A) Whether or not significant contamination remained in any atomic weapons employer facility or facility of a beryllium vendor after such facility discontinued activities relating to the production of nuclear weapons.

"(B) If so, whether or not such contamination could have caused or substantially contributed to the cancer of a covered employee with cancer or a covered beryllium illness, as the case may be.

"(2)(A) The National Institute for Occupational Safety and Health shall submit to the applicable congressional committees the following reports:

"(i) Not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001], a report on the

progress made as of the date of the report on the study required by paragraph (1).

"(ii) Not later than one year after the date of the enactment of this Act, a final report on the study required by paragraph (1).

"(B) In this paragraph, the term 'applicable congressional committees' means—

"(i) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and Committee on Health, Education, Labor, and Pensions of the Senate; and

"(ii) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and Committee on Education and the Workforce of the House of Representatives.

"(3) Amounts for the study under paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A–498) [42 U.S.C. 7384g(a)].

"(4) In this subsection:

"(A) The terms 'atomic weapons employer facility', 'beryllium vendor', 'covered employee with cancer', and 'covered beryllium illness' have the meanings given those terms in section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A–498; 42 U.S.C. 7384l).

"(B) The term 'contamination' means the presence of any—

"(i) material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

"(ii) beryllium dust, particles, or vapor,

exposure to which could cause or substantially contribute to the cancer of a covered employee with cancer or a covered beryllium illness, as the case may be."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13179. PROVIDING COMPENSATION TO AMERICA'S NUCLEAR WEAPONS WORKERS

Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Public Law 106–398, the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384 et seq.] (Public Law 106–398, the "Act"), and to allocate the responsibilities imposed by that legislation and to provide for further legislative efforts, it is hereby ordered as follows:

SECTION 1. *Policy*. Since World War II, hundreds of thousands of men and women have served their Nation in building its nuclear defense. In the course of their work, they overcame previously unimagined scientific and technical challenges. Thousands of these courageous Americans, however, paid a high price for their service, developing disabling or fatal illnesses as a result of exposure to beryllium, ionizing radiation, and other hazards unique to nuclear weapons production and testing. Too often, these workers were neither adequately protected from, nor informed of, the occupational hazards to which they were exposed.

Existing workers' compensation programs have failed to provide for the needs of these workers and their families. Federal workers' compensation programs have generally not included these workers. Further, because of long latency periods, the uniqueness of the hazards to which they were exposed, and inadequate exposure data, many of these individuals have been unable to obtain State workers' compensation benefits. This problem has been exacerbated by the past policy of the Department of Energy (DOE) and its predecessors of encouraging and assisting DOE contractors in opposing the claims of workers who sought those benefits. This policy has recently been reversed.

While the Nation can never fully repay these workers or their families, they deserve recognition and compensation for their sacrifices. Since the Administration's historic announcement in July of 1999 that it intended to compensate DOE nuclear weapons workers who suffered occupational illnesses as a result of exposure to the unique hazards in building the Nation's nuclear defense, it has been the policy of this Administration to support fair and timely compensation for these workers and their survivors. The Federal Government should provide necessary information and otherwise help employees of the DOE or its contractors determine if their illnesses are associated with conditions of their nuclear weapons-related work; it should provide workers and their survivors with all pertinent and available information necessary for evaluating and processing claims; and it should ensure that this program minimizes the administrative burden on workers and their survivors, and respects their dignity and privacy. This order sets out agency responsibilities to accomplish these goals, building on the Administration's articulated principles and the framework set forth in the Energy Employees Occupational Illness Compensation Program Act of 2000 [42

U.S.C. 7384 et seq.]. The Departments of Labor, Health and Human Services, and Energy shall be responsible for developing and implementing actions under the Act to compensate these workers and their families in a manner that is compassionate, fair, and timely. Other Federal agencies, as appropriate, shall assist in this effort.

SEC. 2. *Designation of Responsibilities for Administering the Energy Employees' Occupational Illness Compensation Program ("Program").*

(a) *Secretary of Labor*. The Secretary of Labor shall have primary responsibility for administering the Program. Specifically, the Secretary shall:

(i) Administer and decide all questions arising under the Act not assigned to other agencies by the Act or by this order, including determining the eligibility of individuals with covered occupational illnesses and their survivors and adjudicating claims for compensation and benefits;

(ii) No later than May 31, 2001, promulgate regulations for the administration of the Program, except for functions assigned to other agencies pursuant to the Act or this order;

(iii) No later than July 31, 2001, ensure the availability, in paper and electronic format, of forms necessary for making claims under the Program; and

(iv) Develop informational materials, in coordination with the Secretary of Energy and the Secretary of Health and Human Services, to help potential claimants understand the Program and the application process, and provide these materials to individuals upon request and to the Secretary of Energy and the Attorney General for dissemination to potentially eligible individuals.

(b) *Secretary of Health and Human Services*. The Secretary of Health and Human Services shall:

(i) No later than May 31, 2001, promulgate regulations establishing:

(A) guidelines, pursuant to section 3623(c) of the Act [42 U.S.C. 7384n(c)], to assess the likelihood that an individual with cancer sustained the cancer in the performance of duty at a Department of Energy facility or an atomic weapons employer facility, as defined by the Act; and

(B) methods, pursuant to section 3623(d) of the Act, for arriving at and providing reasonable estimates of the radiation doses received by individuals applying for assistance under this program for whom there are inadequate records of radiation exposure;

(ii) In accordance with procedures developed by the Secretary of Health and Human Services, consider and issue determinations on petitions by classes of employees to be treated as members of the Special Exposure Cohort;

(iii) With the assistance of the Secretary of Energy, apply the methods promulgated under subsection (b)(i)(B) to estimate the radiation doses received by individuals applying for assistance;

(iv) Upon request from the Secretary of Energy, appoint members for a physician panel or panels to consider individual workers' compensation claims as part of the Worker Assistance Program under the process established pursuant to subsection (c)(v); and

(v) Provide the Advisory Board established under section 4 of this order with administrative services, funds, facilities, staff, and other necessary support services and perform the administrative functions of the President under the Federal Advisory Committee Act, as amended ([former] 5 U.S.C. App.) [see 5 U.S.C. 1001 et seq.], with respect to the Advisory Board.

(c) *Secretary of Energy*. The Secretary of Energy shall:

(i) Provide the Secretary of Health and Human Services and the Advisory Board on Radiation and Worker Health access, in accordance with law, to all relevant information pertaining to worker exposures, including access to restricted data, and any other technical assistance needed to carry out their responsibilities under subsection (b)(ii) and section 4(b), respectively.

(ii) Upon request from the Secretary of Health and Human Services or the Secretary of Labor, and as permitted by law, require a DOE contractor, subcontractor, or designated beryllium vendor, pursuant to section 3631(c) of the Act [42 U.S.C. 7384v(c)], to provide information relevant to a claim under this Program;

(iii) Identify and notify potentially eligible individuals of the availability of compensation under the Program;

(iv) Designate, pursuant to sections 3621(4)(B) and 3622 of the Act [42 U.S.C. 7384l(4)(B), 7384m], atomic weapons employers and additions to the list of designated beryllium vendors;

(v) Pursuant to Subtitle D of the Act [42 U.S.C. 7385o], negotiate agreements with the chief executive officer of each State in which there is a DOE facility, and other States as appropriate, to provide assistance to a DOE contractor employee on filing a State workers' compensation system claim, and establish a Worker Assistance Program to help individuals whose illness is related to employment in the DOE's nuclear weapons complex, or the individual's survivor if the individual is deceased, in applying for State workers' compensation benefits. This assistance shall include:

(1) Submittal of reasonable claims to a physician panel, appointed by the Secretary of Health and Human Services and administered by the Secretary of Energy, under procedures established by the Secretary of Energy, for determination of whether the individual's illness or death arose out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility; and

(2) For cases determined by the physician panel and the Secretary of Energy under section 3661(d) and (e) of the Act [42 U.S.C. 7385o(d), (e)] to have arisen out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility, provide assistance to the individual in filing for workers' compensation benefits. The Secretary shall not contest these claims and, to the extent permitted by law, shall direct a DOE contractor who employed the applicant not to contest the claim;

(vi) Report on the Worker Assistance Program by making publicly available on at least an annual basis claims-related data, including the number of claims filed, the number of illnesses found to be related to work at a DOE facility, job location and description, and number of successful State workers' compensation claims awarded; and

(vii) No later than January 15, 2001, publish in the Federal Register a list of atomic weapons employer facilities within the meaning of section 3621(5) of the Act [42 U.S.C. 7384l(5)], Department of Energy employer facilities within the meaning of section 3621(12) of the Act, and a list of facilities owned and operated by a beryllium vendor, within the meaning of section 3621(6) of the Act.

(d) *Attorney General*. The Attorney General shall:

(i) Develop procedures to notify, to the extent possible, each claimant (or the survivor of that claimant if deceased) whose claim for compensation under section 5 of the Radiation Exposure Compensation Act [Pub. L. 101–426, 42 U.S.C. 2210 note] has been or is approved by the Department of Justice, of the availability of supplemental compensation and benefits under the Energy Employees Occupational Illness Compensation Program;

(ii) Identify and notify eligible covered uranium employees or their survivors of the availability of supplemental compensation under the Program; and

(iii) Upon request by the Secretary of Labor, provide information needed to adjudicate the claim of a covered uranium employee under this Program.

SEC. 3. *Establishment of Interagency Working Group.*

(a) There is hereby established an Interagency Working Group to be composed of representatives from the Office of Management and Budget, the National Economic Council, and the Departments of Labor, Energy, Health and Human Services, and Justice.

(b) The Working Group shall:

(i) By January 1, 2001, develop a legislative proposal to ensure the Program's fairness and efficiency, including provisions to assure adequate administrative resources and swift dispute resolution; and

(ii) Address any impediments to timely and coordinated Program implementation.

SEC. 4. *Establishment of Advisory Board on Radiation and Worker Health.*

(a) Pursuant to Public Law 106–398, there is hereby established an Advisory Board on Radiation and Health (Advisory Board). The Advisory Board shall consist of no more than 20 members to be appointed by the President. Members shall include affected workers and their representatives, and representatives from scientific and medical communities. The President shall designate a Chair for the Board among its members.

(b) The Advisory Board shall:

(i) Advise the Secretary of Health and Human Services on the development of guidelines under section 2(b)(i) of this order;

(ii) Advise the Secretary of Health and Human Services on the scientific validity and quality of dose reconstruction efforts performed for this Program; and

(iii) Upon request by the Secretary of Health and Human Services, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

SEC. 5. *Reporting Requirements*. The Secretaries of Labor, Health and Human Services, and Energy shall, as part of their annual budget submissions, report to the Office of Management and Budget (OMB) on their activities under this Program, including total expenditures related to benefits and program administration. They shall also report to the OMB, no later than March 1, 2001, on the manner in which they will carry out their respective responsibilities under the Act and this order. This report shall include, among other things, a description of the administrative structure established within their agencies to implement the Act and this order. In addition, the Secretary of Labor shall annually report on the total number and types of claims for which compensation was considered and other data pertinent to evaluating the Federal Government's performance fulfilling the requirements of the Act and this order.

SEC. 6. *Administration and Judicial Review*. (a) This Executive Order shall be carried out subject to the availability of appropriations, and to the extent permitted by law.

(b) This Executive Order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

EXTENSION OF TERM OF ADVISORY BOARD ON RADIATION AND WORKER HEALTH

Term of Advisory Board on Radiation and Worker Health extended until Sept. 30, 2027, by Ex. Ord. No. 14354, Sept. 29, 2025, 90 F.R. 48145, set out as a note under section 1013 of Title 5, Government Organization and Employees.

Previous extensions of term of Advisory Board on Radiation and Worker Health were contained in the following prior Executive Orders:

Ex. Ord. No. 14109, Sept. 29, 2023, 88 F.R. 68447, extended term until Sept. 30, 2025.
Ex. Ord. No. 14048, Sept. 30, 2021, 86 F.R. 55465, extended term until Sept. 30, 2023.
Ex. Ord. No. 13889, Sept. 27, 2019, 84 F.R. 52743, extended term until Sept. 30, 2021.
Ex. Ord. No. 13811, Sept. 29, 2017, 82 F.R. 46363, extended term until Sept. 30, 2019.
Ex. Ord. No. 13708, Sept. 30, 2015, 80 F.R. 60271, extended term until Sept. 30, 2017.

PART A—ESTABLISHMENT OF COMPENSATION PROGRAM AND COMPENSATION FUND

§7384d. Establishment of Energy Employees Occupational Illness Compensation Program

(a) Program established

There is hereby established a program to be known as the "Energy Employees Occupational Illness Compensation Program" (in this subchapter referred to as the "compensation program"). The President shall carry out the compensation program through one or more Federal agencies or officials, as designated by the President.

(b) Purpose of program

The purpose of the compensation program is to provide for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and subcontractors.

(c) Eligibility for compensation

The eligibility of covered employees for compensation under the compensation program shall be determined in accordance with the provisions of part B as may be modified by a law enacted after the date of the submittal of the proposal for legislation required by section 7384f of this title.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3611], Oct. 30, 2000, 114 Stat. 1654, 1654A–497.)

§7384e. Establishment of Energy Employees Occupational Illness Compensation Fund

(a) Establishment

There is hereby established on the books of the Treasury a fund to be known as the "Energy Employees Occupational Illness Compensation Fund" (in this subchapter referred to as the "compensation fund").

(b) Amounts in compensation fund

The compensation fund shall consist of the following amounts:

(1) Amounts appropriated to the compensation fund pursuant to the authorization of appropriations in section 7384g(b) of this title.

(2) Amounts transferred to the compensation fund under subsection (c).

(c) Financing of compensation fund

Upon the exhaustion of amounts in the compensation fund attributable to the authorization of appropriations in section 7384g(b) of this title, the Secretary of the Treasury shall transfer directly to the compensation fund from the General Fund of the Treasury, without further appropriation, such amounts as are further necessary to carry out the compensation program.

(d) Use of compensation fund

Subject to subsection (e), amounts in the compensation fund shall be used to carry out the compensation program.

(e) Administrative costs not paid from compensation fund

No cost incurred in carrying out the compensation program, or in administering the compensation fund, shall be paid from the compensation fund or set off against or otherwise deducted from any payment to any individual under the compensation program.

(f) Investment of amounts in compensation fund

Amounts in the compensation fund shall be invested in accordance with section 9702 of title 31, and any interest on, and proceeds from, any such investment shall be credited to and become a part of the compensation fund.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3612], Oct. 30, 2000, 114 Stat. 1654, 1654A–497.)

§7384f. Legislative proposal

(a) Legislative proposal required

Not later than March 15, 2001, the President shall submit to Congress a proposal for legislation to implement the compensation program. The proposal for legislation shall include, at a minimum, the specific recommendations (including draft legislation) of the President for the following:

(1) The types of compensation and benefits, including lost wages, medical benefits, and any lump-sum settlement payments, to be provided under the compensation program.

(2) Any adjustments or modifications necessary to appropriately administer the compensation program under part B.

(3) Whether to expand the compensation program to include other illnesses associated with exposure to toxic substances.

(4) Whether to expand the class of individuals who are members of the Special Exposure Cohort (as defined in section 7384l(14) of this title).

(b) Assessment of potential covered employees and required amounts

The President shall include with the proposal for legislation under subsection (a) the following:

(1) An estimate of the number of covered employees that the President determines were exposed in the performance of duty.

(2) An estimate, for each fiscal year of the compensation program, of the amounts to be required for compensation and benefits anticipated to be provided in such fiscal year under the compensation program.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3613], Oct. 30, 2000, 114 Stat. 1654, 1654A–498.)

§7384g. Authorization of appropriations

(a) In general

Pursuant to the authorization of appropriations in section 3103(a),[1] $25,000,000 may be used for purposes of carrying out this subchapter.

(b) Compensation fund

There is hereby authorized to be appropriated $250,000,000 to the Energy Employees Occupational Illness Compensation Fund established by section 7384e of this title.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3614], Oct. 30, 2000, 114 Stat. 1654, 1654A–498.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3103(a), referred to in subsec. (a), means section 1 [div. C, title XXXVI, §3103(a)] of Pub. L. 106–398, Oct. 30, 2000, 114 Stat. 1654, 1654A–449, which is not classified to the Code.

[1] *See References in Text note below.*

PART B—PROGRAM ADMINISTRATION

§7384*l*. Definitions for program administration

In this subchapter:

(1) The term "covered employee" means any of the following:

(A) A covered beryllium employee.

(B) A covered employee with cancer.

(C) To the extent provided in section 7384r of this title, a covered employee with chronic silicosis (as defined in that section).

(2) The term "atomic weapon" has the meaning given that term in section 2014(d) of this title.

(3) The term "atomic weapons employee" means any of the following:

(A) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.

(B) An individual employed—

(i) at a facility with respect to which the National Institute for Occupational Safety and Health, in its report dated October 2003 and titled "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities", or any update to that report, found that there is a potential for significant residual contamination outside of the period in which weapons-related production occurred;

(ii) by an atomic weapons employer or subsequent owner or operators of a facility described in clause (i); and

(iii) during a period, as specified in such report or any update to such report, of potential for significant residual radioactive contamination at such facility.

(4) The term "atomic weapons employer" means an entity, other than the United States, that—

(A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(B) is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

(5) The term "atomic weapons employer facility" means a facility, owned by an atomic

weapons employer, that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.

(6) The term "beryllium vendor" means any of the following:

(A) Atomics International.

(B) Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company.

(C) General Atomics.

(D) General Electric Company.

(E) NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, BerylCo, and Beryllium Corporation of America.

(F) Nuclear Materials and Equipment Corporation.

(G) StarMet Corporation and its predecessor, Nuclear Metals, Incorporated.

(H) Wyman Gordan, Incorporated.

(I) Any other vendor, processor, or producer of beryllium or related products designated as a beryllium vendor for purposes of the compensation program under section 7384m of this title.

(7) The term "covered beryllium employee" means the following, if and only if the employee is determined to have been exposed to beryllium in the performance of duty in accordance with section 7384n(a) of this title:

(A) A current or former employee (as that term is defined in section 8101(1) of title 5) who may have been exposed to beryllium at a Department of Energy facility or at a facility owned, operated, or occupied by a beryllium vendor.

(B) A current or former employee of—

(i) any entity that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility; or

(ii) any contractor or subcontractor that provided services, including construction and maintenance, at such a facility.

(C) A current or former employee of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy.

(8) The term "covered beryllium illness" means any of the following:

(A) Beryllium sensitivity as established by—

(i) an abnormal beryllium lymphocyte proliferation test performed on either blood or lung lavage cells; or

(ii) three borderline beryllium lymphocyte proliferation tests performed on blood cells over a period of 3 years.

(B) Established chronic beryllium disease.

(C) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in subparagraph (A) or (B).

(9) The term "covered employee with cancer" means any of the following:

(A) An individual with a specified cancer who is a member of the Special Exposure Cohort, if and only if that individual contracted that specified cancer after beginning employment at a Department of Energy facility (in the case of a Department of Energy employee or Department of Energy contractor employee) or at an atomic weapons employer facility (in the case of an atomic weapons employee).

(B)(i) An individual with cancer specified in subclause (I), (II), or (III) of clause (ii), if and only if that individual is determined to have sustained that cancer in the performance of duty in accordance with section 7384n(b) of this title.

(ii) Clause (i) applies to any of the following:

(I) A Department of Energy employee who contracted that cancer after beginning employment at a Department of Energy facility.

(II) A Department of Energy contractor employee who contracted that cancer after beginning employment at a Department of Energy facility.

(III) An atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility.

(10) The term "Department of Energy" includes the predecessor agencies of the Department of Energy, including the Manhattan Engineering District.

(11) The term "Department of Energy contractor employee" means any of the following:

(A) An individual who is or was in residence at a Department of Energy facility as a researcher for one or more periods aggregating at least 24 months.

(B) An individual who is or was employed at a Department of Energy facility by—

(i) an entity that contracted with the Department of Energy to provide management and operating, management and integration, or environmental remediation at the facility; or

(ii) a contractor or subcontractor that provided services, including construction and maintenance, at the facility.

(12) The term "Department of Energy facility" means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located—

(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

(B) with regard to which the Department of Energy has or had—

(i) a proprietary interest; or

(ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(13) The term "established chronic beryllium disease" means chronic beryllium disease as established by the following:

(A) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (8)(A)), together with lung pathology consistent with chronic beryllium disease, including—

(i) a lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) a computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

(iii) pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(B) For diagnoses before January 1, 1993, the presence of—

(i) occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) any three of the following criteria:

(I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(III) Lung pathology consistent with chronic beryllium disease.

(IV) Clinical course consistent with a chronic respiratory disorder.

(V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(14) The term "member of the Special Exposure Cohort" means a Department of Energy employee, Department of Energy contractor employee, or atomic weapons employee who meets any of the following requirements:

(A) The employee was so employed for a number of work days aggregating at least 250 work days before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or Oak Ridge, Tennessee, and, during such employment—

(i) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of employee's body to radiation; or

(ii) worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(B) The employee was so employed before January 1, 1974, by the Department of Energy or a Department of Energy contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(C)(i) Subject to clause (ii), the employee is an individual designated as a member of the Special Exposure Cohort by the President for purposes of the compensation program under section 7384q of this title.

(ii) A designation under clause (i) shall, unless Congress otherwise provides, take effect on the date that is 30 days after the date on which the President submits to Congress a report identifying the individuals covered by the designation and describing the criteria used in designating those individuals.

(15) The term "occupational illness" means a covered beryllium illness, cancer referred to in paragraph (9)(B), specified cancer, or chronic silicosis, as the case may be.

(16) The term "radiation" means ionizing radiation in the form of—

(A) alpha particles;

(B) beta particles;

(C) neutrons;

(D) gamma rays; or

(E) accelerated ions or subatomic particles from accelerator machines.

(17) The term "specified cancer" means any of the following:

(A) A specified disease, as that term is defined in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

(B) Bone cancer.

(C) Renal cancers.

(D) Leukemia (other than chronic lymphocytic leukemia), if initial occupational exposure occurred before 21 years of age and onset occurred more than two years after initial occupational exposure.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3621], Oct. 30, 2000, 114 Stat. 1654, 1654A–498; Pub. L. 107–20, title II, §2403(a), July 24, 2001, 115 Stat. 175; Pub. L. 107–107, div. C, title XXXI, §3151(a)(1), (4)(C), Dec. 28, 2001, 115 Stat. 1371, 1374; Pub. L. 108–375, div. C, title XXXI, §§3166(b)(2), 3168(a), Oct. 28, 2004, 118 Stat. 2189, 2190; Pub. L. 118–31, div. E, title LV, §5501(b), Dec. 22, 2023, 137 Stat. 956.)

EDITORIAL NOTES

REFERENCES IN TEXT

Executive Order No. 12344, referred to in par. (12)(A), is set out as a note under section 6102 of Title 10, Armed Forces.

Section 4(b)(2) of the Radiation Exposure Compensation Act, referred to in par. (17)(A), is section 4(b)(2)

of Pub. L. 101–426, which is set out in a note under section 2210 of this title.

AMENDMENTS

2023—Par. (8)(A). Pub. L. 118–31 inserted dash after "established by", designated remainder of existing provisions as cl. (i), and added cl. (ii).

2004—Par. (3). Pub. L. 108–375, §3168(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'atomic weapons employee' means an individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling."

Par. (14)(C)(ii). Pub. L. 108–375, §3166(b)(2), substituted "30 days" for "180 days".

2001—Par. (17)(C). Pub. L. 107–20 added subpar. (C).

Par. (17)(D). Pub. L. 107–107, §3151(a)(1), added subpar. (D).

Par. (18). Pub. L. 107–107, §3151(a)(4)(C), struck out par. (18) which read as follows: "The term 'survivor' means any individual or individuals eligible to receive compensation pursuant to section 8133 of title 5."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2001 AMENDMENTS

Pub. L. 107–107, div. C, title XXXI, §3151(a)(4)(D), Dec. 28, 2001, 115 Stat. 1374, provided that: "The amendments made by this paragraph [amending this section and sections 7384s and 7384u of this title] shall take effect on July 1, 2001."

Pub. L. 107–20, title II, §2403(b), July 24, 2001, 115 Stat. 175, provided that: "This section [amending this section] shall be effective on October 1, 2001."

§7384m. Expansion of list of beryllium vendors

Not later than December 31, 2002, the President may, in consultation with the Secretary of Energy, designate as a beryllium vendor for purposes of section 7384l(6) of this title any vendor, processor, or producer of beryllium or related products not previously listed under or designated for purposes of such section 7384l(6) of this title if the President finds that such vendor, processor, or producer has been engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy in a manner similar to the entities listed in such section 7384l(6) of this title.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3622], Oct. 30, 2000, 114 Stat. 1654, 1654A–502.)

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

§7384n. Exposure in the performance of duty

(a) Beryllium

A covered beryllium employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to beryllium in the performance of duty for the purposes of the compensation program if, and only if, the covered beryllium employee was—

(1) employed at a Department of Energy facility; or

(2) present at a Department of Energy facility, or a facility owned and operated by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of the Department of Energy,

during a period when beryllium dust, particles, or vapor may have been present at such facility.

(b) Cancer

An individual with cancer specified in subclause (I), (II), or (III) of section 7384l(9)(B)(ii) of this title shall be determined to have sustained that cancer in the performance of duty for purposes of the compensation program if, and only if, the cancer specified in that subclause was at least as likely as not related to employment at the facility specified in that subclause, as determined in accordance with the guidelines established under subsection (c).

(c) Guidelines

(1) For purposes of the compensation program, the President shall by regulation establish guidelines for making the determinations required by subsection (b).

(2) The President shall establish such guidelines after technical review by the Advisory Board on Radiation and Worker Health under section 7384o of this title.

(3) Such guidelines shall—

(A) be based on the radiation dose received by the employee (or a group of employees performing similar work) at such facility and the upper 99 percent confidence interval of the probability of causation in the radioepidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note), as such tables may be updated under section 7(b)(3) of such Act from time to time;

(B) incorporate the methods established under subsection (d); and

(C) take into consideration the type of cancer, past health-related activities (such as smoking), information on the risk of developing a radiation-related cancer from workplace exposure, and other relevant factors.

(4) In the case of an atomic weapons employee described in section 7384l(3)(B) of this title, the following doses of radiation shall be treated, for purposes of paragraph (3)(A) of this subsection, as part of the radiation dose received by the employee at such facility:

(A) Any dose of ionizing radiation received by that employee from facilities, materials, devices, or byproducts used or generated in the research, development, production, dismantlement, transportation, or testing of nuclear weapons, or from any activities to research, produce, process, store, remediate, or dispose of radioactive materials by or on behalf of the Department of Energy (except for activities covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) [1] pertaining to the Naval Nuclear Propulsion Program).

(B) Any dose of ionizing radiation received by that employee from a source not covered by subparagraph (A) that is not distinguishable through reliable documentation from a dose covered by subparagraph (A).

(d) Methods for radiation dose reconstructions

(1) The President shall, through any Federal agency (other than the Department of Energy) or official (other than the Secretary of Energy or any other official within the Department of Energy) that the President may designate, establish by regulation methods for arriving at reasonable estimates of the radiation doses received by an individual specified in subparagraph (B) of section 7384l(9) of this title at a facility specified in that subparagraph by each of the following employees:

(A) An employee who was not monitored for exposure to radiation at such facility.

(B) An employee who was monitored inadequately for exposure to radiation at such facility.

(C) An employee whose records of exposure to radiation at such facility are missing or incomplete.

(2) The President shall establish an independent review process using the Advisory Board on Radiation and Worker Health to—

(A) assess the methods established under paragraph (1); and

(B) verify a reasonable sample of the doses established under paragraph (1).

(e) Information on radiation doses

(1) The Secretary of Energy shall provide, to each covered employee with cancer specified in section 7384l(9)(B) of this title, information specifying the estimated radiation dose of that employee during each employment specified in section 7384l(9)(B) of this title, whether established by a dosimetry reading, by a method established under subsection (d), or by both a dosimetry reading and such method.

(2) The Secretary of Health and Human Services and the Secretary of Energy shall each make available to researchers and the general public information on the assumptions, methodology, and data used in establishing radiation doses under subsection (d). The actions taken under this paragraph shall be consistent with the protection of private medical records.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3623], Oct. 30, 2000, 114 Stat. 1654, 1654A–502; Pub. L. 108–375, div. C, title XXXI, §3168(b), Oct. 28, 2004, 118 Stat. 2190.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7(b) of the Orphan Drug Act, referred to in subsec. (c)(3)(A), is section 7(b) of Pub. L. 97–414, which is set out in a note under section 241 of this title.

Executive Order No. 12344, referred to in subsec. (c)(4)(A), is set out as a note under section 6102 of Title 10, Armed Forces.

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108–375 added par. (4).

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

[1] *See References in Text note below.*

§7384*o*. Advisory Board on Radiation and Worker Health

(a) Establishment

(1) Not later than 120 days after October 30, 2000, the President shall establish and appoint an Advisory Board on Radiation and Worker Health (in this section referred to as the "Board").

(2) The President shall make appointments to the Board in consultation with organizations with expertise on worker health issues in order to ensure that the membership of the Board reflects a balance of scientific, medical, and worker perspectives.

(3) The President shall designate a Chair for the Board from among its members.

(b) Duties

The Board shall advise the President on—

(1) the development of guidelines under section 7384n(c) of this title;

(2) the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and

(3) such other matters related to radiation and worker health in Department of Energy facilities as the President considers appropriate.

(c) Staff

(1) The President shall appoint a staff to facilitate the work of the Board. The staff shall be headed by a Director who shall be appointed under subchapter VIII of chapter 33 of title 5.

(2) The President may accept as staff of the Board personnel on detail from other Federal

agencies. The detail of personnel under this paragraph may be on a nonreimbursable basis.

(d) Expenses

Members of the Board, other than full-time employees of the United States, while attending meetings of the Board or while otherwise serving at the request of the President, while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay.

(e) Security clearances

(1) The Secretary of Energy shall ensure that the members and staff of the Board, and the contractors performing work in support of the Board, are afforded the opportunity to apply for a security clearance for any matter for which such a clearance is appropriate. The Secretary should, not later than 180 days after receiving a completed application, make a determination whether or not the individual concerned is eligible for the clearance.

(2) For fiscal year 2007 and each fiscal year thereafter, the Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) a report specifying the number of applications for security clearances under this subsection, the number of such applications granted, and the number of such applications denied.

(f) Information

The Secretary of Energy shall, in accordance with law, provide to the Board and the contractors of the Board access to any information that the Board considers relevant to carry out its responsibilities under this subchapter, including information such as Restricted Data (as defined in section 2014(y) of this title) and information covered by the Privacy Act [5 U.S.C. 552a].

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3624], Oct. 30, 2000, 114 Stat. 1654, 1654A–504; Pub. L. 108–375, div. C, title XXXI, §3166(a), Oct. 28, 2004, 118 Stat. 2188.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Privacy Act, referred to in subsec. (f), is probably a reference to section 552a of Title 5, Government Organization and Employees. See Short Title note set out under section 552a of Title 5.

AMENDMENTS

2004—Subsecs. (e), (f). Pub. L. 108–375 added subsecs. (e) and (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

§7384p. Responsibilities of Secretary of Health and Human Services

The Secretary of Health and Human Services shall carry out that Secretary's responsibilities with respect to the compensation program with the assistance of the Director of the National Institute for Occupational Safety and Health.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3625], Oct. 30, 2000, 114 Stat. 1654, 1654A–504.)

§7384q. Designation of additional members of special exposure cohort

(a) Advice on additional members

(1) The Advisory Board on Radiation and Worker Health under section 7384o of this title shall advise the President whether there is a class of employees at any Department of Energy facility who likely were exposed to radiation at that facility but for whom it is not feasible to estimate with sufficient accuracy the radiation dose they received.

(2) The advice of the Advisory Board on Radiation and Worker Health under paragraph (1) shall be based on exposure assessments by radiation health professionals, information provided by the Department of Energy, and such other information as the Advisory Board considers appropriate.

(3) The President shall request advice under paragraph (1) after consideration of petitions by classes of employees described in that paragraph for such advice. The President shall consider such petitions pursuant to procedures established by the President.

(b) Designation of additional members

Subject to the provisions of section 7384l(14)(C) of this title, the members of a class of employees at a Department of Energy facility, or at an atomic weapons employer facility, may be treated as members of the Special Exposure Cohort for purposes of the compensation program if the President, upon recommendation of the Advisory Board on Radiation and Worker Health, determines that—

(1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and

(2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

(c) Deadlines

(1) Not later than 180 days after the date on which the President receives a petition for designation as members of the Special Exposure Cohort, the Director of the National Institute for Occupational Safety and Health shall submit to the Advisory Board on Radiation and Worker Health a recommendation on that petition, including all supporting documentation.

(2)(A) Upon receipt by the President of a recommendation of the Advisory Board on Radiation and Worker Health that the President should determine in the affirmative that paragraphs (1) and (2) of subsection (b) apply to a class, the President shall have a period of 30 days in which to determine whether such paragraphs apply to the class and to submit that determination (whether affirmative or negative) to Congress.

(B) If the determination submitted by the President under subparagraph (A) is in the affirmative, the President shall also submit a report meeting the requirements of section 7384l(14)(C)(ii) of this title.

(C) If the President does not submit a determination required by subparagraph (A) within the period required by subparagraph (A), then upon the day following the expiration of that period, it shall be deemed for purposes of section 7384l(14)(C)(ii) of this title that the President submitted the report under that provision on that day.

(d) Access to information

The Secretary of Energy shall provide, in accordance with law, the Secretary of Health and Human Services and the members and staff of the Advisory Board on Radiation and Worker Health access to relevant information on worker exposures, including access to Restricted Data (as defined in section 2014(y) of this title.[1]

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3626], Oct. 30, 2000, 114 Stat. 1654, 1654A–504; Pub. L. 107–107, div. C, title XXXI, §3151(a)(2), Dec. 28, 2001, 115 Stat. 1372; Pub. L. 108–375, div. C, title XXXI, §3166(b)(1), Oct. 28, 2004, 118 Stat. 2188.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsecs. (c), (d). Pub. L. 108–375 added subsec. (c) and redesignated former subsec. (c) as (d).

2001—Subsec. (b). Pub. L. 107–107 inserted ", or at an atomic weapons employer facility," after "Department of Energy facility" in introductory provisions.

[1] *So in original. A closing parenthesis should probably follow "title".*

§7384r. Separate treatment of chronic silicosis

(a) Sense of Congress

Congress finds that employees who worked in Department of Energy test sites and later contracted chronic silicosis should also be considered for inclusion in the compensation program. Recognizing that chronic silicosis resulting from exposure to silica is not a condition unique to the nuclear weapons industry, it is not the intent of Congress with this subchapter to establish a precedent on the question of chronic silicosis as a compensable occupational disease. Consequently, it is the sense of Congress that a further determination by the President is appropriate before these workers are included in the compensation program.

(b) Certification by President

A covered employee with chronic silicosis shall be treated as a covered employee (as defined in section 7384l(1) of this title) for the purposes of the compensation program required by section 7384d of this title unless the President submits to Congress not later than 180 days after October 30, 2000, the certification of the President that there is insufficient basis to include such employees. The President shall submit with the certification any recommendations about the compensation program with respect to covered employees with chronic silicosis as the President considers appropriate.

(c) Exposure to silica in the performance of duty

A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a Department of Energy facility located in Nevada or Alaska for tests or experiments related to an atomic weapon.

(d) Covered employee with chronic silicosis

For purposes of this subchapter, the term "covered employee with chronic silicosis" means a Department of Energy employee, or a Department of Energy contractor employee, with chronic silicosis who was exposed to silica in the performance of duty as determined under subsection (c).

(e) Chronic silicosis

For purposes of this subchapter, the term "chronic silicosis" means a nonmalignant lung disease if—

(1) the initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) a written diagnosis of silicosis is made by a medical doctor and is accompanied by—

(A) a chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher;

(B) results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(C) lung biopsy findings consistent with silicosis.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3627], Oct. 30, 2000, 114 Stat. 1654, 1654A–505; Pub. L. 107–107, div. C, title XXXI, §3151(a)(3), Dec. 28, 2001, 115 Stat. 1372.)

EDITORIAL NOTES

AMENDMENTS

2001—Subsec. (e)(2)(A). Pub. L. 107–107 substituted "category 1/0" for "category 1/1".

§7384s. Compensation and benefits to be provided

(a) Compensation provided

(1) Except as provided in paragraph (2), a covered employee, or the survivor of that covered employee if the employee is deceased, shall receive compensation for the disability or death of that employee from that employee's occupational illness in the amount of $150,000.

(2) A covered employee shall, to the extent that employee's occupational illness is established beryllium sensitivity, receive beryllium sensitivity monitoring under subsection (c) in lieu of compensation under paragraph (1).

(b) Medical benefits

A covered employee shall receive medical benefits under section 7384t of this title for that employee's occupational illness.

(c) Beryllium sensitivity monitoring

An individual receiving beryllium sensitivity monitoring under this subsection shall receive the following:

(1) A thorough medical examination to confirm the nature and extent of the individual's established beryllium sensitivity.

(2) Regular medical examinations thereafter to determine whether that individual has developed established chronic beryllium disease.

(d) Payment from compensation fund

The compensation provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(e) Payments in the case of deceased persons

(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee's occupational illness, such payment may be made only as follows:

(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

(F) Notwithstanding the other provisions of this paragraph, if there is—

(i) a surviving spouse described in subparagraph (A); and

(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,

then half of such payment shall be made to such surviving spouse, and the other half of such

payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this subchapter, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

(A) the "spouse" of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(B) a "child" includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(C) a "parent" includes fathers and mothers through adoption;

(D) a "grandchild" of an individual is a child of a child of that individual; and

(E) a "grandparent" of an individual is a parent of a parent of that individual.

(f) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3628], Oct. 30, 2000, 114 Stat. 1654, 1654A–506; Pub. L. 107–107, div. C, title XXXI, §3151(a)(4)(A), Dec. 28, 2001, 115 Stat. 1372.)

EDITORIAL NOTES

AMENDMENTS

2001—Subsec. (e). Pub. L. 107–107 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

"(1) Subject to the provisions of this section, if a covered employee dies before the effective date specified in subsection (f) of this section, whether or not the death is a result of that employee's occupational illness, a survivor of that employee may, on behalf of that survivor and any other survivors of that employee, receive the compensation provided for under this section.

"(2) The right to receive compensation under this section shall be afforded to survivors in the same order of precedence as that set forth in section 8109 of title 5."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective July 1, 2001, see section 3151(a)(4)(D) of Pub. L. 107–107, set out as a note under section 7384l of this title.

§7384t. Medical benefits

(a) Medical benefits provided

The United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.

(b) Persons furnishing benefits

(1) These services, appliances, and supplies shall be furnished by or on the order of United States medical officers and hospitals, or, at the individual's option, by or on the order of physicians and hospitals designated or approved by the President.

(2) The individual may initially select a physician to provide medical services, appliances, and supplies under this section in accordance with such regulations and instructions as the President

considers necessary.

(c) Transportation and expenses

The individual may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies.

(d) Commencement of benefits

An individual receiving benefits under this section shall be furnished those benefits as of the date on which that individual submitted the claim for those benefits in accordance with this subchapter.

(e) Payment from compensation fund

The benefits provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(f) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3629], Oct. 30, 2000, 114 Stat. 1654, 1654A–507.)

§7384u. Separate treatment of certain uranium employees

(a) Compensation provided

An individual who receives, or has received, $100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act (hereafter in this section referred to as a "covered uranium employee"), or the survivor of that covered uranium employee if the employee is deceased, shall receive compensation under this section in the amount of $50,000.

(b) Medical benefits

A covered uranium employee shall receive medical benefits under section 7384t of this title for the illness for which that employee received $100,000 under section 5 of that Act.

(c) Coordination with RECA

The compensation and benefits provided in subsections (a) and (b) are separate from any compensation or benefits provided under that Act.

(d) Payment from compensation fund

The compensation provided under this section and the compensation provided under section 5 of the Radiation Exposure Compensation Act, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(e) Payments in the case of deceased persons

(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee's occupational illness, such payment may be made only as follows:

(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

(F) Notwithstanding the other provisions of this paragraph, if there is—

(i) a surviving spouse described in subparagraph (A); and

(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,

then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this subchapter, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

(A) the "spouse" of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(B) a "child" includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(C) a "parent" includes fathers and mothers through adoption;

(D) a "grandchild" of an individual is a child of a child of that individual; and

(E) a "grandparent" of an individual is a parent of a parent of that individual.

(f) Procedures required

The President shall establish procedures to identify and notify each covered uranium employee, or the survivor of that covered uranium employee if that employee is deceased, of the availability of compensation and benefits under this section.

(g) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3630], Oct. 30, 2000, 114 Stat. 1654, 1654A–507; Pub. L. 107–107, div. C, title XXXI, §3151(a)(4)(B), Dec. 28, 2001, 115 Stat. 1373; Pub. L. 108–375, div. C, title XXXI, §3165(a), Oct. 28, 2004, 118 Stat. 2187.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsecs. (a) to (d), is Pub. L. 101–426, Oct. 15, 1990, 104 Stat. 920, which is set out as a note under section 2210 of this title.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–375 inserted "and the compensation provided under section 5 of the Radiation Exposure Compensation Act" after "The compensation provided under this section".

2001—Subsec. (e). Pub. L. 107–107 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

"(1) Subject to the provisions of this section, if a covered uranium employee dies before the effective date specified in subsection (g) of this section, whether or not the death is a result of the illness specified in subsection (b) of this section, a survivor of that employee may, on behalf of that survivor and any other survivors of that employee, receive the compensation provided for under this section.

"(2) The right to receive compensation under this section shall be afforded to survivors in the same order of precedence as that set forth in section 8109 of title 5."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective July 1, 2001, see section 3151(a)(4)(D) of Pub. L. 107–107, set out as a note under section 7384l of this title.

§7384v. Assistance for claimants and potential claimants

(a) Assistance for claimants

The President shall, upon the receipt of a request for assistance from a claimant under the compensation program, provide assistance to the claimant in connection with the claim, including—

(1) assistance in securing medical testing and diagnostic services necessary to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(2) such other assistance as may be required to develop facts pertinent to the claim.

(b) Assistance for potential claimants

The President shall take appropriate actions to inform and assist covered employees who are potential claimants under the compensation program, and other potential claimants under the compensation program, of the availability of compensation under the compensation program, including actions to—

(1) ensure the ready availability, in paper and electronic format, of forms necessary for making claims;

(2) provide such covered employees and other potential claimants with information and other support necessary for making claims, including—

(A) medical protocols for medical testing and diagnosis to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(B) lists of vendors approved for providing laboratory services related to such medical testing and diagnosis; and

(3) provide such additional assistance to such covered employees and other potential claimants as may be required for the development of facts pertinent to a claim.

(c) Information from beryllium vendors and other contractors

As part of the assistance program provided under subsections (a) and (b), and as permitted by law, the Secretary of Energy shall, upon the request of the President, require a beryllium vendor or other Department of Energy contractor or subcontractor to provide information relevant to a claim or potential claim under the compensation program to the President.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3631], Oct. 30, 2000, 114 Stat. 1654, 1654A–508.)

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

§7384w. Subpoenas; oaths; examination of witnesses

The Secretary of Labor, with respect to any matter under this part, may—

(1) issue subpoenas for and compel the attendance of witnesses;

(2) administer oaths;

(3) examine witnesses; and

(4) require the production of books, papers, documents, and other evidence.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3632], as added Pub. L. 108–375, div. C, title XXXI, §3163(a), Oct. 28, 2004, 118 Stat. 2186.)

§7384w–1. Completion of site profiles

(a) In general

To the extent that the Secretary of Labor determines it useful and practicable, the Secretary of Labor shall direct the Director of the National Institute for Occupational Safety and Health to prepare site profiles for a Department of Energy facility based on the records, files, and other data provided by the Secretary of Energy and such other information as is available, including information available from the former worker medical screening programs of the Department of Energy.

(b) Information

The Secretary of Energy shall furnish to the Secretary of Labor any information that the Secretary of Labor finds necessary or useful for the production of such site profiles, including records from the Department of Energy former worker medical screening program.

(c) Definition

In this section, the term "site profile" means an exposure assessment of a facility that identifies the toxic substances or processes that were commonly used in each building or process of the facility, and the time frame during which the potential for exposure to toxic substances existed.

(d) Time frames

The Secretary of Health and Human Services shall establish time frames for completing site profiles for those Department of Energy facilities for which a site profile has not been completed. Not later than March 1, 2005, the Secretary of Health and Human Services shall submit to Congress a report setting forth those time frames.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3633], as added Pub. L. 108–375, div. C, title XXXI, §3166(c), Oct. 28, 2004, 118 Stat. 2189.)

PART C—TREATMENT, COORDINATION, AND FORFEITURE OF COMPENSATION AND BENEFITS

§7385. Offset for certain payments

A payment of compensation to an individual, or to a survivor of that individual, under this subchapter shall be offset by the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by that individual on account of the exposure for which compensation is payable under this subchapter.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3641], Oct. 30, 2000, 114 Stat. 1654, 1654A–509; Pub. L. 108–375, div. C, title XXXI, §3162(a), Oct. 28, 2004, 118 Stat. 2186.)

EDITORIAL NOTES

AMENDMENTS

2004—Pub. L. 108–375 substituted "this subchapter" for "part B" and "on account of the exposure for which compensation is payable under this subchapter" for "on account of the exposure of a covered beryllium

employee, covered employee with cancer, covered employee with chronic silicosis (as defined in section 7384r of this title), or covered uranium employee (as defined in section 7384u of this title), while so employed, to beryllium, radiation, silica, or radiation, respectively".

§7385a. Subrogation of the United States

Upon payment of compensation under this subchapter, the United States is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in section 7385 of this title.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3642], Oct. 30, 2000, 114 Stat. 1654, 1654A–509; Pub. L. 108–375, div. C, title XXXI, §3162(b), Oct. 28, 2004, 118 Stat. 2186.)

EDITORIAL NOTES

AMENDMENTS

2004—Pub. L. 108–375 substituted "this subchapter" for "part B".

§7385b. Payment in full settlement of claims

Except as provided in part E, the acceptance by an individual of payment of compensation under part B with respect to a covered employee shall be in full satisfaction of all claims of or on behalf of that individual against the United States, against a Department of Energy contractor or subcontractor, beryllium vendor, or atomic weapons employer, or against any person with respect to that person's performance of a contract with the United States, that arise out of an exposure referred to in section 7385 of this title.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3643], Oct. 30, 2000, 114 Stat. 1654, 1654A–509; Pub. L. 108–375, div. C, title XXXI, §3162(c), Oct. 28, 2004, 118 Stat. 2186.)

EDITORIAL NOTES

AMENDMENTS

2004—Pub. L. 108–375 substituted "Except as provided in part E, the acceptance" for "The acceptance".

§7385c. Exclusivity of remedy against the United States and against contractors and subcontractors

(a) In general

The liability of the United States or an instrumentality of the United States under this subchapter with respect to a cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death related thereto of a covered employee is exclusive and instead of all other liability—

(1) of—

(A) the United States;

(B) any instrumentality of the United States;

(C) a contractor that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility (in its capacity as a contractor);

(D) a subcontractor that provided services, including construction, at a Department of Energy facility (in its capacity as a subcontractor); and

(E) an employee, agent, or assign of an entity specified in subparagraphs (A) through (D);

(2) to—

(A) the covered employee;

(B) the covered employee's legal representative, spouse, dependents, survivors, and next of kin; and

(C) any other person, including any third party as to whom the covered employee, or the covered employee's legal representative, spouse, dependents, survivors, or next of kin, has a cause of action relating to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death, otherwise entitled to recover damages from the United States, the instrumentality, the contractor, the subcontractor, or the employee, agent, or assign of one of them,

because of the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death in any proceeding or action including a direct judicial proceeding, a civil action, a proceeding in admiralty, or a proceeding under a tort liability statute or the common law.

(b) Applicability

This section applies to all cases filed on or after October 30, 2000.

(c) Workers' compensation

This section does not apply to an administrative or judicial proceeding under a Federal or State workers' compensation law.

(d) Applicability to part E

This section applies with respect to part E to the covered medical condition or covered illness or death of a covered DOE contractor employee on the same basis as it applies with respect to part B to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death of a covered employee.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3644], Oct. 30, 2000, 114 Stat. 1654, 1654A–509; Pub. L. 108–375, div. C, title XXXI, §3162(d), Oct. 28, 2004, 118 Stat. 2186.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–375 added subsec. (d).

§7385d. Election of remedy for beryllium employees and atomic weapons employees

(a) Effect of tort cases filed before enactment of original law

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) before October 30, 2000, such individual shall be eligible for compensation and benefits under part B.

(2) If such tort case remained pending as of December 28, 2001, and such individual does not dismiss such tort case before December 31, 2003, such individual shall not be eligible for such compensation or benefits.

(b) Effect of tort cases filed between enactment of original law and enactment of 2001 amendments

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) during the period beginning on October 30, 2000, and ending on December 28, 2001, such individual shall not be eligible for such compensation or benefits.

(2) If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation or benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n of this title.

(c) Effect of tort cases filed after enactment of 2001 amendments

(1) If an otherwise eligible individual files a tort case specified in subsection (d) after December 28, 2001, such individual shall not be eligible for such compensation or benefits if a final court decision is entered against such individual in such tort case.

(2) If such a final court decision is not entered, such individual shall nonetheless not be eligible for such compensation or benefits, except as follows: If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation and benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n of this title.

(d) Covered tort cases

A tort case specified in this subsection is a tort case alleging a claim referred to in section 7385b of this title against a beryllium vendor or atomic weapons employer.

(e) Workers' compensation

This section does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation law.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3645], Oct. 30, 2000, 114 Stat. 1654, 1654A–510; Pub. L. 107–107, div. C, title XXXI, §3151(a)(5), Dec. 28, 2001, 115 Stat. 1374.)

EDITORIAL NOTES

AMENDMENTS

2001—Subsecs. (a) to (d). Pub. L. 107–107 amended headings and text of subsecs. (a) to (d) generally, substituting present provisions for provisions relating to election to file suit in subsec. (a), applicable time limits in subsec. (b), dismissal of claims in subsec. (c), and dismissal of pending suit in subsec. (d).

§7385e. Certification of treatment of payments under other laws

Compensation or benefits provided to an individual under this subchapter—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31 or the amount of such benefits.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3646], Oct. 30, 2000, 114 Stat. 1654, 1654A–510; Pub. L. 108–375, div. C, title XXXI, §3162(e), Oct. 28, 2004, 118 Stat. 2186.)

EDITORIAL NOTES

AMENDMENTS

2004—Pub. L. 108–375 substituted "this subchapter" for "part B".

§7385f. Claims not assignable or transferable; choice of remedies

(a) Claims not assignable or transferable

No claim cognizable under this subchapter shall be assignable or transferable.

(b) Choice of remedies

No individual may receive more than one payment of compensation under part B.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3647], Oct. 30, 2000, 114 Stat. 1654, 1654A–511; Pub. L. 108–375, div. C, title XXXI, §3162(f), Oct. 28, 2004, 118 Stat. 2186.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 substituted "this subchapter" for "part B".

§7385g. Attorney fees

(a) General rule

Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual for payment of lump-sum compensation under part B, more than that percentage specified in subsection (b) of a payment made under part B on such claim.

(b) Applicable percentage limitations

The percentage referred to in subsection (a) is—

(1) 2 percent for the filing of an initial claim for payment of lump-sum compensation; and

(2) 10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.

(c) Inapplicability to other services

This section shall not apply with respect to services rendered that are not in connection with such a claim for payment of lump-sum compensation.

(d) Penalty

Any such representative who violates this section shall be fined not more than $5,000.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3648], Oct. 30, 2000, 114 Stat. 1654, 1654A–511; Pub. L. 107–107, div. C, title XXXI, §3151(a)(6), Dec. 28, 2001, 115 Stat. 1375.)

EDITORIAL NOTES

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §3151(a)(6)(A), inserted "for payment of lump-sum compensation" after "the claim of an individual".

Subsec. (b)(1). Pub. L. 107–107, §3151(a)(6)(B), inserted "for payment of lump-sum compensation" after "initial claim".

Subsec. (b)(2). Pub. L. 107–107, §3151(a)(6)(C), substituted "with respect to objections to a recommended decision denying payment of lump-sum compensation" for "with respect to any claim with respect to which a representative has made a contract for services before October 30, 2000".

Subsecs. (c), (d). Pub. L. 107–107, §3151(a)(6)(D), (E), added subsec. (c) and redesignated former subsec. (c) as (d).

§7385h. Certain claims not affected by awards of damages

A payment under this subchapter shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on any individual receiving such

payment, on the basis of such receipt, to repay any insurance carrier for insurance payments, or to repay any person on account of worker's compensation payments; and a payment under this subchapter shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3649], Oct. 30, 2000, 114 Stat. 1654, 1654A–511; Pub. L. 108–375, div. C, title XXXI, §3162(g), Oct. 28, 2004, 118 Stat. 2186.)

EDITORIAL NOTES

AMENDMENTS

2004—Pub. L. 108–375 substituted "this subchapter" for "part B" in two places.

§7385i. Forfeiture of benefits by convicted felons

(a) Forfeiture of compensation

Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter or under any other Federal or State workers' compensation law, shall forfeit (as of the date of such conviction) any entitlement to any compensation or benefit under this subchapter such individual would otherwise be awarded for any injury, illness or death covered by this subchapter for which the time of injury was on or before the date of the conviction.

(b) Information

Notwithstanding section 552a of title 5, or any other Federal or State law, an agency of the United States, a State, or a political subdivision of a State shall make available to the President, upon written request from the President and if the President requires the information to carry out this section, the names and Social Security account numbers of individuals confined, for conviction of a felony, in a jail, prison, or other penal institution or correctional facility under the jurisdiction of that agency.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3650], Oct. 30, 2000, 114 Stat. 1654, 1654A–511; Pub. L. 108–375, div. C, title XXXI, §3162(h), Oct. 28, 2004, 118 Stat. 2186.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 substituted "this subchapter" for "part B" wherever appearing.

§7385j. Coordination with other Federal radiation compensation laws

Except in accordance with section 7384u of this title, an individual may not receive compensation or benefits under the compensation program for cancer and also receive compensation under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) or section 1112(c) of title 38.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3651], Oct. 30, 2000, 114 Stat. 1654, 1654A–512.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in text, is Pub. L. 101–426, Oct. 15, 1990, 104 Stat. 920, which is set out as a note under section 2210 of this title.

§7385j–1. Social Security earnings information

Notwithstanding the provision of section 552a of title 5 or any other provision of Federal or State law, the Social Security Administration shall make available to the Secretary of Labor, upon written request, the Social Security earnings information of living or deceased employees who may have sustained an illness that is the subject of a claim under this subchapter, which the Secretary of Labor may require to carry out the provisions of this subchapter.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3652], as added Pub. L. 108–375, div. C, title XXXI, §3163(b), Oct. 28, 2004, 118 Stat. 2187.)

§7385j–2. Recovery and waiver of overpayments

(a) In general

When an overpayment has been made to an individual under this subchapter because of an error of fact or law, recovery shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled. If the individual dies before the recovery is completed, recovery shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(b) Waiver

Recovery by the United States under this section may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) Liability

A certifying or disbursing official is not liable for an amount certified or paid by him when recovery of the amount is waived under subsection (b) of this section, or when recovery under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3653], as added Pub. L. 108–375, div. C, title XXXI, §3163(c), Oct. 28, 2004, 118 Stat. 2187.)

PART D—ASSISTANCE IN STATE WORKERS' COMPENSATION PROCEEDINGS

§7385*o*. Repealed. Pub. L. 108–375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186

Section, Pub. L. 106–398, §1 [div. C, title XXXVI, §3661], Oct. 30, 2000, 114 Stat. 1654, 1654A–512, authorized Secretary of Energy to enter agreements with States to provide assistance to Department of Energy contractor employees in filing claims under the appropriate State workers' compensation system.

PART E—CONTRACTOR EMPLOYEE COMPENSATION

§7385s. Definitions

In this part:

(1) The term "covered DOE contractor employee" means any Department of Energy contractor employee determined under section 7385s–4 of this title to have contracted a covered illness

through exposure at a Department of Energy facility.

(2) The term "covered illness" means an illness or death resulting from exposure to a toxic substance.

(3) The term "Secretary" means the Secretary of Labor.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3671], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2178.)

§7385s–1. Compensation to be provided

Subject to the other provisions of this part:

(1) Contractor employees

A covered DOE contractor employee shall receive contractor employee compensation under this part in accordance with section 7385s–2 of this title.

(2) Survivors

After the death of a covered DOE contractor employee, compensation referred to in paragraph (1) shall not be paid. Instead, the survivor of that employee shall receive compensation as follows:

(A) Except as provided in subparagraph (B), the survivor of that employee shall receive contractor employee compensation under this part in accordance with section 7385s–3 of this title.

(B) In a case in which the employee's death occurred after the employee applied under this part and before compensation was paid under paragraph (1), and the employee's death occurred from a cause other than the covered illness of the employee, the survivor of that employee may elect to receive, in lieu of compensation under subparagraph (A), the amount of contractor employee compensation that the employee would have received in accordance with section 7385s–2 of this title if the employee's death had not occurred before compensation was paid under paragraph (1).

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3672], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2178.)

§7385s–2. Compensation schedule for contractor employees

(a) Compensation provided

The amount of contractor employee compensation under this part for a covered DOE contractor employee shall be the sum of the amounts determined under paragraphs (1) and (2), as follows:

(1) Impairment

(A) The Secretary shall determine—

(i) the minimum impairment rating of that employee, expressed as a number of percentage points; and

(ii) the number of those points that are the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility.

(B) The employee shall receive an amount under this paragraph equal to $2,500 multiplied by the number referred to in clause (ii) of subparagraph (A).

(2) Wage loss

(A) The Secretary shall determine—

(i) the calendar month during which the employee first experienced wage loss as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility;

(ii) the average annual wage of the employee for the 36-month period immediately preceding

the calendar month referred to in clause (i), excluding any portions of that period during which the employee was unemployed; and

(iii) beginning with the calendar year that includes the calendar month referred to in clause (i), through and including the calendar year during which the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.])—

(I) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage exceeded 50 percent of the average annual wage determined under clause (ii), but did not exceed 75 percent of the average annual wage determined under clause (ii); and

(II) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage determined under clause (ii).

(B) The employee shall receive an amount under this paragraph equal to the sum of—

(i) $10,000 multiplied by the number referred to in clause (iii)(I) of subparagraph (A); and

(ii) $15,000 multiplied by the number referred to in clause (iii)(II) of subparagraph (A).

(b) Determination of minimum impairment rating

For purposes of subsection (a), a minimum impairment rating shall be determined in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3673], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2179.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2)(A)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§7385s–3. Compensation schedule for survivors

(a) Categories of compensation

The amount of contractor employee compensation under this part for the survivor of a covered DOE contractor employee shall be determined as follows:

(1) Category one

The survivor shall receive the amount of $125,000, if the Secretary determines that—

(A) the employee would have been entitled to compensation under section 7385s–4 of this title for a covered illness; and

(B) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the death of such employee.

(2) Category two

The survivor shall receive the amount of $150,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 10 years, before the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]), during which, as the result of any covered illness contracted by that employee

through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 7385s–2(a)(2)(A)(ii) of this title.

(3) Category three

The survivor shall receive the amount of $175,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 20 years, before the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 7385s–2(a)(2)(A)(ii) of this title.

(b) One amount only

The survivor of a covered DOE contractor employee to whom more than one amount under subsection (a) applies shall receive only the highest such amount.

(c) Determination and allocation of shares

The amount under subsection (a) shall be paid only as follows:

(1) If a covered spouse is alive at the time of payment, such payment shall be made to such surviving spouse.

(2) If there is no covered spouse described in paragraph (1), such payment shall be made in equal shares to all covered children who are alive at the time of payment.

(3) Notwithstanding the other provisions of this subsection, if there is—

(A) a covered spouse described in paragraph (1); and

(B) at least one covered child of the employee who is living at the time of payment and who is not a recognized natural child or adopted child of such covered spouse,

then half of such payment shall be made to such covered spouse, and the other half of such payment shall be made in equal shares to each covered child of the employee who is living at the time of payment.

(d) Definitions

In this section:

(1) The term "covered spouse" means a spouse of the employee who was married to the employee for at least one year immediately before the employee's death.

(2) The term "covered child" means a child of the employee who, as of the employee's death—

(A) had not attained the age of 18 years;

(B) had not attained the age of 23 years and was a full-time student who had been continuously enrolled as a full-time student in one or more educational institutions since attaining the age of 18 years; or

(C) had been incapable of self-support.

(3) The term "child" includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3674], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2180.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§7385s–4. Determinations regarding contraction of covered illnesses

(a) Cases determined under part B

A determination under part B that a Department of Energy contractor employee is entitled to compensation under that part for an occupational illness shall be treated for purposes of this part as a determination that the employee contracted that illness through exposure at a Department of Energy facility.

(b) Cases determined under former part D

In the case of a covered illness of an employee with respect to which a panel has made a positive determination under section 7385o(d) of this title and the Secretary of Energy has accepted that determination under section 7385o(e)(2) of this title, or with respect to which a panel has made a negative determination under section 7385o(d) of this title and the Secretary of Energy has found significant evidence to the contrary under section 7385o(e)(2) of this title, that determination shall be treated for purposes of this part as a determination that the employee contracted the covered illness through exposure at a Department of Energy facility.

(c) Other cases

(1) In any other case, a Department of Energy contractor employee shall be determined for purposes of this part to have contracted a covered illness through exposure at a Department of Energy facility if—

(A) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness; and

(B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

(2) A determination under paragraph (1) shall be made by the Secretary.

(d) Applications by spouses and children

If a spouse or child of a Department of Energy contractor employee applies for benefits under this part, the Secretary shall make a determination under this section with respect to that employee without regard to whether the spouse is a "covered spouse", or the child is a "covered child", under this part.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3675], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2181.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7385o of this title, referred to in subsec. (b), was repealed by Pub. L. 108–375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186.

§7385s–5. Applicability to certain uranium employees

(a) In general

This part shall apply to—

(1) a section 5 payment recipient who contracted a section 5 illness through a section 5 exposure at a section 5 facility, or

(2) a section 5 uranium worker determined under section 7385s–4(c) of this title to have contracted a covered illness through exposure to a toxic substance at a section 5 mine or mill,

(or to the survivor of that employee, as applicable) on the same basis as it applies to a Department of Energy contractor employee determined under section 7385s–4 of this title to have contracted a

covered illness through exposure to a toxic substance at a Department of Energy facility (or to the survivor of that employee, as applicable).

(b) Definitions

In this section:

(1) The term "section 5 payment recipient" means an individual who receives, or has received, $100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act.

(2) The terms "section 5 exposure", "section 5 facility", and "section 5 illness" mean the exposure, facility, and illness, respectively, to which an individual's status as a section 5 payment recipient relates.

(3) The term "section 5 uranium worker" means an individual to whom subsection (a)(1)(A)(i) of section 5 of the Radiation Exposure Compensation Act applies (whether directly or by reason of subsection (a)(2)).

(4) The term "section 5 mine or mill" means the mine or mill to which an individual's status as a section 5 uranium worker relates.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3676], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsec. (b), is Pub. L. 101–426, Oct. 15, 1990, 104 Stat. 920, which is set out as a note under section 2210 of this title.

§7385s–6. Administrative and judicial review

(a) Judicial review

A person adversely affected or aggrieved by a final decision of the Secretary under this part may review that order in the United States district court in the district in which the injury was sustained, the employee lives, the survivor lives, or the District of Columbia, by filing in such court within 60 days after the date on which that final decision was issued a written petition praying that such decision be modified or set aside. The person shall also provide a copy of the petition to the Secretary. Upon such filing, the court shall have jurisdiction over the proceeding and shall have the power to affirm, modify, or set aside, in whole or in part, such decision. The court may modify or set aside such decision only if the court determines that such decision was arbitrary and capricious.

(b) Administrative review

The Secretary shall ensure that recommended decisions of the Secretary with respect to a claim under this part are subject to administrative review. The Secretary shall prescribe regulations for carrying out such review or shall apply to this part the regulations applicable to recommended decisions under part B.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3677], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

§7385s–7. Physicians services

(a) In general

The Secretary may utilize the services of physicians for purposes of making determinations under this part.

(b) Physicians

Any physicians whose services are utilized under subsection (a) of this section shall possess appropriate expertise and experience in the evaluation and determination of the extent of permanent physical impairments or in the evaluation and diagnosis of illnesses or deaths aggravated, contributed to, or caused by exposure to toxic substances.

(c) Arrangement

The Secretary may secure the services of physicians utilized under subsection (a) of this section through the appointment of physicians or by contract.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3678], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

§7385s–8. Medical benefits

A covered DOE contractor employee shall be furnished medical benefits specified in section 7384t of this title for the covered illness to the same extent, and under the same conditions and limitations, as an individual eligible for medical benefits under that section is furnished medical benefits under that section.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3679], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

§7385s–9. Attorney fees

Section 7385g of this title shall apply to a payment under this part to the same extent that it applies to a payment under part B.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3680], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

§7385s–10. Administrative matters

(a) In general

The Secretary shall administer this part.

(b) Contract authority

The Secretary may enter into contracts with appropriate persons and entities to administer this part.

(c) Records

(1)(A) The Secretary of Energy shall provide to the Secretary all records, files, and other data, whether paper, electronic, imaged, or otherwise, developed by the Secretary of Energy that are applicable to the administration of this part, including records, files, and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

(B) In providing records, files, and other data under this paragraph, the Secretary of Energy shall preserve the current organization of such records, files, and other data, and shall provide such description and indexing of such records, files, and other data as the Secretary considers appropriate to facilitate their use by the Secretary.

(2) The Secretary of Energy and the Secretary shall jointly undertake such actions as are appropriate to retrieve records applicable to the claims of Department of Energy contractor employees for contractor employee compensation under this part, including employment records, records of exposure to beryllium, radiation, silica, or other toxic substances, and records regarding medical treatment.

(d) Information

At the request of the Secretary, the Secretary of Energy and any contractor who employed a Department of Energy contractor employee shall, within time periods specified by the Secretary, provide to the Secretary and to the employee information or documents in response to the request.

(e) Regulations

The Secretary shall prescribe regulations necessary for the administration of this part. The initial regulations shall be prescribed not later than 210 days after October 28, 2004. The Secretary may prescribe interim final regulations necessary to meet the deadlines specified in this part.

(f) Transition provisions

(1) The Secretary shall commence the administration of the provisions of this part not later than 210 days after October 28, 2004.

(2) Until the commencement of the administration of this part, the Department of Energy Physicians Panels appointed pursuant to part D shall continue to consider and issue determinations concerning any cases pending before such Panels immediately before October 28, 2004.

(3) The Secretary shall take such actions as are appropriate to identify other activities under part D that will continue until the commencement of the administration of this part.

(g) Previous applications

Upon the commencement of the administration of this part, any application previously filed with the Secretary of Energy pursuant to part D shall be considered to have been filed with the Secretary as a claim for benefits pursuant to this part.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3681], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

EDITORIAL NOTES

REFERENCES IN TEXT

Part D, referred to in subsecs. (f)(2), (3) and (g), was repealed by Pub. L. 108–375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186.

§7385s–11. Coordination of benefits with respect to State workers compensation

(a) In general

An individual who has been awarded compensation under this part, and who has also received benefits from a State workers compensation system by reason of the same covered illness, shall receive compensation specified in this part reduced by the amount of any workers compensation benefits, other than medical benefits and benefits for vocational rehabilitation, that the individual has received under the State workers compensation system by reason of the covered illness, after deducting the reasonable costs, as determined by the Secretary, of obtaining those benefits under the State workers compensation system.

(b) Waiver

The Secretary may waive the provisions of subsection (a) if the Secretary determines that the administrative costs and burdens of implementing subsection (a) with respect to a particular case or class of cases justifies such a waiver.

(c) Information

Notwithstanding any other provision of law, each State workers compensation authority shall, upon request of the Secretary, provide to the Secretary on a quarterly basis information concerning workers compensation benefits received by any covered DOE contractor employee entitled to

compensation or benefits under this part, which shall include the name, Social Security number, and nature and amount of workers compensation benefits for each such employee for which the request was made.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3682], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2184.)

§7385s–12. Maximum aggregate compensation

For each individual whose illness or death serves as the basis for compensation or benefits under this part, the total amount of compensation (other than medical benefits) paid under this part, to all persons, in the aggregate, on the basis of that illness or death shall not exceed $250,000.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3683], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2184.)

§7385s–13. Funding of administrative costs

There is authorized and hereby appropriated to the Secretary for fiscal year 2005 and thereafter such sums as may be necessary to carry out this part.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3684], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2184.)

§7385s–14. Payment of compensation and benefits from compensation fund

The compensation and benefits provided under this subchapter, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3685], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2185.)

§7385s–15. Office of Ombudsman

(a) Establishment

There is established in the Department of Labor an office to be known as the "Office of the Ombudsman" (in this section referred to as the "Office").

(b) Head

The head of the Office shall be the Ombudsman. The individual serving as Ombudsman shall be either of the following:

(1) An officer or employee of the Department of Labor designated by the Secretary for purposes of this section from among officers and employees of the Department who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

(2) An individual employed by the Secretary from the private sector from among individuals in the private sector who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

(c) Duties

The duties of the Office shall be as follows:

(1) To provide information on the benefits available under this part and part B and on the requirements and procedures applicable to the provision of such benefits.

(2) To provide guidance and assistance to claimants.

(3) To make recommendations to the Secretary regarding the location of centers (to be known as "resource centers") for the acceptance and development of claims for benefits under this part

and part B.

(4) To carry out such other duties with respect to this part and part B as the Secretary shall specify for purposes of this section.

(d) Independent Office

The Secretary shall take appropriate actions to ensure the independence of the Office within the Department of Labor, including independence from other officers and employees of the Department engaged in activities relating to the administration of the provisions of this part and part B.

(e) Annual report

(1) Not later than July 30 each year, the Ombudsman shall submit to Congress a report on activities under this part and part B.

(2) Each report under paragraph (1) shall set forth the following:

(A) The number and types of complaints, grievances, and requests for assistance received by the Ombudsman under this part and part B during the preceding year.

(B) An assessment of the most common difficulties encountered by claimants and potential claimants under this part and part B during the preceding year.

(3) The first report under paragraph (1) shall be the report submitted in 2006.

(4) Not later than 180 days after the submission to Congress of the annual report under paragraph (1), the Secretary shall submit to Congress in writing, and post on the public Internet website of the Department of Labor, a response to the report that—

(A) includes a statement of whether the Secretary agrees or disagrees with the specific issues raised by the Ombudsman in the report;

(B) if the Secretary agrees with the Ombudsman on those issues, describes the actions to be taken to correct those issues; and

(C) if the Secretary does not agree with the Ombudsman on those issues, describes the reasons the Secretary does not agree.

(f) Outreach

The Secretary of Labor and the Secretary of Health and Human Services shall each undertake outreach to advise the public of the existence and duties of the Office.

(g) National Institute for Occupational Safety and Health Ombudsman

In carrying out the duties of the Ombudsman under this section, the Ombudsman shall work with the individual employed by the National Institute for Occupational Safety and Health to serve as an ombudsman to individuals making claims under part B.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3686], as added Pub. L. 108–375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2185; amended Pub. L. 110–181, div. C, title XXXI, §3116, Jan. 28, 2008, 122 Stat. 578; Pub. L. 111–84, div. C, title XXXI, §3142(a), Oct. 28, 2009, 123 Stat. 2715; Pub. L. 113–291, div. C, title XXXI, §3141(b), Dec. 19, 2014, 128 Stat. 3899; Pub. L. 116–92, div. C, title XXXI, §3134(a), Dec. 20, 2019, 133 Stat. 1958; Pub. L. 116–283, div. C, title XXXI, §3145, Jan. 1, 2021, 134 Stat. 4387.)

EDITORIAL NOTES

AMENDMENTS

2021—Subsec. (h). Pub. L. 116–283 struck out subsec. (h) which read as follows: "Effective October 28, 2020, this section shall have no further force or effect."

2019—Subsec. (c)(2) to (4). Pub. L. 116–92, §3134(a)(1), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (h). Pub. L. 116–92, §3134(a)(2), substituted "2020" for "2019".

2014—Subsec. (e)(1). Pub. L. 113–291, §3141(b)(1)(A), substituted "July 30" for "February 15".

Subsec. (e)(4). Pub. L. 113–291, §3141(b)(1)(B), added par. (4).

Subsec. (h). Pub. L. 113–291, §3141(b)(2), substituted "2019" for "2012".

2009—Subsecs. (c) to (e). Pub. L. 111–84, §3142(a)(1)–(3), inserted "and part B" after "this part" wherever appearing.

Subsecs. (g), (h). Pub. L. 111–84, §3142(a)(4), (5), added subsec. (g) and redesignated former subsec. (g) as (h).

2008—Subsec. (g). Pub. L. 110–181 substituted "October 28, 2012" for "on the date that is 3 years after October 28, 2004".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONSTRUCTION

Pub. L. 111–84, div. C, title XXXI, §3142(b), Oct. 28, 2009, 123 Stat. 2716, provided that: "Except as specifically provided in subsection (g) of section 3686 of the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7385s–15(g)], as amended by subsection (a) of this section, nothing in the amendments made by such subsection (a) shall be construed to alter or affect the duties and functions of the individual employed by the National Institute for Occupational Safety and Health to serve as an ombudsman to individuals making claims under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l et seq.)."

§7385s–16. Advisory Board on Toxic Substances and Worker Health

(a) Establishment

(1) Not later than 120 days after December 19, 2014, the President shall establish and appoint an Advisory Board on Toxic Substances and Worker Health (in this section referred to as the "Board").

(2) The President shall make appointments to the Board in consultation with organizations with expertise on worker health issues in order to ensure that the membership of the Board reflects a proper balance of perspectives from the scientific, medical, and claimant communities.

(3) The President shall designate a Chair of the Board from among its members.

(b) Duties

The Board shall—

(1) advise the Secretary of Labor with respect to—

(A) the site exposure matrices of the Department of Labor;

(B) medical guidance for claims examiners for claims under this part with respect to the weighing of the medical evidence of claimants;

(C) evidentiary requirements for claims under part B related to lung disease;

(D) the work of industrial hygienists and staff physicians and consulting physicians of the Department and reports of such hygienists and physicians to ensure quality, objectivity, and consistency;

(E) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and

(F) such other matters as the Secretary considers appropriate; and

(2) coordinate exchanges of data and findings with the Advisory Board on Radiation and Worker Health established under section 7384o of this title to the extent necessary.

(c) Staff and powers

(1) The President shall appoint a staff to facilitate the work of the Board. The staff of the Board shall be headed by a Director, who shall be appointed under subchapter VIII of chapter 33 of title 5.

(2) The President may authorize the detail of employees of Federal agencies to the Board as necessary to enable the Board to carry out its duties under this section. The detail of such personnel may be on a nonreimbursable basis.

(3) The Secretary may employ outside contractors and specialists to support the work of the Board.

(d) Conflicts of interest

No member, employee, or contractor of the Board shall have any financial interest, employment, or contractual relationship (other than a routine consumer transaction) with any person that has provided, or sought to provide during the two years preceding the appointment or during the service of the member, employee, or contractor under this section, goods or services related to medical benefits under this subchapter.

(e) Expenses

Members of the Board, other than full-time employees of the United States, while attending meetings of the Board or while otherwise serving at the request of the President, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence (as authorized by section 5703 of title 5) for individuals in the Federal Government serving without pay.

(f) Security clearances

(1) The Secretary of Energy shall ensure that the members and staff of the Board, and the contractors performing work in support of the Board, are afforded the opportunity to apply for a security clearance for any matter for which such a clearance is appropriate.

(2) The Secretary of Energy should, not later than 180 days after receiving a completed application for a security clearance for an individual under this subsection, make a determination of whether or not the individual is eligible for the clearance.

(3) For fiscal year 2016 and each fiscal year thereafter, the Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) a report specifying the number of applications for security clearances under this subsection, the number of such applications granted, and the number of such applications denied.

(g) Information

The Secretary of Energy and the Secretary of Labor shall each, in accordance with law, provide to the Board and the contractors of the Board, access to any information that the Board considers relevant to carry out its responsibilities under this section, including information such as Restricted Data (as defined in section 2014(y) of this title) and information covered by section 552a of title 5 (commonly known as the "Privacy Act"). The Secretary of Labor shall make available to the Board the program's medical director, toxicologist, industrial hygienist and program's support contractors as requested by the Board.

(h) Response to recommendations

Not later than 60 days after submission to the Secretary of Labor of the Board's recommendations, the Secretary shall respond to the Board in writing, and post on the public internet website of the Department of Labor, a response to the recommendations that—

(1) includes a statement of whether the Secretary accepts or rejects the Board's recommendations;

(2) if the Secretary accepts the Board's recommendations, describes the timeline for when those recommendations will be implemented; and

(3) if the Secretary does not accept the recommendations, describes the reasons the Secretary does not agree and provides all scientific research to the Board supporting that decision.

(i) Authorization of appropriations

(1) In general

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(2) Treatment as discretionary spending

Amounts appropriated to carry out this section—

(A) shall not be appropriated to the account established under subsection (a) of section 151 of title I of division B of Appendix D of the Consolidated Appropriations Act, 2001 (Public Law 106–554; 114 Stat. 2763A–251); and

(B) shall not be subject to subsection (b) of that section.

(j) Sunset

The Board shall terminate on the date that is 15 years after December 19, 2014.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3687], as added Pub. L. 113–291, div. C, title XXXI, §3141(a), Dec. 19, 2014, 128 Stat. 3897; amended Pub. L. 115–91, div. C, title XXXI, §3120, Dec. 12, 2017, 131 Stat. 1892; Pub. L. 116–92, div. C, title XXXI, §3134(b), Dec. 20, 2019, 133 Stat. 1959; Pub. L. 118–31, div. E, title LV, §5501(c), Dec. 22, 2023, 137 Stat. 956.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 151 of title I of division B of Appendix D of the Consolidated Appropriations Act, 2001, referred to in subsec. (i)(2)(A), (B), is Pub. L. 106–554, §1(a)(4) [div. B, title I, §151], Dec. 21, 2000, 114 Stat. 2763, 2763A–251, which is not classified to the Code.

AMENDMENTS

2023—Subsec. (j). Pub. L. 118–31 substituted "15 years" for "10 years".

2019—Subsec. (b)(1)(E), (F). Pub. L. 116–92, §3134(b)(1), added subpars. (E) and (F).

Subsec. (g). Pub. L. 116–92, §3134(b)(2), substituted "The Secretary of Energy and the Secretary of Labor shall each" for "The Secretary of Energy shall" and inserted at end "The Secretary of Labor shall make available to the Board the program's medical director, toxicologist, industrial hygienist and program's support contractors as requested by the Board."

Subsecs. (h) to (j). Pub. L. 116–92, §3134(b)(3), (4), added subsec. (h) and redesignated subsecs. (h) and (i) as (i) and (j), respectively.

2017—Subsec. (i). Pub. L. 115–91 substituted "10 years" for "5 years".

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13699. ESTABLISHING THE ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

Ex. Ord. No. 13699, June 26, 2015, 80 F.R. 37529, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291), and to allocate the responsibilities imposed by that Act, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established within the Department of Labor the Advisory Board on Toxic Substances and Worker Health (Advisory Board).

SEC. 2. *Membership*. (a) The Advisory Board shall reflect a proper balance of perspectives from the scientific, medical, and claimant communities.

(b) The Advisory Board shall consist of no more than 15 members to be appointed by the Secretary of Labor in consultation with organizations with expertise on worker health issues. Members shall serve without compensation as Special Government Employees, but shall be allowed travel and meal expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) The Secretary of Labor shall designate a Chair of the Board from among its members.

SEC. 3. *Functions*. (a) The Advisory Board shall advise the Secretary of Labor with respect to:

(i) the site exposure matrices of the Department of Labor;

(ii) medical guidance for claims examiners for claims under subtitle E of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) with respect to the weighing of the medical evidence of claimants;

(iii) evidentiary requirements for claims under EEOICPA subtitle B related to lung disease; and

(iv) the work of industrial hygienists, staff physicians, and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency.

(b) To the extent necessary, the Advisory Board also shall coordinate exchanges of data and findings with the Advisory Board on Radiation and Worker Health, which was authorized by EEOICPA and established by Executive Order 13179 of December 7, 2000.

SEC. 4. *Administration*. (a) The Secretary of Labor shall provide the Advisory Board with funding and administrative support, including the appointment of staff and, as the Secretary determines appropriate, authorization for the detail of Federal employees from within the Department of Labor and employment of outside contractors and specialists, to the extent permitted by law and within existing appropriations. The Secretary also shall perform the administrative functions of the President under the Federal Advisory Committee Act, as amended ([former] 5 U.S.C. App. 2) [see 5 U.S.C. 1001 et seq.], with respect to the Advisory Board.

(b) The Secretary of Labor shall designate a senior officer of the Department of Labor to serve as the Director of the staff of the Advisory Board.

SEC. 5. *Termination*. The Advisory Board shall terminate on the date that is 5 years after the enactment of the National Defense Authorization Act for Fiscal Year 2015.

SEC. 6. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

SUBCHAPTER XVII—[Repealed]

EDITORIAL NOTES

CODIFICATION

Pub. L. 108–136, div. C, title XXXI, §3141(m)(1), Nov. 24, 2003, 117 Stat. 1787, struck out heading for subchapter XVII "Department of Energy National Security Authorizations General Provisions".

§§7386 to 7386k. Transferred

EDITORIAL NOTES

CODIFICATION

Sections 7386 to 7386k, Pub. L. 107–314, div. C, title XXXVI, §§3620–3631, Dec. 2, 2002, 116 Stat. 2756–2762, were renumbered sections 4701 to 4712, respectively, of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, §3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781, and were formerly classified to sections 2741 to 2752, respectively, of Title 50, War and National Defense. See sections 6271 to 6283, repsectively, of Title 10, Armed Forces.

Section 7386 related to definitions for purposes of former sections 7386 to 7386k of this title.

Section 7386a related to reprogramming of amounts appropriated pursuant to a Department of Energy national security authorization.

Section 7386b related to minor construction projects.

Section 7386c related to limits on construction projects.

Section 7386d related to fund transfer authority.

Section 7386e related to conceptual and construction design.

Section 7386f related to authority for emergency planning, design, and construction activities.

Section 7386g related to scope of authority to carry out plant projects.

Section 7386h related to availability of funds.

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Section 7386j related to transfer of weapons activities funds.

Section 7386k related to funds available for all national security programs of the Department of Energy.

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EDITORIAL NOTES

CODIFICATION

Act July 14, 1955, ch. 360, 69 Stat. 322, as amended, known as the Clean Air Act, which was formerly classified to chapter 15B (§1857 et seq.) of this title, was completely revised by Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 685, and was reclassified to this chapter.

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

PART A—AIR QUALITY AND EMISSION LIMITATIONS

EDITORIAL NOTES

CODIFICATION

Pub. L. 95–95, title I, §117(a), Aug. 7, 1977, 91 Stat. 712, designated sections 7401 to 7428 of this title as part A.

§7401. Congressional findings and declaration of purpose

(a) Findings

The Congress finds—

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

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

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

(b) Declaration

The purposes of this subchapter are—

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

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

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

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

(c) Pollution prevention

A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.

(July 14, 1955, ch. 360, title I, §101, formerly §1, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 392; renumbered §101 and amended Pub. L. 89–272, title I, §101(2), (3), Oct. 20, 1965, 79 Stat. 992; Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 485; Pub. L. 101–549, title I, §108(k), Nov. 15, 1990, 104 Stat. 2468.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in a prior section 1857 of this title, act of July 14, 1955, ch. 360, §1, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101–549, §108(k)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and".

Subsec. (b)(4). Pub. L. 101–549, §108(k)(2), inserted "prevention and" after "pollution".

Subsec. (c). Pub. L. 101–549, §108(k)(3), added subsec. (c).

1967—Subsec. (b)(1). Pub. L. 90–148 inserted "and enhance the quality of" after "to protect".

1965—Subsec. (b). Pub. L. 89–272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–549, title VII, §711(b), Nov. 15, 1990, 104 Stat. 2684, provided that:

"(1) Except as otherwise expressly provided, the amendments made by this Act [see Tables for classification] shall be effective on the date of enactment of this Act [Nov. 15, 1990].

"(2) The Administrator's authority to assess civil penalties under section 205(c) of the Clean Air Act [42 U.S.C. 7524(c)], as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act. Civil penalties for violations that occur prior to such date and do not continue after such date shall be assessed in accordance with the provisions of the Clean Air Act [42 U.S.C. 7401 et seq.] in effect immediately prior to the date of enactment of this Act.

"(3) The civil penalties prescribed under sections 205(a) and 211(d)(1) of the Clean Air Act [42 U.S.C. 7524(a), 7545(d)(1)], as amended by this Act, shall apply to violations that occur on or after the date of enactment of this Act. Violations that occur prior to such date shall be subject to the civil penalty provisions prescribed in sections 205(a) and 211(d) of the Clean Air Act in effect immediately prior to the enactment of this Act. The injunctive authority prescribed under section 211(d)(2) of the Clean Air Act, as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act.

"(4) For purposes of paragraphs (2) and (3), where the date of a violation cannot be determined it will be assumed to be the date on which the violation is discovered."

EFFECTIVE DATE OF 1977 AMENDMENT; PENDING ACTIONS; CONTINUATION OF RULES, CONTRACTS, AUTHORIZATIONS, ETC.; IMPLEMENTATION PLANS

Pub. L. 95–95, title IV, §406, Aug. 7, 1977, 91 Stat. 795, as amended by Pub. L. 95–190, §14(b)(6), Nov. 16, 1977, 91 Stat. 1405, provided that:

"(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977] shall abate by reason of the taking effect of the amendments made by this Act [see Short Title of 1977 Amendment note below]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

"(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977], and pertaining to any functions, powers, requirements, and duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act, and not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act [see Short Title of 1977 Amendment note below].

"(c) Nothing in this Act [see Short Title of 1977 Amendment note below] nor any action taken pursuant to this Act shall in any way affect any requirement of an approved implementation plan in effect under section 110 of the Clean Air Act [section 7410 of this title] or any other provision of the Act in effect under the Clean Air Act before the date of enactment of this section [Aug. 7, 1977] until modified or rescinded in accordance with the Clean Air Act [this chapter] as amended by this Act [see Short Title of 1977 Amendment note below].

"(d)(1) Except as otherwise expressly provided, the amendments made by this Act [see Short Title of 1977 Amendment note below] shall be effective on date of enactment [Aug. 7, 1977].

"(2) Except as otherwise expressly provided, each State required to revise its applicable implementation plan by reason of any amendment made by this Act [see Short Title of 1977 Amendment note below] shall adopt and submit to the Administrator of the Environmental Protection Administration such plan revision before the later of the date—

"(A) one year after the date of enactment of this Act [Aug. 7, 1977], or

"(B) nine months after the date of promulgation by the Administrator of the Environmental Protection Administration of any regulations under an amendment made by this Act which are necessary for the approval of such plan revision."

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–40, §1, Aug. 5, 1999, 113 Stat. 207, provided that: "This Act [amending section 7412 of this title and enacting provisions set out as notes under section 7412 of this title] may be cited as the 'Chemical Safety Information, Site Security and Fuels Regulatory Relief Act'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–286, §1, Oct. 27, 1998, 112 Stat. 2773, provided that: "This Act [amending section 7511b of this title and enacting provisions set out as a note under section 7511b of this title] may be cited as the 'Border Smog Reduction Act of 1998'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, is popularly known as the "Clean Air Act Amendments of 1990". See Tables for classification.

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–23, §1, July 17, 1981, 95 Stat. 139, provided: "That this Act [amending sections 7410 and 7413 of this title] may be cited as the 'Steel Industry Compliance Extension Act of 1981'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–95, §1, Aug. 7, 1977, 91 Stat. 685, provided that: "This Act [enacting sections 4362, 7419 to 7428, 7450 to 7459, 7470 to 7479, 7491, 7501 to 7508, 7548, 7549, 7551, 7617 to 7625, and 7626 of this title, amending sections 7403, 7405, 7407 to 7415, 7417, 7418, 7521 to 7525, 7541, 7543, 7544, 7545, 7550, 7571, 7601 to 7605, 7607, 7612, 7613, and 7616 of this title, repealing section 1857c–10 of this title, and enacting provisions set out as notes under this section, sections 7403, 7422, 7470, 7479, 7502, 7521, 7548, and 7621 of

this title, and section 792 of Title 15, Commerce and Trade] may be cited as the 'Clean Air Act Amendments of 1977'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–604, §1, Dec. 31, 1970, 84 Stat. 1676, provided: "That this Act [amending this chapter generally] may be cited as the 'Clean Air Amendments of 1970'."

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–148, §1, Nov. 21, 1967, 81 Stat. 485, provided: "That this Act [amending this chapter generally] may be cited as the 'Air Quality Act of 1967'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–675, §1, Oct. 15, 1966, 80 Stat. 954, provided: "That this Act [amending sections 7405 and 7616 of this title and repealing section 1857f–8 of this title] may be cited as the 'Clean Air Act Amendments of 1966'."

SHORT TITLE

Act July 14, 1955, ch. 360, title III, §317, formerly §14, as added by Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 401; renumbered §307 by Pub. L. 89–272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; renumbered §310 by Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 499; renumbered §317 by Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1705, provided that: "This Act [enacting this chapter] may be cited as the 'Clean Air Act'."

Act July 14, 1955, ch. 360, title II, §201, as added by Pub. L. 89–272, title I, §101(8), Oct. 20, 1965, 79 Stat. 992, and amended by Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 499, provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'National Emission Standards Act'." Prior to its amendment by Pub. L. 90–148, title II of act June 14, 1955, was known as the "Motor Vehicle Air Pollution Control Act".

Act July 14, 1955, ch. 360, title IV, §401, as added by Dec. 31, 1970, Pub. L. 91–604, §14, 84 Stat. 1709, provided that: "This title [enacting subchapter IV of this chapter] may be cited as the 'Noise Pollution and Abatement Act of 1970'."

SAVINGS PROVISION

Pub. L. 101–549, title VII, §711(a), Nov. 15, 1990, 104 Stat. 2684, provided that: "Except as otherwise expressly provided in this Act [see Tables for classification], no suit, action, or other proceeding lawfully commenced by the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [42 U.S.C. 7401 et seq.], as in effect immediately prior to the date of enactment of this Act [Nov. 15, 1990], shall abate by reason of the taking effect of the amendments made by this Act."

IMPACT ON SMALL COMMUNITIES

Pub. L. 101–549, title VIII, §810, Nov. 15, 1990, 104 Stat. 2690, provided that: "Before implementing a provision of this Act [see Tables for classification], the Administrator of the Environmental Protection Agency shall consult with the Small Communities Coordinator of the Environmental Protection Agency to determine the impact of such provision on small communities, including the estimated cost of compliance with such provision."

RADON ASSESSMENT AND MITIGATION

Pub. L. 99–499, title I, §118(k), Oct. 17, 1986, 100 Stat. 1659, as amended by Pub. L. 105–362, title V, §501(i), Nov. 10, 1998, 112 Stat. 3284, provided that:

"(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a report which shall, to the extent possible—

"(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

"(B) assess the levels of radon gas that are present in such structures;

"(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

"(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

"(E) include guidance and public information materials based on the findings or research of mitigating

radon.

"(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

"(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

"(B) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

"(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law."

SPILL CONTROL TECHNOLOGY

Pub. L. 99–499, title I, §118(n), Oct. 17, 1986, 100 Stat. 1660, provided that:

"(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection [Oct. 17, 1986], the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

"(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

"(A) documents and archives spill control technology;

"(B) investigates and analyzes significant hazardous spill incidents;

"(C) develops and provides generic emergency action plans;

"(D) documents and archives spill test results;

"(E) develops emergency action plans to respond to spills;

"(F) conducts training of spill response personnel; and

"(G) establishes safety standards for personnel engaged in spill response activities.

"(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

"(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection."

RADON GAS AND INDOOR AIR QUALITY RESEARCH

Pub. L. 99–499, title IV, Oct. 17, 1986, 100 Stat. 1758, provided that:

"SEC. 401. SHORT TITLE.

"This title may be cited as the 'Radon Gas and Indoor Air Quality Research Act of 1986'.

"SEC. 402. FINDINGS.

"The Congress finds that:

"(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

"(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

"(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

"(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

"SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

"(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

"(1) gather data and information on all aspects of indoor air quality in order to contribute to the

understanding of health problems associated with the existence of air pollutants in the indoor environment;

"(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

"(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

"(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

"(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

"(A) the measurement of various pollutant concentrations and their strengths and sources,

"(B) high-risk building types, and

"(C) instruments for indoor air quality data collection;

"(2) research relating to the effects of indoor air pollution and radon on human health;

"(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

"(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

"(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

"(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

"(B) design measures to avoid indoor air pollution; and

"(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

"(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

"(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

"(e) REPORT.—Not later than 2 years after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

"SEC. 404. CONSTRUCTION OF TITLE.

"Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

"SEC. 405. AUTHORIZATIONS.

"There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) [section 118(k) of Pub. L. 99–499, set out as a note above] not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2)."

STUDY OF ODORS AND ODOROUS EMISSIONS

Pub. L. 95–95, title IV, §403(b), Aug. 7, 1977, 91 Stat. 792, directed Administrator of Environmental Protection Agency to conduct a study and report to Congress not later than Jan. 1, 1979, on effects on public health and welfare of odors and odorous emissions, source of such emissions, technology or other measures available for control of such emissions and costs of such technology or measures, and costs and benefits of alternative measures or strategies to abate such emissions.

LIST OF CHEMICAL CONTAMINANTS FROM ENVIRONMENTAL POLLUTION FOUND IN HUMAN TISSUE

Pub. L. 95–95, title IV, §403(c), Aug. 7, 1977, 91 Stat. 792, directed Administrator of EPA, not later than twelve months after Aug. 7, 1977, to publish throughout the United States a list of all known chemical contaminants resulting from environmental pollution which have been found in human tissue including blood, urine, breast milk, and all other human tissue, such list to be prepared for the United States and to indicate approximate number of cases, range of levels found, and mean levels found, directed Administrator, not later than eighteen months after Aug. 7, 1977, to publish in same manner an explanation of what is known about the manner in which chemicals entered the environment and thereafter human tissue, and directed Administrator, in consultation with National Institutes of Health, the National Center for Health Statistics, and the National Center for Health Services Research and Development, to, if feasible, conduct an epidemiological study to demonstrate the relationship between levels of chemicals in the environment and in human tissue, such study to be made in appropriate regions or areas of the United States in order to determine any different results in such regions or areas, and the results of such study to be reported, as soon as practicable, to appropriate committee of Congress.

STUDY ON REGIONAL AIR QUALITY

Pub. L. 95–95, title IV, §403(d), Aug. 7, 1977, 91 Stat. 793, directed Administrator of EPA to conduct a study of air quality in various areas throughout the country including the gulf coast region, such study to include analysis of liquid and solid aerosols and other fine particulate matter and contribution of such substances to visibility and public health problems in such areas, with Administrator to use environmental health experts from the National Institutes of Health and other outside agencies and organizations.

RAILROAD EMISSION STUDY

Pub. L. 95–95, title IV, §404, Aug. 7, 1977, 91 Stat. 793, as amended by H. Res. 549, Mar. 25, 1980, directed Administrator of EPA to conduct a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock, in order to determine extent to which such emissions affect air quality in air quality control regions throughout the United States, technological feasibility and current state of technology for controlling such emissions, and status and effect of current and proposed State and local regulations affecting such emissions, and within one hundred and eighty days after commencing such study and investigation, Administrator to submit a report of such study and investigation, together with recommendations for appropriate legislation, to Senate Committee on Environment and Public Works and House Committee on Energy and Commerce.

STUDY AND REPORT CONCERNING ECONOMIC APPROACHES TO CONTROLLING AIR POLLUTION

Pub. L. 95–95, title IV, §405, Aug. 7, 1977, 91 Stat. 794, directed Administrator, in conjunction with Council of Economic Advisors, to undertake a study and assessment of economic measures for control of air pollution which could strengthen effectiveness of existing methods of controlling air pollution, provide incentives to abate air pollution greater than that required by Clean Air Act, and serve as primary incentive for controlling air pollution problems not addressed by Clean Air Act, and directed that not later than 2 years after Aug. 7, 1977, Administrator and Council conclude study and submit a report to President and Congress.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Reorg. Plan No. 3 of 1970, §2(a)(3), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, transferred to Administrator of Environmental Protection Agency functions vested by law in Secretary of Health, Education, and Welfare or in Department of Health, Education, and Welfare which are administered through Environmental Health Service, including functions exercised by National Air Pollution Control Administration, and Environmental Control Administration's Bureau of Solid Waste Management, Bureau of Water Hygiene, and Bureau of Radiological Health, except insofar as functions carried out by Bureau of Radiological Health pertain to regulation of radiation from consumer products, including electronic product radiation, radiation as used in healing arts, occupational exposure to radiation, and research, technical assistance, and training related to radiation from consumer products, radiation as used in healing arts, and occupational exposure to radiation.

NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL

For provisions relating to establishment of National Industrial Pollution Control Council, see Ex. Ord. No. 11523, Apr. 9, 1970, 35 F.R. 5993, set out as a note under section 4321 of this title.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to responsibility of head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

EXECUTIVE ORDER NO. 10779

Ex. Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, formerly set out under section 7418 of this title.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for prevention, control, and abatement of air pollution at Federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

PROMOTING DOMESTIC MANUFACTURING AND JOB CREATION—POLICIES AND PROCEDURES RELATING TO IMPLEMENTATION OF AIR QUALITY STANDARDS

Memorandum of President of the United States, Apr. 12, 2018, 83 F.R. 16761, which related to State Implementation Plans for the Regional Haze Program, was revoked by Ex. Ord. No. 13990, §7(d), Jan. 20, 2021, 86 F.R. 7042, set out in a note under section 4321 of this title.

§7402. Cooperative activities

(a) Interstate cooperation; uniform State laws; State compacts

The Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

(b) Federal cooperation

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

(c) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after November 21, 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

(July 14, 1955, ch. 360, title I, §102, formerly §2, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 393; renumbered §102, Pub. L. 89–272, title I, §101(3), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 485; Pub. L. 91–604, §15(c)(2), Dec. 31, 1970, 84 Stat. 1713.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857a of this title.

PRIOR PROVISIONS

Provisions similar to those in the first clause of subsec. (a) of this section were contained in subsec. (b)(1) of a prior section 1857a, of this title, act July 14, 1955, ch. 360, §2, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1970—Subsecs. (a), (b). Pub. L. 91–604 substituted "Administrator" for "Secretary" wherever appearing.

1967—Subsec. (c). Pub. L. 90–148 inserted declaration that it is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which for purposes of codification was changed to November 21, 1967, the date of approval of such Act, relating to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

§7403. Research, investigation, training, and other activities

(a) Research and development program for prevention and control of air pollution

The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

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

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

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

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research; and

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

(b) Authorized activities of Administrator in establishing research and development program

In carrying out the provisions of the preceding subsection the Administrator is authorized to—

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

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

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

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41;

(5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related

responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof;

(7) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution; and

(8) construct facilities, provide equipment, and employ staff as necessary to carry out this chapter.

In carrying out the provisions of subsection (a), the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a)(5). Reasonable fees may be charged for such training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge.

(c) Air pollutant monitoring, analysis, modeling, and inventory research

In carrying out subsection (a), the Administrator shall conduct a program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants. Such program shall include the following elements:

(1) Consideration of individual, as well as complex mixtures of, air pollutants and their chemical transformations in the atmosphere.

(2) Establishment of a national network to monitor, collect, and compile data with quantification of certainty in the status and trends of air emissions, deposition, air quality, surface water quality, forest condition, and visibility impairment, and to ensure the comparability of air quality data collected in different States and obtained from different nations.

(3) Development of improved methods and technologies for sampling, measurement, monitoring, analysis, and modeling to increase understanding of the sources of ozone precursors, ozone formation, ozone transport, regional influences on urban ozone, regional ozone trends, and interactions of ozone with other pollutants. Emphasis shall be placed on those techniques which—

(A) improve the ability to inventory emissions of volatile organic compounds and nitrogen oxides that contribute to urban air pollution, including anthropogenic and natural sources;

(B) improve the understanding of the mechanism through which anthropogenic and biogenic volatile organic compounds react to form ozone and other oxidants; and

(C) improve the ability to identify and evaluate region-specific prevention and control options for ozone pollution.

(4) Submission of periodic reports to the Congress, not less than once every 5 years, which evaluate and assess the effectiveness of air pollution control regulations and programs using monitoring and modeling data obtained pursuant to this subsection.

(d) Environmental health effects research

(1) The Administrator, in consultation with the Secretary of Health and Human Services, shall conduct a research program on the short-term and long-term effects of air pollutants, including wood smoke, on human health. In conducting such research program the Administrator—

(A) shall conduct studies, including epidemiological, clinical, and laboratory and field studies, as necessary to identify and evaluate exposure to and effects of air pollutants on human health;

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

(C) shall consult with other Federal agencies to ensure that similar research being conducted in other agencies is coordinated to avoid duplication.

(2) In conducting the research program under this subsection, the Administrator shall develop methods and techniques necessary to identify and assess the risks to human health from both routine and accidental exposures to individual air pollutants and combinations thereof. Such research program shall include the following elements:

(A) The creation of an Interagency Task Force to coordinate such program. The Task Force shall include representatives of the National Institute for Environmental Health Sciences, the Environmental Protection Agency, the Agency for Toxic Substances and Disease Registry, the National Toxicology Program, the National Institute of Standards and Technology, the National Science Foundation, the Surgeon General, and the Department of Energy. This Interagency Task Force shall be chaired by a representative of the Environmental Protection Agency and shall convene its first meeting within 60 days after November 15, 1990.

(B) An evaluation, within 12 months after November 15, 1990, of each of the hazardous air pollutants listed under section 7412(b) of this title, to decide, on the basis of available information, their relative priority for preparation of environmental health assessments pursuant to subparagraph (C). The evaluation shall be based on reasonably anticipated toxicity to humans and exposure factors such as frequency of occurrence as an air pollutant and volume of emissions in populated areas. Such evaluation shall be reviewed by the Interagency Task Force established pursuant to subparagraph (A).

(C) Preparation of environmental health assessments for each of the hazardous air pollutants referred to in subparagraph (B), beginning 6 months after the first meeting of the Interagency Task Force and to be completed within 96 months thereafter. No fewer than 24 assessments shall be completed and published annually. The assessments shall be prepared in accordance with guidelines developed by the Administrator in consultation with the Interagency Task Force and the Science Advisory Board of the Environmental Protection Agency. Each such assessment shall include—

(i) an examination, summary, and evaluation of available toxicological and epidemiological information for the pollutant to ascertain the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects;

(ii) a determination of gaps in available information related to human health effects and exposure levels; and

(iii) where appropriate, an identification of additional activities, including toxicological and inhalation testing, needed to identify the types or levels of exposure which may present significant risk of adverse health effects in humans.

(e) Ecosystem research

In carrying out subsection (a), the Administrator, in cooperation, where appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere, the Director of the Fish and Wildlife Service, and the Secretary of Agriculture, shall conduct a research program to improve understanding of the short-term and long-term causes, effects, and trends of ecosystems damage from air pollutants on ecosystems. Such program shall include the following elements:

(1) Identification of regionally representative and critical ecosystems for research.

(2) Evaluation of risks to ecosystems exposed to air pollutants, including characterization of the causes and effects of chronic and episodic exposures to air pollutants and determination of the reversibility of those effects.

(3) Development of improved atmospheric dispersion models and monitoring systems and networks for evaluating and quantifying exposure to and effects of multiple environmental stresses associated with air pollution.

(4) Evaluation of the effects of air pollution on water quality, including assessments of the short-term and long-term ecological effects of acid deposition and other atmospherically derived pollutants on surface water (including wetlands and estuaries) and groundwater.

(5) Evaluation of the effects of air pollution on forests, materials, crops, biological diversity, soils, and other terrestrial and aquatic systems exposed to air pollutants.

(6) Estimation of the associated economic costs of ecological damage which have occurred as a result of exposure to air pollutants.

Consistent with the purpose of this program, the Administrator may use the estuarine research reserves established pursuant to section 1461 of title 16 to carry out this research.

(f) Liquefied Gaseous Fuels Spill Test Facility

(1) The Administrator, in consultation with the Secretary of Energy and the Federal Coordinating Council for Science, Engineering, and Technology, shall oversee an experimental and analytical research effort, with the experimental research to be carried out at the Liquefied Gaseous Fuels Spill Test Facility. In consultation with the Secretary of Energy, the Administrator shall develop a list of chemicals and a schedule for field testing at the Facility. Analysis of a minimum of 10 chemicals per year shall be carried out, with the selection of a minimum of 2 chemicals for field testing each year. Highest priority shall be given to those chemicals that would present the greatest potential risk to human health as a result of an accidental release—

(A) from a fixed site; or

(B) related to the transport of such chemicals.

(2) The purpose of such research shall be to—

(A) develop improved predictive models for atmospheric dispersion which at a minimum—

(i) describe dense gas releases in complex terrain including man-made structures or obstacles with variable winds;

(ii) improve understanding of the effects of turbulence on dispersion patterns; and

(iii) consider realistic behavior of aerosols by including physicochemical reactions with water vapor, ground deposition, and removal by water spray;

(B) evaluate existing and future atmospheric dispersion models by—

(i) the development of a rigorous, standardized methodology for dense gas models; and

(ii) the application of such methodology to current dense gas dispersion models using data generated from field experiments; and

(C) evaluate the effectiveness of hazard mitigation and emergency response technology for fixed site and transportation related accidental releases of toxic chemicals.

Models pertaining to accidental release shall be evaluated and improved periodically for their utility in planning and implementing evacuation procedures and other mitigative strategies designed to minimize human exposure to hazardous air pollutants released accidentally.

(3) The Secretary of Energy shall make available to interested persons (including other Federal agencies and businesses) the use of the Liquefied Gaseous Fuels Spill Test Facility to conduct research and other activities in connection with the activities described in this subsection.

(g) Pollution prevention and emissions control

(1) In general

In carrying out subsection (a), the Administrator shall conduct a basic engineering research and technology program to develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention.

(2) Participation requirement

Such strategies and technologies described in paragraph (1) shall be developed with priority on those pollutants which pose a significant risk to human health and the environment, and with opportunities for participation by industry, public interest groups, scientists, States, institutions of higher education, and other interested persons in the development of such strategies and technologies.

(3) Program inclusions

The program under this subsection shall include the following elements:

(A) Improvements in nonregulatory strategies and technologies for preventing or reducing multiple air pollutants, including sulfur oxides, nitrogen oxides, heavy metals, PM–10 (particulate matter), carbon monoxide, and carbon dioxide, from stationary sources, including fossil fuel power plants. Such strategies and technologies shall include improvements in the

relative cost effectiveness and long-range implications of various air pollutant reduction and nonregulatory control strategies such as energy conservation, including end-use efficiency, and fuel-switching to cleaner fuels. Such strategies and technologies shall be considered for existing and new facilities.

(B) Improvements in nonregulatory strategies and technologies for reducing air emissions from area sources.

(C) Improvements in nonregulatory strategies and technologies for preventing, detecting, and correcting accidental releases of hazardous air pollutants.

(D) Improvements in nonregulatory strategies and technologies that dispose of tires in ways that avoid adverse air quality impacts.

(4) Effect of subsection

Nothing in this subsection shall be construed to authorize the imposition on any person of air pollution control requirements.

(5) Coordination and avoidance of duplication

The Administrator shall consult with other appropriate Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

(6) Certain carbon dioxide activities

(A) In general

In carrying out paragraph (3)(A) with respect to carbon dioxide, the Administrator—

(i) is authorized to carry out the activities described in subparagraph (B); and

(ii) shall carry out the activities described in subparagraph (C).

(B) Direct air capture research

(i) Definitions

In this subparagraph:

(I) Board

The term "Board" means the Direct Air Capture Technology Advisory Board established by clause (iii)(I).

(II) Dilute

The term "dilute" means a concentration of less than 1 percent by volume.

(III) Direct air capture

(aa) In general

The term "direct air capture", with respect to a facility, technology, or system, means that the facility, technology, or system uses carbon capture equipment to capture carbon dioxide directly from the air.

(bb) Exclusion

The term "direct air capture" does not include any facility, technology, or system that captures carbon dioxide—

(AA) that is deliberately released from a naturally occurring subsurface spring; or

(BB) using natural photosynthesis.

(IV) Intellectual property

The term "intellectual property" means—

(aa) an invention that is patentable under title 35; and

(bb) any patent on an invention described in item (aa).

(ii) Technology prizes

(I) In general

Not later than 1 year after December 27, 2020, the Administrator, in consultation with

the Secretary of Energy, is authorized to establish a program to provide financial awards on a competitive basis for direct air capture from media in which the concentration of carbon dioxide is dilute.

(II) Duties

In carrying out this clause, the Administrator shall—

(aa) subject to subclause (III), develop specific requirements for—

(AA) the competition process; and

(BB) the demonstration of performance of approved projects;

(bb) offer financial awards for a project designed—

(AA) to the maximum extent practicable, to capture more than 10,000 tons of carbon dioxide per year;

(BB) to operate in a manner that would be commercially viable in the foreseeable future (as determined by the Board); and

(CC) to improve the technologies or information systems that enable monitoring and verification methods for direct air capture projects; and

(cc) to the maximum extent practicable, make financial awards to geographically diverse projects, including at least—

(AA) 1 project in a coastal State; and

(BB) 1 project in a rural State.

(III) Public participation

In carrying out subclause (II)(aa), the Administrator shall—

(aa) provide notice of and, for a period of not less than 60 days, an opportunity for public comment on, any draft or proposed version of the requirements described in subclause (II)(aa); and

(bb) take into account public comments received in developing the final version of those requirements.

(iii) Direct Air Capture Technology Advisory Board

(I) Establishment

The Administrator may establish an advisory board to be known as the "Direct Air Capture Technology Advisory Board".

(II) Composition

The Board, on the establishment of the Board, shall be composed of 9 members appointed by the Administrator, who shall provide expertise in—

(aa) climate science;

(bb) physics;

(cc) chemistry;

(dd) biology;

(ee) engineering;

(ff) economics;

(gg) business management; and

(hh) such other disciplines as the Administrator determines to be necessary to achieve the purposes of this subparagraph.

(III) Term; vacancies

(aa) Term

A member of the Board shall serve for a term of 6 years.

(bb) Vacancies

A vacancy on the Board—

(AA) shall not affect the powers of the Board; and
(BB) shall be filled in the same manner as the original appointment was made.

(IV) Initial meeting

Not later than 30 days after the date on which all members of the Board have been appointed, the Board shall hold the initial meeting of the Board.

(V) Meetings

The Board shall meet at the call of the Chairperson or on the request of the Administrator.

(VI) Quorum

A majority of the members of the Board shall constitute a quorum, but a lesser number of members may hold hearings.

(VII) Chairperson and Vice Chairperson

The Board shall select a Chairperson and Vice Chairperson from among the members of the Board.

(VIII) Compensation

Each member of the Board may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5 for each day during which the member is engaged in the actual performance of the duties of the Board.

(IX) Duties

The Board shall—

(aa) advise the Administrator on carrying out the duties of the Administrator under this subparagraph; and

(bb) provide other assistance and advice as requested by the Administrator.

(iv) Intellectual property

(I) In general

As a condition of receiving a financial award under this subparagraph, an applicant shall agree to vest the intellectual property of the applicant derived from the technology in 1 or more entities that are incorporated in the United States.

(II) Reservation of license

The United States—

(aa) may reserve a nonexclusive, nontransferable, irrevocable, paid-up license, to have practiced for or on behalf of the United States, in connection with any intellectual property described in subclause (I); but

(bb) shall not, in the exercise of a license reserved under item (aa), publicly disclose proprietary information relating to the license.

(III) Transfer of title

Title to any intellectual property described in subclause (I) shall not be transferred or passed, except to an entity that is incorporated in the United States, until the expiration of the first patent obtained in connection with the intellectual property.

(v) Authorization of appropriations

There is authorized to be appropriated to carry out this subparagraph $35,000,000, to remain available until expended.

(vi) Termination of authority

Notwithstanding section 14 of the Federal Advisory Committee Act (5 U.S.C. App.),[1] the Board and all authority provided under this subparagraph shall terminate not later than 12

years after December 27, 2020.

(C) Deep saline formation report

(i) Definition of deep saline formation

(I) In general

In this subparagraph, the term "deep saline formation" means a formation of subsurface geographically extensive sedimentary rock layers saturated with waters or brines that have a high total dissolved solids content and that are below the depth where carbon dioxide can exist in the formation as a supercritical fluid.

(II) Clarification

In this subparagraph, the term "deep saline formation" does not include oil and gas reservoirs.

(ii) Report

In consultation with the Secretary of Energy, and, as appropriate, with the head of any other relevant Federal agency and relevant stakeholders, not later than 1 year after December 27, 2020, the Administrator shall prepare, submit to Congress, and make publicly available a report that includes—

(I) a comprehensive identification of potential risks and benefits to project developers associated with increased storage of carbon dioxide captured from stationary sources in deep saline formations, using existing research;

(II) recommendations for managing the potential risks identified under subclause (I), including potential risks unique to public land; and

(III) recommendations for Federal legislation or other policy changes to mitigate any potential risks identified under subclause (I).

(D) GAO report

Not later than 5 years after December 27, 2020, the Comptroller General of the United States shall submit to Congress a report that—

(i) identifies all Federal grant programs in which a purpose of a grant under the program is to perform research on carbon capture and utilization technologies, including direct air capture technologies; and

(ii) examines the extent to which the Federal grant programs identified pursuant to clause (i) overlap or are duplicative.

(h) NIEHS studies

(1) The Director of the National Institute of Environmental Health Sciences may conduct a program of basic research to identify, characterize, and quantify risks to human health from air pollutants. Such research shall be conducted primarily through a combination of university and medical school-based grants, as well as through intramural studies and contracts.

(2) The Director of the National Institute of Environmental Health Sciences shall conduct a program for the education and training of physicians in environmental health.

(3) The Director shall assure that such programs shall not conflict with research undertaken by the Administrator.

(4) There are authorized to be appropriated to the National Institute of Environmental Health Sciences such sums as may be necessary to carry out the purposes of this subsection.

(i) Coordination of research

The Administrator shall develop and implement a plan for identifying areas in which activities authorized under this section can be carried out in conjunction with other Federal ecological and air pollution research efforts. The plan, which shall be submitted to Congress within 6 months after November 15, 1990, shall include—

(1) an assessment of ambient monitoring stations and networks to determine cost effective ways to expand monitoring capabilities in both urban and rural environments;

(2) a consideration of the extent of the feasibility and scientific value of conducting the research program under subsection (e) to include consideration of the effects of atmospheric processes and air pollution effects; and

(3) a methodology for evaluating and ranking pollution prevention technologies, such as those developed under subsection (g), in terms of their ability to reduce cost effectively the emissions of air pollutants and other airborne chemicals of concern.

Not later than 2 years after November 15, 1990, and every 4 years thereafter, the Administrator shall report to Congress on the progress made in implementing the plan developed under this subsection, and shall include in such report any revisions of the plan.

(j) Continuation of national acid precipitation assessment program

(1) The acid precipitation research program set forth in the Acid Precipitation Act of 1980 [42 U.S.C. 8901 et seq.] shall be continued with modifications pursuant to this subsection.

(2) The Acid Precipitation Task Force shall consist of the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Secretary of Agriculture, the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and such additional members as the President may select. The President shall appoint a chairman for the Task Force from among its members within 30 days after November 15, 1990.

(3) The responsibilities of the Task Force shall include the following:

(A) Review of the status of research activities conducted to date under the comprehensive research plan developed pursuant to the Acid Precipitation Act of 1980 [42 U.S.C. 8901 et seq.], and development of a revised plan that identifies significant research gaps and establishes a coordinated program to address current and future research priorities. A draft of the revised plan shall be submitted by the Task Force to Congress within 6 months after November 15, 1990. The plan shall be available for public comment during the 60 day period after its submission, and a final plan shall be submitted by the President to the Congress within 45 days after the close of the comment period.

(B) Coordination with participating Federal agencies, augmenting the agencies' research and monitoring efforts and sponsoring additional research in the scientific community as necessary to ensure the availability and quality of data and methodologies needed to evaluate the status and effectiveness of the acid deposition control program. Such research and monitoring efforts shall include, but not be limited to—

(i) continuous monitoring of emissions of precursors of acid deposition;

(ii) maintenance, upgrading, and application of models, such as the Regional Acid Deposition Model, that describe the interactions of emissions with the atmosphere, and models that describe the response of ecosystems to acid deposition; and

(iii) analysis of the costs, benefits, and effectiveness of the acid deposition control program.

(C) Publication and maintenance of a National Acid Lakes Registry that tracks the condition and change over time of a statistically representative sample of lakes in regions that are known to be sensitive to surface water acidification.

(D) Submission every two years of a unified budget recommendation to the President for activities of the Federal Government in connection with the research program described in this subsection.

(E) Beginning in 1992 and biennially thereafter, submission of a report to Congress describing the results of its investigations and analyses. The reporting of technical information about acid deposition shall be provided in a format that facilitates communication with policymakers and the public. The report shall include—

(i) actual and projected emissions and acid deposition trends;

(ii) average ambient concentrations of acid deposition percursors [2] and their transformation products;

(iii) the status of ecosystems (including forests and surface waters), materials, and visibility affected by acid deposition;

(iv) the causes and effects of such deposition, including changes in surface water quality and forest and soil conditions;

(v) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds; and

(vi) the confidence level associated with each conclusion to aid policymakers in use of the information.

(F) Beginning in 1996, and every 4 years thereafter, the report under subparagraph (E) shall include—

(i) the reduction in deposition rates that must be achieved in order to prevent adverse ecological effects; and

(ii) the costs and benefits of the acid deposition control program created by subchapter IV–A of this chapter.

(k) Air pollution conferences

If, in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, the Administrator may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under this part, the Administrator shall send such findings, together with recommendations concerning the measures which the Administrator finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 7408 of this title.

(July 14, 1955, ch. 360, title I, §103, formerly §3, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 394; renumbered §103 and amended Pub. L. 89–272, title I, §§101(3), 103, Oct. 20, 1965, 79 Stat. 992, 996; Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 486; Pub. L. 91–604, §§2(a), 4(2), 15(a)(2), (c)(2), Dec. 31, 1970, 84 Stat. 1676, 1689, 1710, 1713; Pub. L. 95–95, title I, §101(a), (b), Aug. 7, 1977, 91 Stat. 686, 687; Pub. L. 101–549, title IX, §901(a)–(c), Nov. 15, 1990, 104 Stat. 2700–2703; Pub. L. 116–260, div. S, §102(b), Dec. 27, 2020, 134 Stat. 2243.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (g)(6)(B)(vi), is section 14 of Pub. L. 92–463, which was set out in the Appendix to Title 5, Government Organization and Employees, and was repealed and restated as section 1013 of Title 5 by Pub. L. 117–286, §§3(a), 7, Dec. 27, 2022, 136 Stat. 4204, 4361.

The Acid Precipitation Act of 1980, referred to in subsec. (j)(1), (3)(A), is title VII of Pub. L. 96–294, June 30, 1980, 94 Stat. 770, which is classified generally to chapter 97 (§8901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8901 of this title and Tables.

CODIFICATION

In subsec. (b)(4), "section 3324(a) and (b) of title 31 and section 6101 of title 41" substituted for "sections

3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section was formerly classified to section 1857b of this title.

PRIOR PROVISIONS

Provisions similar to those in subsec. (a)(3) of this section were contained in subsec. (a) of a prior section 1857b of this title, act July 14, 1955, ch. 360, §3, 69 Stat. 322, as amended Oct. 9, 1962, Pub. L. 87–761, §2, 76 Stat. 760, prior to the general amendment of this chapter by Pub. L. 88–206.

Provisions similar to those in this section were contained in prior sections 1857a to 1857d of this title, act July 14, 1955, ch. 360, §§2 to 5, 69 Stat. 322 (section 1857b as amended Oct. 9, 1962, Pub. L. 87–761, §2, 76 Stat. 760; section 1857d as amended Sept. 22, 1959, Pub. L. 86–365, §1, 73 Stat. 646 and Oct. 9, 1962, Pub. L. 87–761, §1, 76 Stat. 760), prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

2020—Subsec. (c)(3). Pub. L. 116–260, §102(b)(1), substituted "precursors" for "percursors" in introductory provisions.

Subsec. (g)(1). Pub. L. 116–260, §102(b)(2)(C)(iii), designated first sentence of introductory provisions as par. (1) and inserted heading. Former par. (1) redesignated subpar. (A) of par. (3).

Subsec. (g)(2). Pub. L. 116–260, §102(b)(2)(C)(ii), designated second sentence of introductory provisions as par. (2), inserted heading, substituted "Such strategies and technologies described in paragraph (1) shall be developed" for "Such strategies and technologies shall be developed", and inserted "States, institutions of higher education," after "scientists,". Former par. (2) redesignated subpar. (B) of par. (3).

Subsec. (g)(3). Pub. L. 116–260, §102(b)(2)(C)(i), designated third sentence of introductory provisions as par. (3), inserted heading, and substituted "The program under this subsection" for "Such program". Former par. (3) redesignated subpar. (C) of par. (3).

Subsec. (g)(3)(A) to (D). Pub. L. 116–260, §102(b)(2)(A), redesignated pars. (1) to (4) of subsec. (g) as subpars. (A) to (D), respectively, of par. (3).

Subsec. (g)(4), (5). Pub. L. 116–260, §102(b)(2)(B), designated first and second sentences of concluding provisions as pars. (4) and (5), respectively, and inserted headings. Former par. (4) redesignated subpar. (D) of par. (3).

Subsec. (g)(6). Pub. L. 116–260, §102(b)(2)(D), added par. (6).

1990—Subsec. (a)(1). Pub. L. 101–549, §901(a)(1), inserted "(including health and welfare effects)" after "effects".

Subsec. (b)(8). Pub. L. 101–549, §901(a)(2), which directed amendment of subsec. (b) by adding par. (8) at end, was executed by adding par. (8) after par. (7) to reflect the probable intent of Congress.

Subsecs. (c) to (f). Pub. L. 101–549, §901(b), amended subsecs. (c) to (f) generally, substituting present provisions for provisions which related to: in subsec. (c), results of other scientific studies; in subsec. (d), construction of facilities; in subsec. (e), potential air pollution problems, conferences, and findings and recommendations of the Administrator; and, in subsec. (f), accelerated research programs.

Subsecs. (g) to (k). Pub. L. 101–549, §901(c), added subsecs. (g) to (k).

1977—Subsec. (a). Pub. L. 95–95, §101(b), struck out reference to "training" in par. (1) and added par. (5).

Subsec. (b). Pub. L. 95–95, §101(a), struck out par. (5) which provided for training and training grants to personnel of air pollution control agencies and other persons with suitable qualifications, redesignated pars. (6), (7), and (8) as (5), (6), and (7), respectively, and, following par. (7) as so redesignated, inserted provisions directing the Administrator, in carrying out subsec. (a), to provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and to make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsec. (a)(5) and allowing reasonable fees to be charged for such training provided to persons other than personnel of air pollution control agencies but requiring that such training be provided to such personnel of air pollution control agencies without charge.

1970—Subsec. (a). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (b). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (c). Pub. L. 91–604, §15(a)(2), (c)(2), substituted "Administrator" for "Secretary" and "air pollutants" for "air pollution agents (or combinations of agents)".

Subsec. (d). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (e). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" wherever appearing,

substituted "7415" for "7415(a)", and inserted references to subsecs. (b) and (c) of section 7415 of this title.

Subsec. (f). Pub. L. 91–604, §2(a), added subsec. (f).

1967—Subsec. (a). Pub. L. 90–148 substituted "establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research" for "initiate and conduct a program of research directed toward the development of improved, low-cost techniques for extracting sulfur from fuels" as cl. (4) and struck out cl. (5) which related to research programs relating to the control of hydrocarbon emissions from evaporation of gasoline and nitrogen and aldehyde oxide emission from gasoline and diesel powered vehicles and relating to the development of improved low-cost techniques to reduce emissions of oxides of sulfur produced by the combustion of sulfur-containing fuels.

Subsec. (c). Pub. L. 90–148 struck out provision for promulgation of criteria in the case of particular air pollution agents present in the air in certain quantities reflecting the latest scientific knowledge and allowing for availability and revision and provided for recommendation by Secretary of air quality criteria.

Subsec. (e). Pub. L. 90–148 substituted references to subsections (d), (e), and (f) of section 7415 of this title for references to subsections (c), (d), and (e) of section 7415 of this title in provision for admission of advisory findings and recommendations together with the record of the conference and made such findings and recommendations part of the proceedings of the conference, not merely part of the record of proceedings.

1965—Subsec. (a)(5). Pub. L. 89–272, §103(3), added par. (5).

Subsecs. (d), (e). Pub. L. 89–272, §103(4), added subsecs. (d) and (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i) of this section requiring quadrennial reports to Congress and of reporting provisions in subsec. (j)(3)(E) and (F) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th and 8th items on page 163 of House Document No. 103–7.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 1013 of Title 5, Government Organization and Employees.

PILOT DESIGN PROGRAMS

Pub. L. 106–246, div. B, title II, §2603, July 13, 2000, 114 Stat. 558, required the Administrator of the Environmental Protection Agency to make grants to carry out a 2-year program to implement in five metropolitan areas pilot design programs and report to Congress on the results not later than 360 days from first day of the second year of the 2-year program.

NATIONAL ACID LAKES REGISTRY

Pub. L. 101–549, title IV, §405, Nov. 15, 1990, 104 Stat. 2632, provided that: "The Administrator of the Environmental Protection Agency shall create a National Acid Lakes Registry that shall list, to the extent

practical, all lakes that are known to be acidified due to acid deposition, and shall publish such list within one year of the enactment of this Act [Nov. 15, 1990]. Lakes shall be added to the registry as they become acidic or as data becomes available to show they are acidic. Lakes shall be deleted from the registry as they become nonacidic."

ASSESSMENT OF INTERNATIONAL AIR POLLUTION CONTROL TECHNOLOGIES

Pub. L. 101–549, title IX, §901(e), Nov. 15, 1990, 104 Stat. 2706, directed Administrator of Environmental Protection Agency to conduct a study that compares international air pollution control technologies of selected industrialized countries to determine if there exist air pollution control technologies in countries outside the United States that may have beneficial applications to this Nation's air pollution control efforts, including, with respect to each country studied, the topics of urban air quality, motor vehicle emissions, toxic air emissions, and acid deposition, and within 2 years after Nov. 15, 1990, submit to Congress a report detailing the results of such study.

WESTERN STATES ACID DEPOSITION RESEARCH

Pub. L. 101–549, title IX, §901(g), Nov. 15, 1990, 104 Stat. 2707, provided that:

"(1) The Administrator of the Environmental Protection Agency shall sponsor monitoring and research and submit to Congress annual and periodic assessment reports on—

"(A) the occurrence and effects of acid deposition on surface waters located in that part of the United States west of the Mississippi River;

"(B) the occurrence and effects of acid deposition on high elevation ecosystems (including forests, and surface waters); and

"(C) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds.

"(2) The Administrator of the Environmental Protection Agency shall analyze data generated from the studies conducted under paragraph (1), data from the Western Lakes Survey, and other appropriate research and utilize predictive modeling techniques that take into account the unique geographic, climatological, and atmospheric conditions which exist in the western United States to determine the potential occurrence and effects of acid deposition due to any projected increases in the emission of sulfur dioxide and nitrogen oxides in that part of the United States located west of the Mississippi River. The Administrator shall include the results of the project conducted under this paragraph in the reports issued to Congress under paragraph (1)."

CONSULTATION WITH AND TRANSMISSION OF REPORTS AND STUDIES TO CONGRESSIONAL COMMITTEE

Pub. L. 95–95, title I, §101(c), Aug. 7, 1977, 91 Stat. 687, provided that: "The Administrator of the Environmental Protection Agency shall consult with the House Committee on Science and Technology [now Committee on Science, Space, and Technology] on the environmental and atmospheric research, development, and demonstration aspects of this Act [see Short Title of 1977 Amendment note set out under section 7401 of this title]. In addition, the reports and studies required by this Act that relate to research, development, and demonstration issues shall be transmitted to the Committee on Science and Technology [now Committee on Science, Space, and Technology] at the same time they are made available to other committees of the Congress."

STUDY OF SUBSTANCES DISCHARGED FROM EXHAUSTS OF MOTOR VEHICLES

Pub. L. 86–493, June 8, 1960, 74 Stat. 162, directed Surgeon General of Public Health Service to conduct a thorough study for purposes of determining, with respect to the various substances discharged from exhausts of motor vehicles, the amounts and kinds of such substances which, from the standpoint of human health, it is safe for motor vehicles to discharge into the atmosphere under the various conditions under which such vehicles may operate, and, not later than two years after June 8, 1960, submit to Congress a report on results of the study, together with such recommendations, if any, based upon the findings made in such study, as he deemed necessary for the protection of the public health.

[1] *See References in Text note below.*

[2] *So in original. Probably should be "precursors".*

§7404. Research relating to fuels and vehicles

(a) Research programs; grants; contracts; pilot and demonstration plants; byproducts research

The Administrator shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

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

(A) control of combustion byproducts of fuels,

(B) removal of potential air pollutants from fuels prior to combustion,

(C) control of emissions from the evaporation of fuels,

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

(E) producing synthetic or new fuels which, when used, result in decreased atmospheric emissions.[1]

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industrywide application of preventing or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41: *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 [2] of title 10, except that the determination, approval, and certification required thereby shall be made by the Administrator; *Provided further*, That no grant may be made under this paragraph in excess of $1,500,000;

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this chapter; [3]

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

(b) Powers of Administrator in establishing research and development programs

In carrying out the provisions of this section, the Administrator may—

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

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

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

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

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the chapter

will be served thereby.

(c) Clean alternative fuels

The Administrator shall conduct a research program to identify, characterize, and predict air emissions related to the production, distribution, storage, and use of clean alternative fuels to determine the risks and benefits to human health and the environment relative to those from using conventional gasoline and diesel fuels. The Administrator shall consult with other Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

(July 14, 1955, ch. 360, title I, §104, as added Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 487; amended Pub. L. 91–137, Dec. 5, 1969, 83 Stat. 283; Pub. L. 91–604, §§2(b), (c), 13(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1676, 1677, 1709, 1713; Pub. L. 93–15, §1(a), Apr. 9, 1973, 87 Stat. 11; Pub. L. 93–319, §13(a), June 22, 1974, 88 Stat. 265; Pub. L. 101–549, title IX, §901(d), Nov. 15, 1990, 104 Stat. 2706.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2353 of title 10, referred to in subsec. (a)(2), was renumbered section 4174 of title 10 by Pub. L. 116–283, div. A, title XVIII, §1844(b)(1), Jan. 1, 2021, 134 Stat. 4245, as amended by Pub. L. 117–81, div. A, title XVII, §1701(u)(6)(B), Dec. 27, 2021, 135 Stat. 2154.

CODIFICATION

In subsec. (a)(2)(D), "section 3324(a) and (b) of title 31 and section 6101 of title 41" substituted for "sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section was formerly classified to section 1857b–1 of this title.

PRIOR PROVISIONS

A prior section 104 of act July 14, 1955, was renumbered section 105 by Pub. L. 90–148 and is classified to section 7405 of this title.

AMENDMENTS

1990—Subsecs. (a)(1), (b)(1). Pub. L. 101–549, §901(d)(1), substituted "cost-effective" for "low-cost".

Subsec. (c). Pub. L. 101–549, §901(d)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "For the purposes of this section there are authorized to be appropriated $75,000,000 for the fiscal year ending June 30, 1971, $125,000,000 for the fiscal year ending June 30, 1972, $150,000,000 for the fiscal year ending June 30, 1973, and $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975. Amounts appropriated pursuant to this subsection shall remain available until expended."

1974—Subsec. (c). Pub. L. 93–319 authorized appropriation of $150,000,000 for fiscal year ending June 30, 1975.

1973—Subsec. (c). Pub. L. 93–15 authorized appropriation of $150,000,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (a)(1). Pub. L. 91–604, §2(b), inserted provisions authorizing research programs directed toward development of techniques for improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and producing synthetic or new fuels which result in decreased atmospheric emissions.

Subsec. (a)(2). Pub. L. 91–604, §2(c), added cls. (B) and (C) and redesignated former cl. (B) as (D).

Subsec. (b). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (c). Pub. L. 91–604, §13(a), substituted provisions authorizing appropriations for fiscal years ending June 30, 1971, 1972, and 1973, for provisions authorizing appropriations for fiscal years ending June 30, 1968 and 1969.

1969—Subsec. (c). Pub. L. 91–137 authorized appropriation of $45,000,000 for fiscal year ending June 30, 1970.

STATUTORY NOTES AND RELATED SUBSIDIARIES

HYDROGEN FUEL CELL VEHICLE STUDY AND TEST PROGRAM

Pub. L. 101–549, title VIII, §807, Nov. 15, 1990, 104 Stat. 2689, provided that the Administrator of the Environmental Protection Agency, in conjunction with the National Aeronautics and Space Administration and the Department of Energy, would conduct a study, performed in the university or universities which are best exhibiting the facilities and expertise to develop such a fuel cell vehicle and test program on the development of a hydrogen fuel cell electric vehicle, to determine how best to transfer existing NASA hydrogen fuel cell technology into the form of a mass-producible, cost effective hydrogen fuel cell vehicle and include at a minimum a feasibility-design study, the construction of a prototype, and a demonstration, and provided that the study and test program were to be completed and a report submitted to Congress within 3 years after Nov. 15, 1990.

COMBUSTION OF CONTAMINATED USED OIL IN SHIPS

Pub. L. 101–549, title VIII, §813, Nov. 15, 1990, 104 Stat. 2693, directed that within 2 years after Nov. 15, 1990, the Administrator of the Environmental Protection Agency was to complete a study and submit a report to Congress evaluating the health and environmental impacts of the combustion of contaminated used oil in ships, the reasons for using such oil, the alternatives, and the costs of such alternatives, and other relevant factors and impacts.

EXTENSION TO AUG. 31, 1970 OF AUTHORIZATION PERIOD FOR FISCAL YEAR 1970

Pub. L. 91–316, July 10, 1970, 84 Stat. 416, provided in part that the authorization contained in section 104(c) of the Clean Air Act [subsec. (c) of this section] for the fiscal year ending June 30, 1970, should remain available through Aug. 31, 1970, notwithstanding any provisions of this section.

[1] So in original. The period probably should be a semicolon.

[2] See References in Text note below.

[3] So in original. The word "and" probably should appear.

§7405. Grants for support of air pollution planning and control programs

(a) Amounts; limitations; assurances of plan development capability

(1)(A) The Administrator may make grants to air pollution control agencies, within the meaning of paragraph (1), (2), (3), (4), or (5) of section 7602 of this title, in an amount up to three-fifths of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. For the purpose of this section, "implementing" means any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs.

(B) Subject to subsections (b) and (c) of this section, an air pollution control agency which receives a grant under subparagraph (A) and which contributes less than the required two-fifths minimum shall have 3 years following November 15, 1990, in which to contribute such amount. If such an agency fails to meet and maintain this required level, the Administrator shall reduce the amount of the Federal contribution accordingly.

(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 7410 of this title, grants under subparagraph (A) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency

within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

(b) Terms and conditions; regulations; factors for consideration; State expenditure limitations

(1) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (A) the population, (B) the extent of the actual or potential air pollution problem, and (C) the financial need of the respective agencies.

(2) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends. Subject to the provisions of paragraph (1) of this subsection, no State shall have made available to it for application less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

(c) Maintenance of effort

(1) No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for the Administrator to award grants under this section in a timely manner each fiscal year, the Administrator shall compare an agency's prospective expenditure level to that of its second preceding fiscal year. The Administrator shall revise the current regulations which define applicable nonrecurrent and recurrent expenditures, and in so doing, give due consideration to exempting an agency from the limitations of this paragraph and subsection (a) due to periodic increases experienced by that agency from time to time in its annual expenditures for purposes acceptable to the Administrator for that fiscal year.

(2) The Administrator may still award a grant to an agency not meeting the requirements of paragraph (l) [1] of this subsection if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government. No agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such a grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds. No grants shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

(d) Reduction of payments; availability of reduced amounts; reduced amount as deemed paid to agency for purpose of determining amount of grant

The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 7601 of this title, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this chapter. The amount by which such payments

have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

(e) Notice and opportunity for hearing when affected by adverse action

No application by a State for a grant under this section may be disapproved by the Administrator without prior notice and opportunity for a public hearing in the affected State, and no commitment or obligation of any funds under any such grant may be revoked or reduced without prior notice and opportunity for a public hearing in the affected State (or in one of the affected States if more than one State is affected).

(July 14, 1955, ch. 360, title I, §105, formerly §4, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 395; renumbered §104 and amended Pub. L. 89–272, title I, §101(2)–(4), Oct. 20, 1965, 79 Stat. 992; Pub. L. 89–675, §3, Oct. 15, 1966, 80 Stat. 954; renumbered §105 and amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 489; Pub. L. 91–604, §§3(a), (b)(1), 15(c)(2), Dec. 31, 1970, 84 Stat. 1677, 1713; Pub. L. 95–95, title I, §102, title III, §305(b), Aug. 7, 1977, 91 Stat. 687, 776; Pub. L. 101–549, title VIII, §802(a)–(e), Nov. 15, 1990, 104 Stat. 2687, 2688.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857c of this title.

PRIOR PROVISIONS

A prior section 105 of act July 14, 1955, was renumbered section 108 by Pub. L. 90–148 and is classified to section 7415 of this title.

Provisions similar to those in subsecs. (a) and (b) of this section were contained in a prior section 1857d of this title, act July 14, 1955, ch. 360, §5, 69 Stat. 322, as amended Sept. 22, 1959, Pub. L. 86–365, §1, 73 Stat. 646; Oct. 9, 1962, Pub. L. 87–761, §1, 76 Stat. 760, prior to the general amendment by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–549, §802(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

"(A) The Administrator may make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and secondry [sic] ambient air quality standards.

"(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 7602(b) of this title in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in an area that includes two or more municipalities, whether in the same or different States."

Subsec. (a)(1)(C). Pub. L. 101–549, §802(b), substituted "subparagraph (A)" for "subparagraph (B)".

Subsec. (b)(1). Pub. L. 101–549, §802(c), designated existing provisions of subsec. (b) as par. (1), redesignated former cls. (1) to (3) as cls. (A) to (C), respectively, and struck out at end "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected."

Subsec. (b)(2). Pub. L. 101–549, §802(d), redesignated subsec. (c) as subsec. (b)(2) and substituted "Subject to the provisions of paragraph (1) of this subsection, no State shall have made available to it for application less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State." for "In fiscal year 1978 and subsequent fiscal years, subject to the provisions of subsection (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State."

Subsec. (c). Pub. L. 101–549, §802(e), added subsec. (c). Former subsec. (c) redesignated (b)(2).

1977—Subsec. (b). Pub. L. 95–95, §102(a), inserted ", unless the Administrator, after notice and opportunity for hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government" after "will be less than its expenditures were for such programs during the preceding fiscal year".

Subsec. (c). Pub. L. 95–95, §102(b), provided that in fiscal year 1978 and subsequent fiscal years, subject to provisions of subsec. (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

Subsec. (e). Pub. L. 95–95, §305(b), added subsec. (e).

1970—Subsec. (a)(1). Pub. L. 91–604, §3(a), substituted provisions authorizing the Administrator to make grants, for provisions authorizing the Secretary to make grants, and provisions authorizing grants for programs implementing national primary and secondary ambient air quality standards, for provisions authorizing grants for programs implementing air quality standards authorized by this subchapter, and inserted the provision requiring grants to air pollution control agencies be made to agencies having substantial responsibilities for carrying out the applicable implementation plan with respect to the air quality control region or portion thereof.

Subsecs. (a)(2), (3), (b), (c). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (d). Pub. L. 91–604, §3(b)(1), added subsec. (d).

1967—Subsec. (a). Pub. L. 90–148 designated existing provisions as par. (1), substituted "regional air quality control program" for "regional air pollution control program," added planning to list of authorized activities, and added programs for implementation of air quality standards authorized by this chapter to list of authorized programs, and added pars. (2) and (3).

Subsec. (b). Pub. L. 90–148 made minor changes in the order of provisions.

Subsec. (c). Pub. L. 90–148 reduced percentage limitation on portion of total funds which might be granted for air pollution control programs in any one State from 12½ per centum to 10 per centum.

1966—Subsec. (a). Pub. L. 89–675, §3(a)(1), struck out provisions limiting available funds to 20 per centum of sums appropriated annually for purpose of this subchapter, inserted provisions allowing grants to air pollution control agencies up to one-half of cost of maintaining programs for prevention and control of air pollution, and authorized Secretary to make grants of up to three-fifths of cost of maintaining regional air pollution control programs.

Subsec. (b). Pub. L. 89–675, §3(a)(2), substituted "for the purpose of" for "under", permitted grantees to reduce annual expenditures to the extent that nonrecurrent costs are involved for purposes of application of the provision that no agency may receive grants during any fiscal year when its expenditures of non-Federal funds for air pollution control programs are less than its expenditures for such programs during the preceding year, and inserted provisions insuring that Federal funds will in no event be used to supplant State or local government funds in maintaining air pollution control programs.

Subsec. (c). Pub. L. 89–675, §3(b), substituted "total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs" for "grant funds available under subsection (a) of this section shall be expended" and authorized the Secretary to determine the portion of grants to interstate agencies to be charged against the twelve and one-half percent limitation of grant funds to any one State.

1965—Subsec. (a). Pub. L. 89–272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter", and "section 302(b)(2) and (4)" for "section 9(b)(2) and (4)", which for purposes of codification has been changed to "section 7602(b)(2) and (4) of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. Probably should be paragraph "(1)".

§7406. Interstate air quality agencies; program cost limitations

For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 7407 of this title or of implementing section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution), the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any commission established under section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution) or any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency or such commission in an amount up to three-fifths of the air quality implementation program costs of such agency or commission.

(July 14, 1955, ch. 360, title I, §106, as added Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 490; amended Pub. L. 91–604, §3(c), Dec. 31, 1970, 84 Stat. 1677; Pub. L. 101–549, title I, §102(f)(2), title VIII, §802(f), Nov. 15, 1990, 104 Stat. 2420, 2688.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857c–1 of this title.

PRIOR PROVISIONS

A prior section 106 of act July 14, 1955, was renumbered section 117 by Pub. L. 91–604 and is classified to section 7417 of this title.

AMENDMENTS

1990—Pub. L. 101–549, §102(f)(2)(A), inserted "or of implementing section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution)" after "section 7407 of this title".

Pub. L. 101–549, §102(f)(2)(B), which directed insertion of "any commission established under section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution) or" after "program costs of", was executed by making the insertion after that phrase the first place it appeared to reflect the probable intent of Congress.

Pub. L. 101–549, §102(f)(2)(C), which directed insertion of "or such commission" after "such agency" in last sentence, was executed by making insertion after "such agency" the first place it appeared in the last sentence to reflect the probable intent of Congress.

Pub. L. 101–549, §§102(f)(2)(D), 802(f), substituted "three-fifths of the air quality implementation program costs of such agency or commission" for "three-fourths of the air quality planning program costs of such agency".

1970—Pub. L. 91–604 struck out designation "(a)", substituted provisions authorizing Federal grants for the purpose of developing implementation plans and provisions requiring the designated State agency to be capable of recommending plans for implementation of national primary and secondary ambient air quality standards, for provisions authorizing Federal grants for the purpose of expediting the establishment of air quality standards and provisions requiring the designated State agency to be capable of recommending standards of air quality and plans for implementation thereof, respectively, and struck out subsec. (b) which authorized establishment of air quality planning commissions.

§7407. Air quality control regions

(a) Responsibility of each State for air quality; submission of implementation plan

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) Designated regions

For purposes of developing and carrying out implementation plans under section 7410 of this title—

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c), shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) Authority of Administrator to designate regions; notification of Governors of affected States

The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(d) Designations

(1) Designations generally

(A) Submission by Governors of initial designations following promulgation of new or revised standards

By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 7409 of this title, the Governor of each State shall (and at any other time the Governor of a State deems appropriate the Governor may) submit to the Administrator a list of all areas (or portions thereof) in the State, designating as—

(i) nonattainment, any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant,

(ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or

(iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

The Administrator may not require the Governor to submit the required list sooner than 120 days after promulgating a new or revised national ambient air quality standard.

(B) Promulgation by EPA of designations

(i) Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under subparagraph (A) as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.

(ii) In making the promulgations required under clause (i), the Administrator may make such modifications as the Administrator deems necessary to the designations of the areas (or portions thereof) submitted under subparagraph (A) (including to the boundaries of such areas or portions thereof). Whenever the Administrator intends to make a modification, the Administrator shall notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate. The Administrator shall give such notification no later than 120 days before the date the Administrator promulgates the designation, including any modification thereto. If the Governor fails to submit the list in whole or in part, as required under subparagraph (A), the Administrator shall promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State.

(iii) If the Governor of any State, on the Governor's own motion, under subparagraph (A), submits a list of areas (or portions thereof) in the State designated as nonattainment, attainment, or unclassifiable, the Administrator shall act on such designations in accordance with the procedures under paragraph (3) (relating to redesignation).

(iv) A designation for an area (or portion thereof) made pursuant to this subsection shall remain in effect until the area (or portion thereof) is redesignated pursuant to paragraph (3) or (4).

(C) Designations by operation of law

(i) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(A), (B), or (C) of this subsection (as in effect immediately before November 15, 1990) is designated, by operation of law, as a nonattainment area for such pollutant within the meaning of subparagraph (A)(i).

(ii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(E) (as in effect immediately before November 15, 1990) is designated by operation of law, as an attainment area for such pollutant within the meaning of subparagraph (A)(ii).

(iii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(D) (as in effect immediately before November 15, 1990) is designated, by operation of law, as an unclassifiable area for such pollutant within the meaning of subparagraph (A)(iii).

(2) Publication of designations and redesignations

(A) The Administrator shall publish a notice in the Federal Register promulgating any designation under paragraph (1) or (5), or announcing any designation under paragraph (4), or promulgating any redesignation under paragraph (3).

(B) Promulgation or announcement of a designation under paragraph (1), (4) or (5) shall not be subject to the provisions of sections 553 through 557 of title 5 (relating to notice and comment), except nothing herein shall be construed as precluding such public notice and comment whenever possible.

(3) Redesignation

(A) Subject to the requirements of subparagraph (E), and on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, the Administrator may at any time notify the Governor of any State that available information indicates that the designation of any area or portion of an area within the State or interstate area should be revised. In issuing such notification, which shall be public, to the Governor, the Administrator shall provide such information as the Administrator may have available explaining the basis for the notice.

(B) No later than 120 days after receiving a notification under subparagraph (A), the Governor shall submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof within the State or interstate area, as the Governor considers appropriate.

(C) No later than 120 days after the date described in subparagraph (B) (or paragraph (1)(B)(iii)), the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with subparagraph (B), making such modifications as the Administrator may deem necessary, in the same manner and under the same procedure as is applicable under clause (ii) of paragraph (1)(B), except that the phrase "60 days" shall be substituted for the phrase "120 days" in that clause. If the Governor does not submit, in accordance with subparagraph (B), a redesignation for an area (or portion thereof) identified by the Administrator under subparagraph (A), the Administrator shall promulgate such redesignation, if any, that the Administrator deems appropriate.

(D) The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation. The submission of a redesignation by a Governor shall not affect the effectiveness or enforceability of the applicable implementation plan for the State.

(E) The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless—

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under section 7410(k) of this title;

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 7505a of this title; and

(v) the State containing such area has met all requirements applicable to the area under section 7410 of this title and part D.

(F) The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.

(4) Nonattainment designations for ozone, carbon monoxide and particulate matter (PM–10)

(A) Ozone and carbon monoxide

(i) Within 120 days after November 15, 1990, each Governor of each State shall submit to the Administrator a list that designates, affirms or reaffirms the designation of, or redesignates (as the case may be), all areas (or portions thereof) of the Governor's State as attainment, nonattainment, or unclassifiable with respect to the national ambient air quality standards for ozone and carbon monoxide.

(ii) No later than 120 days after the date the Governor is required to submit the list of areas (or portions thereof) required under clause (i) of this subparagraph, the Administrator shall promulgate such designations, making such modifications as the Administrator may deem necessary, in the same manner, and under the same procedure, as is applicable under clause (ii) of paragraph (1)(B), except that the phrase "60 days" shall be substituted for the phrase "120 days" in that clause. If the Governor does not submit, in accordance with clause (i) of this subparagraph, a designation for an area (or portion thereof), the Administrator shall promulgate the designation that the Administrator deems appropriate.

(iii) No nonattainment area may be redesignated as an attainment area under this subparagraph.

(iv) Notwithstanding paragraph (1)(C)(ii) of this subsection, if an ozone or carbon monoxide

nonattainment area located within a metropolitan statistical area or consolidated metropolitan statistical area (as established by the Bureau of the Census) is classified under part D of this subchapter as a Serious, Severe, or Extreme Area, the boundaries of such area are hereby revised (on the date 45 days after such classification) by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be, unless within such 45-day period the Governor (in consultation with State and local air pollution control agencies) notifies the Administrator that additional time is necessary to evaluate the application of clause (v). Whenever a Governor has submitted such a notice to the Administrator, such boundary revision shall occur on the later of the date 8 months after such classification or 14 months after November 15, 1990, unless the Governor makes the finding referred to in clause (v), and the Administrator concurs in such finding, within such period. Except as otherwise provided in this paragraph, a boundary revision under this clause or clause (v) shall apply for purposes of any State implementation plan revision required to be submitted after November 15, 1990.

(v) Whenever the Governor of a State has submitted a notice under clause (iv), the Governor, in consultation with State and local air pollution control agencies, shall undertake a study to evaluate whether the entire metropolitan statistical area or consolidated metropolitan statistical area should be included within the nonattainment area. Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport.

(B) PM–10 designations

By operation of law, until redesignation by the Administrator pursuant to paragraph (3)—

(i) each area identified in 52 Federal Register 29383 (Aug. 7, 1987) as a Group I area (except to the extent that such identification was modified by the Administrator before November 15, 1990) is designated nonattainment for PM–10;

(ii) any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM–10 before January 1, 1989 (as determined under part 50, appendix K of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM–10; and

(iii) each area not described in clause (i) or (ii) is hereby designated unclassifiable for PM–10.

Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to this subsection (as in effect immediately before November 15, 1990) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 7473(b) of this title, until the Administrator determines that such designation is no longer necessary for that purpose.

(5) Designations for lead

The Administrator may, in the Administrator's discretion at any time the Administrator deems appropriate, require a State to designate areas (or portions thereof) with respect to the national ambient air quality standard for lead in effect as of November 15, 1990, in accordance with the procedures under subparagraphs (A) and (B) of paragraph (1), except that in applying subparagraph (B)(i) of paragraph (1) the phrase "2 years from the date of promulgation of the new

or revised national ambient air quality standard" shall be replaced by the phrase "1 year from the date the Administrator notifies the State of the requirement to designate areas with respect to the standard for lead".

(6) Designations

(A) Submission

Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 $PM_{2.5}$ national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

(B) Promulgation

Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 $PM_{2.5}$ national ambient air quality standards.

(7) Implementation plan for regional haze

(A) In general

Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 7492(e)(1) of this title (referred to in this paragraph as "regional haze requirements").

(B) No preclusion of other provisions

Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.

(e) Redesignation of air quality control regions

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

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

(3) No compliance date extension granted under section 7413(d)(5) [1] of this title (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 7413(d)(5) [1] of this title if the violation of such limitation is due solely to a redesignation of a region under this subsection.

(July 14, 1955, ch. 360, title I, §107, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95–95, title I, §103, Aug. 7, 1977, 91 Stat. 687; Pub. L. 101–549, title I, §101(a), Nov. 15, 1990, 104 Stat. 2399; Pub. L. 108–199, div. G, title IV, §425(a), Jan. 23, 2004, 118 Stat. 417.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7413 of this title, referred to in subsec. (e)(3), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) of section 7413 no longer relates to final compliance orders.

CODIFICATION

Section was formerly classified to section 1857c–2 of this title.

PRIOR PROVISIONS

A prior section 107 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 490, related to air quality control regions and was classified to section 1857c–2 of this title, prior to repeal by Pub. L. 91–604.

Another prior section 107 of act July 14, 1955, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 399, was renumbered section 111 by Pub. L. 90–148 and is classified to section 7411 of this title.

AMENDMENTS

2004—Subsec. (d)(6), (7). Pub. L. 108–199 added pars. (6) and (7).

1990—Subsec. (d). Pub. L. 101–549 amended subsec. (d) generally, substituting present provisions for provisions which required States to submit lists of regions not in compliance on Aug. 7, 1977, with certain air quality standards to be submitted to the Administrator, and which authorized States to revise and resubmit such lists from time to time.

1977—Subsecs. (d), (e). Pub. L. 95–95 added subsecs. (d) and (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

OZONE AND PARTICULATE MATTER STANDARDS

Pub. L. 108–199, div. G, title IV, §425(b), Jan. 23, 2004, 118 Stat. 417, provided that: "Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act [subsec. (d)(6), (7) of this section] (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century [Pub. L. 105–178] (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act [Jan. 23, 2004], shall remain in effect."

Pub. L. 105–178, title VI, June 9, 1998, 112 Stat. 463, as amended by Pub. L. 109–59, title VI, §6012(a), Aug. 10, 2005, 119 Stat. 1882, provided that:

"SEC. 6101. FINDINGS AND PURPOSE.

"(a) The Congress finds that—

"(1) there is a lack of air quality monitoring data for fine particle levels, measured as $PM_{2.5}$, in the United States and the States should receive full funding for the monitoring efforts;

"(2) such data would provide a basis for designating areas as attainment or nonattainment for any $PM_{2.5}$ national ambient air quality standards pursuant to the standards promulgated in July 1997;

"(3) the President of the United States directed the Administrator of the Environmental Protection Agency (referred to in this title as the 'Administrator') in a memorandum dated July 16, 1997, to complete the next periodic review of the particulate matter national ambient air quality standards by July 2002 in order to determine 'whether to revise or maintain the standards';

"(4) the Administrator has stated that 3 years of air quality monitoring data for fine particle levels, measured as $PM_{2.5}$ and performed in accordance with any applicable Federal reference methods, is appropriate for designating areas as attainment or nonattainment pursuant to the July 1997 promulgated standards; and

"(5) the Administrator has acknowledged that in drawing boundaries for attainment and nonattainment areas for the July 1997 ozone national air quality standards, Governors would benefit from considering

implementation guidance from EPA on drawing area boundaries.

"(b) The purposes of this title are—

"(1) to ensure that 3 years of air quality monitoring data regarding fine particle levels are gathered for use in the determination of area attainment or nonattainment designations respecting any $PM_{2.5}$ national ambient air quality standards;

"(2) to ensure that the Governors have adequate time to consider implementation guidance from EPA on drawing area boundaries prior to submitting area designations respecting the July 1997 ozone national ambient air quality standards;

"(3) to ensure that the schedule for implementation of the July 1997 revisions of the ambient air quality standards for particulate matter and the schedule for the Environmental Protection Agency's visibility regulations related to regional haze are consistent with the timetable for implementation of such particulate matter standards as set forth in the President's Implementation Memorandum dated July 16, 1997.

"SEC. 6102. PARTICULATE MATTER MONITORING PROGRAM.

"(a) Through grants under section 103 of the Clean Air Act [42 U.S.C. 7403] the Administrator of the Environmental Protection Agency shall use appropriated funds no later than fiscal year 2000 to fund 100 percent of the cost of the establishment, purchase, operation and maintenance of a $PM_{2.5}$ monitoring network necessary to implement the national ambient air quality standards for $PM_{2.5}$ under section 109 of the Clean Air Act [42 U.S.C. 7409]. This implementation shall not result in a diversion or reprogramming of funds from other Federal, State or local Clean Air Act activities. Any funds previously diverted or reprogrammed from section 105 Clean Air Act [42 U.S.C. 7405] grants for $PM_{2.5}$ monitors must be restored to State or local air programs in fiscal year 1999.

"(b) EPA and the States, consistent with their respective authorities under the Clean Air Act [42 U.S.C. 7401 et seq.], shall ensure that the national network (designated in subsection (a)) which consists of the $PM_{2.5}$ monitors necessary to implement the national ambient air quality standards is established by December 31, 1999.

"(c)(1) The Governors shall be required to submit designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] for each area following promulgation of the July 1997 $PM_{2.5}$ national ambient air quality standard within 1 year after receipt of 3 years of air quality monitoring data performed in accordance with any applicable Federal reference methods for the relevant areas. Only data from the monitoring network designated in subsection (a) and other Federal reference method $PM_{2.5}$ monitors shall be considered for such designations. Nothing in the previous sentence shall be construed as affecting the Governor's authority to designate an area initially as nonattainment, and the Administrator's authority to promulgate the designation of an area as nonattainment, under section 107(d)(1) of the Clean Air Act, based on its contribution to ambient air quality in a nearby nonattainment area.

"(2) For any area designated as nonattainment for the July 1997 $PM_{2.5}$ national ambient air quality standard in accordance with the schedule set forth in this section, notwithstanding the time limit prescribed in paragraph (2) of section 169B(e) of the Clean Air Act [42 U.S.C. 7492(e)(2)], the Administrator shall require State implementation plan revisions referred to in such paragraph (2) to be submitted at the same time as State implementation plan revisions referred to in section 172 of the Clean Air Act [42 U.S.C. 7502] implementing the revised national ambient air quality standard for fine particulate matter are required to be submitted. For any area designated as attainment or unclassifiable for such standard, the Administrator shall require the State implementation plan revisions referred to in such paragraph (2) to be submitted 1 year after the area has been so designated. The preceding provisions of this paragraph shall not preclude the implementation of the agreements and recommendations set forth in the Grand Canyon Visibility Transport Commission Report dated June 1996.

"(d) The Administrator shall promulgate the designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] for each area following promulgation of the July 1997 $PM_{2.5}$ national ambient air quality standard by the earlier of 1 year after the initial designations required under subsection (c)(1) are required to be submitted or December 31, 2005.

"(e) FIELD STUDY.—Not later than 2 years after the date of enactment of the SAFETEA–LU [Aug. 10, 2005], the Administrator shall—

"(1) conduct a field study of the ability of the $PM_{2.5}$ Federal Reference Method to differentiate those particles that are larger than 2.5 micrometers in diameter;

"(2) develop a Federal reference method to measure directly particles that are larger than 2.5 micrometers in diameter without reliance on subtracting from coarse particle measurements those particles

that are equal to or smaller than 2.5 micrometers in diameter;

"(3) develop a method of measuring the composition of coarse particles; and

"(4) submit a report on the study and responsibilities of the Administrator under paragraphs (1) through (3) to—

"(A) the Committee on Energy and Commerce of the House of Representatives; and

"(B) the Committee on Environment and Public Works of the Senate.

"SEC. 6103. OZONE DESIGNATION REQUIREMENTS.

"(a) The Governors shall be required to submit the designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] within 2 years following the promulgation of the July 1997 ozone national ambient air quality standards.

"(b) The Administrator shall promulgate final designations no later than 1 year after the designations required under subsection (a) are required to be submitted.

"SEC. 6104. ADDITIONAL PROVISIONS.

"Nothing in sections 6101 through 6103 shall be construed by the Administrator of Environmental Protection Agency or any court, State, or person to affect any pending litigation or to be a ratification of the ozone or $PM_{2.5}$ standards."

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] *See References in Text note below.*

§7408. Air quality criteria and control techniques

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

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

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such

pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(1) Simultaneously with the issuance of criteria under subsection (a), the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1), which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

(d) Publication in Federal Register; availability of copies for general public

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

(e) Transportation planning and guidelines

The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after November 15, 1990,[1] and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Such guidelines shall include information on—

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

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

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

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

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

planning process.

(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health

(1) The Administrator shall publish and make available to appropriate Federal, State, and local environmental and transportation agencies not later than one year after November 15, 1990, and from time to time thereafter—

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to—

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

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

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

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with subchapter II, which are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.[2]

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

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

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

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

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

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

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

(g) Assessment of risks to ecosystems

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER clearinghouse

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

(July 14, 1955, ch. 360, title I, §108, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95–95, title I, §§104, 105, title IV, §401(a), Aug. 7, 1977, 91 Stat. 689, 790; Pub. L. 101–549, title I, §§108(a)–(c), (o), 111, Nov. 15, 1990, 104 Stat. 2465, 2466, 2469, 2470; Pub. L. 105–362, title XV, §1501(b), Nov. 10, 1998, 112 Stat. 3294.)

EDITORIAL NOTES

CODIFICATION

November 15, 1990, referred to in subsec. (e), was in the original "enactment of the Clean Air Act Amendments of 1989", and was translated as meaning the date of the enactment of Pub. L. 101–549, popularly known as the Clean Air Act Amendments of 1990, to reflect the probable intent of Congress.

Section was formerly classified to section 1857c–3 of this title.

PRIOR PROVISIONS

A prior section 108 of act July 14, 1955, was renumbered section 115 by Pub. L. 91–604 and is classified to section 7415 of this title.

AMENDMENTS

1998—Subsec. (f)(3), (4). Pub. L. 105–362 struck out par. (3), which required reports by the Secretary of Transportation and the Administrator to be submitted to Congress by Jan. 1, 1993, and every 3 years thereafter, reviewing and analyzing existing State and local air quality related transportation programs, evaluating achievement of goals, and recommending changes to existing programs, and par. (4), which required that in each report after the first report the Secretary of Transportation include a description of the actions taken to implement the changes recommended in the preceding report.

1990—Subsec. (e). Pub. L. 101–549, §108(a), inserted first sentence and struck out former first sentence which read as follows: "The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after August 7, 1977, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 7505 of this title."

Subsec. (f)(1). Pub. L. 101–549, §108(b), in introductory provisions, substituted present provisions for provisions relating to Federal agencies, States, and air pollution control agencies within either 6 months or one year after Aug. 7, 1977.

Subsec. (f)(1)(A). Pub. L. 101–549, §108(b), substituted present provisions for provisions relating to information prepared in cooperation with Secretary of Transportation, regarding processes, procedures, and methods to reduce certain pollutants.

Subsec. (f)(3), (4). Pub. L. 101–549, §111, added pars. (3) and (4).

Subsec. (g). Pub. L. 101–549, §108(o), added subsec. (g).

Subsec. (h). Pub. L. 101–549, §108(c), added subsec. (h).

1977—Subsec. (a)(1)(A). Pub. L. 95–95, §401(a), substituted "emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" for "which in his judgment has an adverse effect on public health or welfare".

Subsec. (b)(1). Pub. L. 95–95, §104(a), substituted "cost of installation and operation, energy requirements,

emission reduction benefits, and environmental impact of the emission control technology" for "technology and costs of emission control".

Subsec. (c). Pub. L. 95–95, §104(b), inserted provision directing the Administrator, not later than six months after Aug. 7, 1977, to revise and reissue criteria relating to concentrations of NO**2** over such period (not more than three hours) as he deems appropriate, with the criteria to include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

Subsecs. (e), (f). Pub. L. 95–95, §105, added subsecs. (e) and (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] See Codification note below.

[2] So in original. The period probably should be a semicolon.

§7409. National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

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

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

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

(July 14, 1955, ch. 360, title I, §109, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1679; amended Pub. L. 95–95, title I, §106, Aug. 7, 1977, 91 Stat. 691.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857c–4 of this title.

PRIOR PROVISIONS

A prior section 109 of act July 14, 1955, was renumbered section 116 by Pub. L. 91–604 and is classified to section 7416 of this title.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95–95, §106(b), added subsec. (c).
Subsec. (d). Pub. L. 95–95, §106(a), added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

ROLE OF SECONDARY STANDARDS

Pub. L. 101–549, title VIII, §817, Nov. 15, 1990, 104 Stat. 2697, provided that:

"(a) REPORT.—The Administrator shall request the National Academy of Sciences to prepare a report to the Congress on the role of national secondary ambient air quality standards in protecting welfare and the environment. The report shall:

"(1) include information on the effects on welfare and the environment which are caused by ambient concentrations of pollutants listed pursuant to section 108 [42 U.S.C. 7408] and other pollutants which may be listed;

"(2) estimate welfare and environmental costs incurred as a result of such effects;

"(3) examine the role of secondary standards and the State implementation planning process in preventing such effects;

"(4) determine ambient concentrations of each such pollutant which would be adequate to protect welfare and the environment from such effects;

"(5) estimate the costs and other impacts of meeting secondary standards; and

"(6) consider other means consistent with the goals and objectives of the Clean Air Act [42 U.S.C. 7401 et seq.] which may be more effective than secondary standards in preventing or mitigating such effects.

"(b) SUBMISSION TO CONGRESS; COMMENTS; AUTHORIZATION.—(1) The report shall be transmitted to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

"(2) At least 90 days before issuing a report the Administrator shall provide an opportunity for public comment on the proposed report. The Administrator shall include in the final report a summary of the comments received on the proposed report.

"(3) There are authorized to be appropriated such sums as are necessary to carry out this section."

§7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion

thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for

public inspection;

(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan—

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—

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

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3)(A) Repealed. Pub. L. 101–549, title I, §101(d)(1), Nov. 15, 1990, 104 Stat. 2409.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under

section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d) [1] of this title, suspensions under subsection (f) or (g) (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(e) [1] of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) Repealed. Pub. L. 101–549, title I, §101(d)(2), Nov. 15, 1990, 104 Stat. 2409.

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

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

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

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

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

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

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

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

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

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d) [1] of this title or section 7419 of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A), or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. Pub. L. 101–549, title I, §101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) Repealed. Pub. L. 101–549, title I, §101(d)(3)(B), Nov. 15, 1990, 104 Stat. 2409.

(D) For purposes of this paragraph—

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

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

(4) Repealed. Pub. L. 101–549, title I, §101(d)(3)(C), Nov. 15, 1990, 104 Stat. 2409.

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

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures to:

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

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

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

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

(d), (e) Repealed. Pub. L. 101–549, title I, §101(d)(4), (5), Nov. 15, 1990, 104 Stat. 2409

(f) National or regional energy emergencies; determination by President

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

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) may be necessary, and

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

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

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

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

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

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

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

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

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c–10 [1] of this title, as in effect before August 7, 1977, or section 7413(d) [1] of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions

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

(A) meets the requirements of this section, and

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

which the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

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

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c–10 [1] of this title as in effect before August 7, 1977, or under section 7413(d) [1] of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than 5 years after November 15, 1990, and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

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

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d) [1] of this title (relating to compliance orders), a plan promulgation under subsection (c), or a plan revision under subsection (a)(3); no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

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

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as

appropriate (except that the Administrator may not adjust any attainment date prescribed under part D, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(l) Plan revisions

Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in section 7509(b) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 7509(a) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 7509(a) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 7509(a) of this title, such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses

(1) Existing plan provisions

Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter.

(2) Attainment dates

For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State—

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on November 15, 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) (as in effect immediately before November 15, 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of November 15, 1990, or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas

In the case of an area to which, immediately before November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before November 15, 1990) applied by virtue of a finding of the Administrator

that the State containing such area had not submitted an implementation plan meeting the requirements of section 7502(b)(6) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before November 15, 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 7502(c)(5) of this title (relating to permit programs) or subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(o) Indian tribes

If an Indian tribe submits an implementation plan to the Administrator pursuant to section 7601(d) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 7601(d)(2) of this title. When such plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports

Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development [2] effectiveness, need for revision, or implementation of any plan or plan revision required under this chapter.

(July 14, 1955, ch. 360, title I, §110, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1680; amended Pub. L. 93–319, §4, June 22, 1974, 88 Stat. 256; Pub. L. 95–95, title I, §§107, 108, Aug. 7, 1977, 91 Stat. 691, 693; Pub. L. 95–190, §14(a)(1)–(6), Nov. 16, 1977, 91 Stat. 1399; Pub. L. 97–23, §3, July 17, 1981, 95 Stat. 142; Pub. L. 101–549, title I, §§101(b)–(d), 102(h), 107(c), 108(d), title IV, §412, Nov. 15, 1990, 104 Stat. 2404–2408, 2422, 2464, 2466, 2634.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a)(3)(B), is Pub. L. 93–319, June 22, 1974, 88 Stat. 246, which is classified principally to chapter 16C (§791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Section 7413 of this title, referred to in subsecs. (a)(3)(C), (6), (f)(5), (g)(3), and (i), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsecs. (d) and (e) of section 7413 no longer relates to final compliance orders and steel industry compliance extension, respectively.

Section 1857c–10 of this title, as in effect before August 7, 1977, referred to in subsecs. (f)(5) and (g)(3), was in the original "section 119, as in effect before the date of the enactment of this paragraph", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, §3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of subsecs. (f)(5) and (g)(3) of this section by Pub. L. 95–95, §107, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title. Section 7413 of this title was subsequently

amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, see note above. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857c–5 of this title.

PRIOR PROVISIONS

A prior section 110 of act July 14, 1955, was renumbered section 117 by Pub. L. 91–604 and is classified to section 7417 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, §101(d)(8), substituted "3 years (or such shorter period as the Administrator may prescribe)" for "nine months" in two places.

Subsec. (a)(2). Pub. L. 101–549, §101(b), amended par. (2) generally, substituting present provisions for provisions setting the time within which the Administrator was to approve or disapprove a plan or portion thereof and listing the conditions under which the plan or portion thereof was to be approved after reasonable notice and hearing.

Subsec. (a)(3)(A). Pub. L. 101–549, §101(d)(1), struck out subpar. (A) which directed Administrator to approve any revision of an implementation plan if it met certain requirements and had been adopted by the State after reasonable notice and public hearings.

Subsec. (a)(3)(D). Pub. L. 101–549, §101(d)(1), struck out subpar. (D) which directed that certain implementation plans be revised to include comprehensive measures and requirements.

Subsec. (a)(4). Pub. L. 101–549, §101(d)(2), struck out par. (4) which set forth requirements for review procedure.

Subsec. (c)(1). Pub. L. 101–549, §102(h), amended par. (1) generally, substituting present provisions for provisions relating to preparation and publication of regulations setting forth an implementation plan, after opportunity for a hearing, upon failure of a State to make required submission or revision.

Subsec. (c)(2)(A). Pub. L. 101–549, §101(d)(3)(A), struck out subpar. (A) which required a study and report on necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations to achieve and maintain national primary ambient air quality standards.

Subsec. (c)(2)(C). Pub. L. 101–549, §101(d)(3)(B), struck out subpar. (C) which authorized suspension of certain regulations and requirements relating to management of parking supply.

Subsec. (c)(4). Pub. L. 101–549, §101(d)(3)(C), struck out par. (4) which permitted Governors to temporarily suspend measures in implementation plans relating to retrofits, gas rationing, and reduction of on-street parking.

Subsec. (c)(5)(B). Pub. L. 101–549, §101(d)(3)(D), struck out "(including the written evidence required by part D)," after "include comprehensive measures".

Subsec. (d). Pub. L. 101–549, §101(d)(4), struck out subsec. (d) which defined an applicable implementation plan for purposes of this chapter.

Subsec. (e). Pub. L. 101–549, §101(d)(5), struck out subsec. (e) which permitted an extension of time for attainment of a national primary ambient air quality standard.

Subsec. (f)(1). Pub. L. 101–549, §412, inserted "or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets)" in subpar. (A) and in last sentence.

Subsec. (g)(1). Pub. L. 101–549, §101(d)(6), substituted "12 months of submission of the proposed plan revision" for "the required four month period" in closing provisions.

Subsec. (h)(1). Pub. L. 101–549, §101(d)(7), substituted "5 years after November 15, 1990, and every three years thereafter" for "one year after August 7, 1977, and annually thereafter" and struck out at end "Each such document shall be revised as frequently as practicable but not less often than annually."

Subsecs. (k) to (n). Pub. L. 101–549, §101(c), added subsecs. (k) to (n).

Subsec. (o). Pub. L. 101–549, §107(c), added subsec. (o).

Subsec. (p). Pub. L. 101–549, §108(d), added subsec. (p).

1981—Subsec. (a)(3)(C). Pub. L. 97–23 inserted reference to extensions of compliance in decrees entered under section 7413(e) of this title (relating to iron- and steel-producing operations).

1977—Subsec. (a)(2)(A). Pub. L. 95–95, §108(a)(1), substituted "(A) except as may be provided in subparagraph (I)(i) in the case of a plan" for "(A)(i) in the case of a plan".

Subsec. (a)(2)(B). Pub. L. 95–95, §108(a)(2), substituted "transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D)" for "land use and transportation controls".

Subsec. (a)(2)(D). Pub. L. 95–95, §108(a)(3), substituted "it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii) a procedure" for "it includes a procedure".

Subsec. (a)(2)(E). Pub. L. 95–95, §108(a)(4), substituted "it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 7426 of this title, relating to interstate pollution abatement" for "it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region".

Subsec. (a)(2)(F). Pub. L. 95–95, §108(a)(5), added cl. (vi).

Subsec. (a)(2)(H). Pub. L. 95–190, §14(a)(1), substituted "1977;" for "1977".

Pub. L. 95–95, §108(a)(6), inserted "except as provided in paragraph (3)(C)," after "or (ii)" and "or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977" after "to achieve the national ambient air quality primary or secondary standard which it implements".

Subsec. (a)(2)(I). Pub. L. 95–95, §108(b), added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 95–190, §14(a)(2), substituted "; and" for ", and".

Pub. L. 95–95, §108(b), added subpar. (J).

Subsec. (a)(2)(K). Pub. L. 95–95, §108(b) added subpar. (K).

Subsec. (a)(3)(C). Pub. L. 95–95, §108(c), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 95–190, §14(a)(4), added subpar. (D).

Subsec. (a)(5). Pub. L. 95–95, §108(e), added par. (5).

Subsec. (a)(5)(D). Pub. L. 95–190, §14(a)(3), struck out "preconstruction or premodification" before "review".

Subsec. (a)(6). Pub. L. 95–95, §108(e), added par. (6).

Subsec. (c)(1). Pub. L. 95–95, §108(d)(1), (2), substituted "plan which meets the requirements of this section" for "plan for any national ambient air quality primary or secondary standard within the time prescribed" in subpar. (A) and, in provisions following subpar. (C), directed that any portion of a plan relating to any measure described in first sentence of 7421 of this title (relating to consultation) or the consultation process required under such section 7421 of this title not be required to be promulgated before the date eight months after such date required for submission.

Subsec. (c)(3) to (5). Pub. L. 95–95, §108(d)(3), added pars. (3) to (5).

Subsec. (d). Pub. L. 95–95, §108(f), substituted "and which implements the requirements of this section" for "and which implements a national primary or secondary ambient air quality standard in a State".

Subsec. (f). Pub. L. 95–95, §107(a), substituted provisions relating to the handling of national or regional energy emergencies for provisions relating to the postponement of compliance by stationary sources or classes of moving sources with any requirement of applicable implementation plans.

Subsec. (g). Pub. L. 95–95, §108(g), added subsec. (g) relating to publication of comprehensive document.

Pub. L. 95–95, §107(b), added subsec. (g) relating to Governor's authority to issue temporary emergency suspensions.

Subsec. (h). Pub. L. 95–190, §14(a)(5), redesignated subsec. (g), added by Pub. L. 95–95, §108(g), as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95–190, §14(a)(5), redesignated subsec. (h), added by Pub. L. 95–95, §108(g), as (i). Former subsec. (i) redesignated (j) and amended.

Subsec. (j). Pub. L. 95–190 §14(a)(5), (6), redesignated subsec. (i), added by Pub. L. 95–95, §108(g), as (j) and in subsec. (j) as so redesignated, substituted "will enable such source" for "at such source will enable it".

1974—Subsec. (a)(3). Pub. L. 93–319, §4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 93–319, §4(b), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of such redesignated par. (1), and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF IMPLEMENTATION PLANS APPROVED AND IN EFFECT PRIOR TO AUG. 7, 1977

Nothing in the Clean Air Act Amendments of 1977 [Pub. L. 95–95] to affect any requirement of an approved implementation plan under this section or any other provision in effect under this chapter before Aug. 7, 1977, until modified or rescinded in accordance with this chapter as amended by the Clean Air Act Amendments of 1977, see section 406(c) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SAVINGS PROVISION

Pub. L. 91–604, §16, Dec. 31, 1970, 84 Stat. 1713, provided that:

"(a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act [this chapter] prior to enactment of this Act [Dec. 31, 1970] may be approved under section 110 of the Clean Air Act [this section] (as amended by this Act) [Pub. L. 91–604] and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with applicable requirements of the Clean Air Act [this chapter] (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act [section 7409(a) of this title], notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act [subsec. (c) of this section].

"(2) The amendments made by section 4(b) [amending sections 7403 and 7415 of this title] shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act [section 7415 of this title] before the date of enactment of this Act [Dec. 31, 1970].

"(b) Regulations or standards issued under this title II of the Clean Air Act [subchapter II of this chapter] prior to the enactment of this Act [Dec. 31, 1970] shall continue in effect until revised by the Administrator consistent with the purposes of such Act [this chapter]."

FEDERAL ENERGY ADMINISTRATOR

"Federal Energy Administrator", for purposes of this chapter, to mean Administrator of Federal Energy Administration established by Pub. L. 93–275, May 7, 1974, 88 Stat. 97, which is classified to section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until Federal Energy Administrator takes office and after Federal Energy Administration ceases to exist, see section 798 of Title 15, Commerce and Trade.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred

to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

[1] *See References in Text note below.*

[2] *So in original. Probably should be followed by a comma.*

§7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

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

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

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

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii) [1] of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one year after such publication, such

standards with such modifications as he deems appropriate. The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h), nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii) [1] shall be promulgated not later than one year after August 7, 1977. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the

sources in the category of sources to which such standard applies.

(e) Prohibited acts

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance

(1) For those categories of major stationary sources that the Administrator listed under subsection (b)(1)(A) before November 15, 1990, and for which regulations had not been proposed by the Administrator by November 15, 1990, the Administrator shall—

(A) propose regulations establishing standards of performance for at least 25 percent of such categories of sources within 2 years after November 15, 1990;

(B) propose regulations establishing standards of performance for at least 50 percent of such categories of sources within 4 years after November 15, 1990; and

(C) propose regulations for the remaining categories of sources within 6 years after November 15, 1990.

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

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

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

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

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations

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

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

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

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

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

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

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

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

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

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

(6) Before taking any action required by subsection (f) or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation

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

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

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

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

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter (other than the provisions of subsection (a) and this subsection).

(i) Country elevators

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

(j) Innovative technological systems of continuous emission reduction

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

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

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at

least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

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

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

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

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

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

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

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

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

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

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

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

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

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

and that such failure cannot be corrected.

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

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

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

whichever is earlier.

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

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the

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

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

(July 14, 1955, ch. 360, title I, §111, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1683; amended Pub. L. 92–157, title III, §302(f), Nov. 18, 1971, 85 Stat. 464; Pub. L. 95–95, title I, §109(a)–(d)(1), (e), (f), title IV, §401(b), Aug. 7, 1977, 91 Stat. 697–703, 791; Pub. L. 95–190, §14(a)(7)–(9), Nov. 16, 1977, 91 Stat. 1399; Pub. L. 95–623, §13(a), Nov. 9, 1978, 92 Stat. 3457; Pub. L. 101–549, title I, §108(e)–(g), title III, §302(a), (b), title IV, §403(a), Nov. 15, 1990, 104 Stat. 2467, 2574, 2631.)

EDITORIAL NOTES

REFERENCES IN TEXT

Such Act, referred to in subsec. (a)(8), means Pub. L. 93–319, June 22, 1974, 88 Stat. 246, known as the Energy Supply and Environmental Coordination Act of 1974, which is classified principally to chapter 16C (§791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Section 7413 of this title, referred to in subsec. (a)(8), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) of section 7413 no longer relates to final compliance orders.

Subsection (a)(1) of this section, referred to in subsec. (b)(6), was amended generally by Pub. L. 101–549, title VII, §403(a), Nov. 15, 1990, 104 Stat. 2631, and, as so amended, no longer contains subpars.

CODIFICATION

Section was formerly classified to section 1857c–6 of this title.

PRIOR PROVISIONS

A prior section 111 of act July 14, 1955, was renumbered section 118 by Pub. L. 91–604 and is classified to section 7418 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, §403(a), amended par. (1) generally, substituting provisions defining "standard of performance" with respect to any air pollutant for provisions defining such term with respect to subsec. (b) fossil fuel fired and other stationary sources and subsec. (d) particular sources.

Subsec. (a)(3). Pub. L. 101–549, §108(f), inserted at end "Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines."

Subsec. (b)(1)(B). Pub. L. 101–549, §108(e)(1), substituted "Within one year" for "Within 120 days", "within one year" for "within 90 days", and "every 8 years" for "every four years", inserted before last sentence "Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.", and inserted at end "When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice."

Subsec. (d)(1)(A)(i). Pub. L. 101–549, §302(a), which directed the substitution of "7412(b)" for "7412(b)(1)(A)", could not be executed, because of the prior amendment by Pub. L. 101–549, §108(g), see below.

Pub. L. 101–549, §108(g), substituted "or emitted from a source category which is regulated under section 7412 of this title" for "or 7412(b)(1)(A)".

Subsec. (f)(1). Pub. L. 101–549, §108(e)(2), amended par. (1) generally, substituting present provisions for provisions requiring the Administrator to promulgate regulations listing the categories of major stationary sources not on the required list by Aug. 7, 1977, and regulations establishing standards of performance for such categories.

Subsec. (g)(5) to (8). Pub. L. 101–549, §302(b), redesignated par. (7) as (5) and struck out "or section 7412 of this title" after "this section", redesignated par. (8) as (6), and struck out former pars. (5) and (6) which read as follows:

"(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 7412 of this title the Administrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

"(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 7412 of this title is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources."

1978—Subsecs. (d)(1)(A)(ii), (g)(4)(B). Pub. L. 95–623, §13(a)(2), substituted "under this section" for "under subsection (b) of this section".

Subsec. (h)(5). Pub. L. 95–623, §13(a)(1), added par. (5).

Subsec. (j). Pub. L. 95–623, §13(a)(3), substituted in pars. (1)(A) and (2)(A) "standards under this section" and "under this section" for "standards under subsection (b) of this section" and "under subsection (b) of this section", respectively.

1977—Subsec. (a)(1). Pub. L. 95–95, §109(c)(1)(A), added subpars. (A), (B), and (C), substituted "For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect" for "a standard for emissions of air pollutants which reflects", "and the percentage reduction achievable" for "achievable", and "technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environment impact and energy requirements)" for "system of emission reduction which (taking into account the cost of achieving such reduction)" in existing provisions, and inserted provision that, for the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

Subsec. (a)(7). Pub. L. 95–95, §109(c)(1)(B), added par. (7) defining "technological system of continuous emission reduction".

Pub. L. 95–95, §109(f), added par. (7) directing that under certain circumstances a conversion to coal not be deemed a modification for purposes of pars. (2) and (4).

Subsec. (a)(7), (8). Pub. L. 95–190, §14(a)(7), redesignated second par. (7) as (8).

Subsec. (b)(1)(A). Pub. L. 95–95, §401(b), substituted "such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger" for "such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of".

Subsec. (b)(1)(B). Pub. L. 95–95, §109(c)(2), substituted "shall, at least every four years, review and, if appropriate," for "may, from time to time,".

Subsec. (b)(5), (6). Pub. L. 95–95, §109(c)(3), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 95–95, §109(d)(1), struck out "(except with respect to new sources owned or operated by the United States)" after "implement and enforce such standards".

Subsec. (d)(1). Pub. L. 95–95, §109(b)(1), substituted "standards of performance" for "emission standards" and inserted provisions directing that regulations of the Administrator permit the State, in applying a standard of performance to any particular source under a submitted plan, to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies.

Subsec. (d)(2). Pub. L. 95–95, §109(b)(2), provided that, in promulgating a standard of performance under a plan, the Administrator take into consideration, among other factors, the remaining useful lives of the sources in the category of sources to which the standard applies.

Subsecs. (f) to (i). Pub. L. 95–95, §109(a), added subsecs. (f) to (i).

Subsecs. (j), (k). Pub. L. 95–190, §14(a)(8), (9), redesignated subsec. (k) as (j) and, as so redesignated, substituted "(B)" for "(8)" as designation for second subpar. in par. (2). Former subsec. (j), added by Pub. L. 95–95, §109(e), which related to compliance with applicable standards of performance, was struck out.

Pub. L. 95–95, §109(e), added subsec. (k).

1971—Subsec. (b)(1)(B). Pub. L. 92–157 substituted in first sentence "publish proposed" for "propose".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

REGULATIONS

Pub. L. 101–549, title IV, §403(b), (c), Nov. 15, 1990, 104 Stat. 2631, provided that:

"(b) REVISED REGULATIONS.—Not later than three years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator shall promulgate revised regulations for standards of performance for new fossil fuel fired electric utility units commencing construction after the date on which such regulations are proposed that, at a minimum, require any source subject to such revised standards to emit sulfur dioxide at a rate not greater than would have resulted from compliance by such source with the applicable standards of performance under this section [amending sections 7411 and 7479 of this title] prior to such revision.

"(c) APPLICABILITY.—The provisions of subsections (a) [amending this section] and (b) apply only so long as the provisions of section 403(e) of the Clean Air Act [42 U.S.C. 7651b(e)] remain in effect."

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official in Environmental Protection Agency related to compliance with new source performance standards under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

POWER SECTOR CARBON POLLUTION STANDARDS

Memorandum of President of the United States, June 25, 2013, 78 F.R. 39535, which related to carbon pollution standards for power plants, was revoked by Ex. Ord. No. 13783, §3(a)(ii), Mar. 28, 2017, 82 F.R. 16094, formerly set out as a note under section 13201 of this title.

[1] *See References in Text note below.*

§7412. Hazardous air pollutants

(a) Definitions

For purposes of this section, except subsection (r)—

(1) Major source

The term "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(2) Area source

The term "area source" means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term "area source" shall not include motor vehicles or nonroad vehicles subject to regulation under subchapter II.

(3) Stationary source

The term "stationary source" shall have the same meaning as such term has under section 7411(a) of this title.

(4) New source

The term "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

(5) Modification

The term "modification" means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

(6) Hazardous air pollutant

The term "hazardous air pollutant" means any air pollutant listed pursuant to subsection (b).

(7) Adverse environmental effect

The term "adverse environmental effect" means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(8) Electric utility steam generating unit

The term "electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(9) Owner or operator

The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(10) Existing source

The term "existing source" means any stationary source other than a new source.

(11) Carcinogenic effect

Unless revised, the term "carcinogenic effect" shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment.[1] Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

(b) List of pollutants

(1) Initial list

The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid

532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (l-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)

106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl

100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane

108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds [1]
0	Glycol ethers [2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers [3]
0	Nickel Compounds
0	Polycylic Organic Matter [4]
0	Radionuclides (including radon) [5]
0	Selenium Compounds

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

[1] XCN where X = H or any other group where a formal dissociation may occur. For example KCN or $Ca(CN)_2$.

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol $R–(OCH2CH2)_n–OR$ where

n = 1, 2, or 3

R = alkyl or aryl groups

R = R, H, or groups which, when removed, yield glycol ethers with the structure: $R–(OCH2CH)_n–OH$. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

[5] A type of atom which spontaneously undergoes radioactive decay.

(2) Revision of the list

The Administrator shall periodically review the list established by this subsection and publish

the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) as a result of emissions to the air. No air pollutant which is listed under section 7408(a) of this title may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 7408(a) of this title or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) Petitions to modify the list

(A) Beginning at any time after 6 months after November 15, 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects [2] of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) for which a deletion petition has been filed within 12 months of November 15, 1990.

(4) Further information

If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

(5) Test methods

The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of

hazardous air pollutants.

(6) Prevention of significant deterioration

The provisions of part C (prevention of significant deterioration) shall not apply to pollutants listed under this section.

(7) Lead

The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

(c) List of source categories

(1) In general

Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 7411 of this title and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

(2) Requirement for emissions standards

For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d), according to the schedule in this subsection and subsection (e).

(3) Area sources

The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after November 15, 1990, and pursuant to subsection (k)(3)(B), list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after November 15, 1990.

(4) Previously regulated categories

The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before November 15, 1990.

(5) Additional categories

In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) for the category or subcategory shall be promulgated within 10 years after November 15, 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

(6) Specific pollutants

With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall, not later than 5 years after November 15, 1990, list categories and subcategories of sources assuring that sources accounting for not less

than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4). Such standards shall be promulgated not later than 10 years after November 15, 1990. This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.

(7) Research facilities

The Administrator shall establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities. For purposes of this section, "research or laboratory facility" means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

(8) Boat manufacturing

When establishing emissions standards for styrene, the Administrator shall list boat manufacturing as a separate subcategory unless the Administrator finds that such listing would be inconsistent with the goals and requirements of this chapter.

(9) Deletions from the list

(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administrator shall delete the source category from the list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3).

(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

(d) Emission standards

(1) In general

The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e). The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) as the result of the authority provided by this sentence.

(2) Standards and methods

Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of

the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which—

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or

(E) are a combination of the above.

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 7414(c) of this title, in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

(3) New and existing sources

The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than—

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 7501 of this title) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

(4) Health threshold

With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

(5) Alternative standard for area sources

With respect only to categories and subcategories of area sources listed pursuant to subsection (c), the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f), elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

(6) Review and revision

The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

(7) Other requirements preserved

No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D, or other authority of this chapter or a standard issued under State authority.

(8) Coke ovens

(A) Not later than December 31, 1992, the Administrator shall promulgate regulations establishing emission standards under paragraphs (2) and (3) of this subsection for coke oven batteries. In establishing such standards, the Administrator shall evaluate—

(i) the use of sodium silicate (or equivalent) luting compounds to prevent door leaks, and other operating practices and technologies for their effectiveness in reducing coke oven emissions, and their suitability for use on new and existing coke oven batteries, taking into account costs and reasonable commercial door warranties; and

(ii) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of such standards, the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies, and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke.

Such regulations shall require at a minimum that coke oven batteries will not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing oven doors. Notwithstanding subsection (i), the compliance date for such emission standards for existing coke oven batteries shall be December 31, 1995.

(B) The Administrator shall promulgate work practice regulations under this subsection for coke oven batteries requiring, as appropriate—

(i) the use of sodium silicate (or equivalent) luting compounds, if the Administrator determines that use of sodium silicate is an effective means of emissions control and is achievable, taking into account costs and reasonable commercial warranties for doors and related equipment; and

(ii) door and jam cleaning practices.

Notwithstanding subsection (i), the compliance date for such work practice regulations for coke oven batteries shall be not later than the date 3 years after November 15, 1990.

(C) For coke oven batteries electing to qualify for an extension of the compliance date for standards promulgated under subsection (f) in accordance with subsection (i)(8), the emission standards under this subsection for coke oven batteries shall require that coke oven batteries not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing doors. Notwithstanding subsection (i), the compliance date for such emission standards for existing coke oven batteries seeking an extension shall be not later than the date 3 years after November 15, 1990.

(9) Sources licensed by the Nuclear Regulatory Commission

No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.] for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 7411 of this title or this section.

(10) Effective date

Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

(e) Schedule for standards and review

(1) In general

The Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) as expeditiously as practicable, assuring that—

(A) emission standards for not less than 40 categories and subcategories (not counting coke oven batteries) shall be promulgated not later than 2 years after November 15, 1990;

(B) emission standards for coke oven batteries shall be promulgated not later than December 31, 1992;

(C) emission standards for 25 per centum of the listed categories and subcategories shall be promulgated not later than 4 years after November 15, 1990;

(D) emission standards for an additional 25 per centum of the listed categories and subcategories shall be promulgated not later than 7 years after November 15, 1990; and

(E) emission standards for all categories and subcategories shall be promulgated not later than 10 years after November 15, 1990.

(2) Priorities

In determining priorities for promulgating standards under subsection (d), the Administrator shall consider—

(A) the known or anticipated adverse effects of such pollutants on public health and the environment;

(B) the quantity and location of emissions or reasonably anticipated emissions of hazardous air pollutants that each category or subcategory will emit; and

(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

(3) Published schedule

Not later than 24 months after November 15, 1990, and after opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of emission standards for each category and subcategory of sources listed pursuant to subsection (c)(1) and (3) which shall be consistent with the requirements of paragraphs (1) and (2). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 7604 of this title.

(4) Judicial review

Notwithstanding section 7607 of this title, no action of the Administrator adding a pollutant to the list under subsection (b) or listing a source category or subcategory under subsection (c) shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 7607 of this title when the Administrator issues emission standards for such pollutant or category.

(5) Publicly owned treatment works

The Administrator shall promulgate standards pursuant to subsection (d) applicable to publicly owned treatment works (as defined in title II of the Federal Water Pollution Control Act [33 U.S.C. 1281 et seq.]) not later than 5 years after November 15, 1990.

(f) Standard to protect health and environment

(1) Report

Not later than 6 years after November 15, 1990, the Administrator shall investigate and report,

after consultation with the Surgeon General and after opportunity for public comment, to Congress on—

(A) methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d);

(B) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks;

(C) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and

(D) recommendations as to legislation regarding such remaining risk.

(2) Emission standards

(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d), promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

(B) Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as in effect before November 15, 1990, and set forth in the Federal Register of September 14, 1989 (54 Federal Register 38044).

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under subsection (d) for each source category or subcategory concerned. In the case of categories or subcategories for which standards under subsection (d) are required to be promulgated within 2 years after November 15, 1990, the Administrator shall have 9 years after promulgation of the standards under subsection (d) to make the determination under the preceding sentence and, if required, to promulgate the standards under this paragraph.

(3) Effective date

Any emission standard established pursuant to this subsection shall become effective upon promulgation.

(4) Prohibition

No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(A) such standard shall not apply until 90 days after its effective date, and

(B) the Administrator may grant a waiver permitting such source a period of up to 2 years after the effective date of a standard to comply with the standard if the Administrator finds that such period is necessary for the installation of controls and that steps will be taken during the

period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(5) Area sources

The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) and for which an emission standard is promulgated pursuant to subsection (d)(5).

(6) Unique chemical substances

In establishing standards for the control of unique chemical substances of listed pollutants without CAS numbers under this subsection, the Administrator shall establish such standards with respect to the health and environmental effects of the substances actually emitted by sources and direct transformation byproducts of such emissions in the categories and subcategories.

(g) Modifications

(1) Offsets

(A) A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B). The owner or operator of such source shall submit a showing to the Administrator (or the State) that such increase has been offset under the preceding sentence.

(B) The Administrator shall, after notice and opportunity for comment and not later than 18 months after November 15, 1990, publish guidance with respect to implementation of this subsection. Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) sufficient to facilitate the offset showing authorized by subparagraph (A). Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).

(2) Construction, reconstruction and modifications

(A) After the effective date of a permit program under subchapter V in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator.

(B) After the effective date of a permit program under subchapter V in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

(3) Procedures for modifications

The Administrator (or the State) shall establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit.

(h) Work practice standards and other requirements

(1) In general

For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the

Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f). In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) Definition

For the purpose of this subsection, the phrase "not feasible to prescribe or enforce an emission standard" means any situation in which the Administrator determines that—

(A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or

(B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(3) Alternative standard

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

(4) Numerical standard required

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

(i) Schedule for compliance

(1) Preconstruction and operating requirements

After the effective date of any emission standard, limitation, or regulation under subsection (d), (f) or (h), no person may construct any new major source or reconstruct any existing major source subject to such emission standard, regulation or limitation unless the Administrator (or a State with a permit program approved under subchapter V) determines that such source, if properly constructed, reconstructed and operated, will comply with the standard, regulation or limitation.

(2) Special rule

Notwithstanding the requirements of paragraph (1), a new source which commences construction or reconstruction after a standard, limitation or regulation applicable to such source is proposed and before such standard, limitation or regulation is promulgated shall not be required to comply with such promulgated standard until the date 3 years after the date of promulgation if—

(A) the promulgated standard, limitation or regulation is more stringent than the standard, limitation or regulation proposed; and

(B) the source complies with the standard, limitation, or regulation as proposed during the 3-year period immediately after promulgation.

(3) Compliance schedule for existing sources

(A) After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

(B) The Administrator (or a State with a program approved under subchapter V) may issue a

permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under subsection (d) if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 4-year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b).

(4) Presidential exemption

The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(5) Early reduction

(A) The Administrator (or a State acting pursuant to a permit program approved under subchapter V) shall issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed. Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension authorized by the previous sentence.

(B) An existing source which achieves the reduction referred to in subparagraph (A) after the proposal of an applicable standard but before January 1, 1994, may qualify under subparagraph (A), if the source makes an enforceable commitment to achieve such reduction before the proposal of the standard. Such commitment shall be enforceable to the same extent as a regulation under this section.

(C) The reduction shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that, there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The Administrator may allow a source to use a baseline year of 1985 or 1986 provided that the source can demonstrate to the satisfaction of the Administrator that emissions data for the source reflects verifiable data based on information for such source, received by the Administrator prior to November 15, 1990, pursuant to an information request issued under section 7414 of this title.

(D) For each source granted an alternative emission limitation under this paragraph there shall be established by a permit issued pursuant to subchapter V an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under this paragraph. An alternative emission limitation under this paragraph shall not be available with respect to standards or requirements promulgated pursuant to subsection (f) and the Administrator shall, for the purpose of determining whether a standard under subsection (f) is necessary, review emissions from sources granted an alternative emission limitation under this paragraph at the same time that other sources in the category or subcategory are reviewed.

(E) With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small quantities including, but not limited to, chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying for an alternative emissions limitation under this paragraph.

(6) Other reductions

Notwithstanding the requirements of this section, no existing source that has installed—

(A) best available control technology (as defined in section 7479(3) of this title), or

(B) technology required to meet a lowest achievable emission rate (as defined in section 7501 of this title),

prior to the promulgation of a standard under this section applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to an action described in subparagraph (A) or (B) shall be required to comply with such standard under this section until the date 5 years after the date on which such installation or reduction has been achieved, as determined by the Administrator. The Administrator may issue such rules and guidance as are necessary to implement this paragraph.

(7) Extension for new sources

A source for which construction or reconstruction is commenced after the date an emission standard applicable to such source is proposed pursuant to subsection (d) but before the date an emission standard applicable to such source is proposed pursuant to subsection (f) shall not be required to comply with the emission standard under subsection (f) until the date 10 years after the date construction or reconstruction is commenced.

(8) Coke ovens

(A) Any coke oven battery that complies with the emission limitations established under subsection (d)(8)(C), subparagraph (B), and subparagraph (C), and complies with the provisions of subparagraph (E), shall not be required to achieve emission limitations promulgated under subsection (f) until January 1, 2020.

(B)(i) Not later than December 31, 1992, the Administrator shall promulgate emission limitations for coke oven emissions from coke oven batteries. Notwithstanding paragraph (3) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 1998. Such emission limitations shall reflect the lowest achievable emission rate as defined in section 7501 of this title for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than—

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

with an exclusion for emissions during the period after the closing of self-sealing oven doors (or the total mass emissions equivalent). The rulemaking in which such emission limitations are promulgated shall also establish an appropriate measurement methodology for determining compliance with such emission limitations, and shall establish such emission limitations in terms of an equivalent level of mass emissions reduction from a coke oven battery, unless the Administrator finds that such a mass emissions standard would not be practicable or enforceable. Such measurement methodology, to the extent it measures leaking doors, shall take into consideration alternative test methods that reflect the best technology and practices actually applied in the affected industries, and shall assure that the final test methods are consistent with the performance of such best technology and practices.

(ii) If the Administrator fails to promulgate such emission limitations under this subparagraph prior to the effective date of such emission limitations, the emission limitations applicable to coke oven batteries under this subparagraph shall be—

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

or the total mass emissions equivalent (if the total mass emissions equivalent is determined to be practicable and enforceable), with no exclusion for emissions during the period after the closing of self-sealing oven doors.

(C) Not later than January 1, 2007, the Administrator shall review the emission limitations promulgated under subparagraph (B) and revise, as necessary, such emission limitations to reflect the lowest achievable emission rate as defined in section 7501 of this title at the time for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than the emission limitation promulgated under subparagraph (B). Notwithstanding paragraph (2) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 2010.

(D) At any time prior to January 1, 1998, the owner or operator of any coke oven battery may elect to comply with emission limitations promulgated under subsection (f) by the date such emission limitations would otherwise apply to such coke oven battery, in lieu of the emission limitations and the compliance dates provided under subparagraphs (B) and (C) of this paragraph. Any such owner or operator shall be legally bound to comply with such emission limitations promulgated under subsection (f) with respect to such coke oven battery as of January 1, 2003. If no such emission limitations have been promulgated for such coke oven battery, the Administrator shall promulgate such emission limitations in accordance with subsection (f) for such coke oven battery.

(E) Coke oven batteries qualifying for an extension under subparagraph (A) shall make available not later than January 1, 2000, to the surrounding communities the results of any risk assessment performed by the Administrator to determine the appropriate level of any emission standard established by the Administrator pursuant to subsection (f).

(F) Notwithstanding the provisions of this section, reconstruction of any source of coke oven emissions qualifying for an extension under this paragraph shall not subject such source to emission limitations under subsection (f) more stringent than those established under subparagraphs (B) and (C) until January 1, 2020. For the purposes of this subparagraph, the term "reconstruction" includes the replacement of existing coke oven battery capacity with new coke oven batteries of comparable or lower capacity and lower potential emissions.

(j) Equivalent emission limitation by permit

(1) Effective date

The requirements of this subsection shall apply in each State beginning on the effective date of a permit program established pursuant to subchapter V in such State, but not prior to the date 42 months after November 15, 1990.

(2) Failure to promulgate a standard

In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e)(1) and (3), and beginning 18 months after such date (but not prior to the effective date of a permit program under subchapter V), the owner or operator of any major source in such category or subcategory shall submit a permit application under paragraph (3) and such owner or operator shall also comply with paragraphs (5) and (6).

(3) Applications

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this subsection, any failure to have a permit shall not be a violation of paragraph (2), unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application. The Administrator shall not later than 18 months after November 15, 1990, and after notice and opportunity for comment, establish requirements for applications under this subsection including a standard application form and criteria for determining in a timely manner the completeness of applications.

(4) Review and approval

Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of section 7661d of this title. In the event that the Administrator (or the State) disapproves a permit application submitted under this subsection or determines that the application is incomplete, the applicant shall have up to 6 months to revise the application to meet the objections of the Administrator (or the State).

(5) Emission limitation

The permit shall be issued pursuant to subchapter V and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d). In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of subsection (i)(5). For purposes of the preceding sentence, the reduction required by subsection (i)(5)(A) shall be achieved by the date on which the relevant standard should have been promulgated under subsection (d). No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i).

(6) Applicability of subsequent standards

If the Administrator promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (5), provided that the source shall have the compliance period provided under subsection (i). If the Administrator promulgates a standard under subsection (d) that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

(k) Area source program

(1) Findings and purpose

The Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced. It is the purpose of this subsection to achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources including a reduction of not less than 75 per centum in the incidence of cancer attributable to emissions from such sources.

(2) Research program

The Administrator shall, after consultation with State and local air pollution control officials, conduct a program of research with respect to sources of hazardous air pollutants in urban areas and shall include within such program—

(A) ambient monitoring for a broad range of hazardous air pollutants (including, but not limited to, volatile organic compounds, metals, pesticides and products of incomplete combustion) in a representative number of urban locations;

(B) analysis to characterize the sources of such pollution with a focus on area sources and the

contribution that such sources make to public health risks from hazardous air pollutants; and

(C) consideration of atmospheric transformation and other factors which can elevate public health risks from such pollutants.

Health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the role of such pollutants as precursors of ozone or acid aerosol formation. The Administrator shall report the preliminary results of such research not later than 3 years after November 15, 1990.

(3) National strategy

(A) Considering information collected pursuant to the monitoring program authorized by paragraph (2), the Administrator shall, not later than 5 years after November 15, 1990, and after notice and opportunity for public comment, prepare and transmit to the Congress a comprehensive strategy to control emissions of hazardous air pollutants from area sources in urban areas.

(B) The strategy shall—

(i) identify not less than 30 hazardous air pollutants which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas and that are or will be listed pursuant to subsection (b), and

(ii) identify the source categories or subcategories emitting such pollutants that are or will be listed pursuant to subsection (c). When identifying categories and subcategories of sources under this subparagraph, the Administrator shall assure that sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to standards pursuant to subsection (d).

(C) The strategy shall include a schedule of specific actions to substantially reduce the public health risks posed by the release of hazardous air pollutants from area sources that will be implemented by the Administrator under the authority of this or other laws (including, but not limited to, the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. 136 et seq.] and the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]) or by the States. The strategy shall achieve a reduction in the incidence of cancer attributable to exposure to hazardous air pollutants emitted by stationary sources of not less than 75 per centum, considering control of emissions of hazardous air pollutants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.

(D) The strategy may also identify research needs in monitoring, analytical methodology, modeling or pollution control techniques and recommendations for changes in law that would further the goals and objectives of this subsection.

(E) Nothing in this subsection shall be interpreted to preclude or delay implementation of actions with respect to area sources of hazardous air pollutants under consideration pursuant to this or any other law and that may be promulgated before the strategy is prepared.

(F) The Administrator shall implement the strategy as expeditiously as practicable assuring that all sources are in compliance with all requirements not later than 9 years after November 15, 1990.

(G) As part of such strategy the Administrator shall provide for ambient monitoring and emissions modeling in urban areas as appropriate to demonstrate that the goals and objectives of the strategy are being met.

(4) Areawide activities

In addition to the national urban air toxics strategy authorized by paragraph (3), the Administrator shall also encourage and support areawide strategies developed by State or local air pollution control agencies that are intended to reduce risks from emissions by area sources within a particular urban area. From the funds available for grants under this section, the Administrator shall set aside not less than 10 per centum to support areawide strategies addressing hazardous air pollutants emitted by area sources and shall award such funds on a demonstration basis to those

States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall prepare guidelines for control technologies or management practices which may be applicable to various categories or subcategories of area sources.

(5) Report

The Administrator shall report to the Congress at intervals not later than 8 and 12 years after November 15, 1990, on actions taken under this subsection and other parts of this chapter to reduce the risk to public health posed by the release of hazardous air pollutants from area sources. The reports shall also identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

(l) State programs

(1) In general

Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (r). A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements but shall not include authority to set standards less stringent than those promulgated by the Administrator under this chapter.

(2) Guidance

Not later than 12 months after November 15, 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b).

(3) Technical assistance

The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 7403 of this title to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

(4) Grants

Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (k).

(5) Approval or disapproval

Not later than 180 days after receiving a program submitted by a State, and after notice and

opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that—

(A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this chapter.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and resubmit the proposed program for review and approval pursuant to the provisions of this subsection.

(6) Withdrawal

Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action which will assure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless the State shall have been notified and the reasons for withdrawal shall have been stated in writing and made public.

(7) Authority to enforce

Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard or requirement under this section.

(8) Local program

The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection and any such agency implementing an approved program may take any action authorized to be taken by a State under this section.

(9) Permit authority

Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under subchapter V.

(m) Atmospheric deposition to Great Lakes and coastal waters

(1) Deposition assessment

The Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct a program to identify and assess the extent of atmospheric deposition of hazardous air pollutants (and in the discretion of the Administrator, other air pollutants) to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters. As part of such program, the Administrator shall—

(A) monitor the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters, including monitoring of the Great Lakes through the monitoring network established pursuant to paragraph (2) of this subsection and designing and deploying an atmospheric monitoring network for coastal waters pursuant to paragraph (4);

(B) investigate the sources and deposition rates of atmospheric deposition of air pollutants (and their atmospheric transformation precursors);

(C) conduct research to develop and improve monitoring methods and to determine the

relative contribution of atmospheric pollutants to total pollution loadings to the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal waters;

(D) evaluate any adverse effects to public health or the environment caused by such deposition (including effects resulting from indirect exposure pathways) and assess the contribution of such deposition to violations of water quality standards established pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and drinking water standards established pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.]; and

(E) sample for such pollutants in biota, fish, and wildlife of the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters and characterize the sources of such pollutants.

(2) Great Lakes monitoring network

The Administrator shall oversee, in accordance with Annex 15 of the Great Lakes Water Quality Agreement, the establishment and operation of a Great Lakes atmospheric deposition network to monitor atmospheric deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) to the Great Lakes.

(A) As part of the network provided for in this paragraph, and not later than December 31, 1991, the Administrator shall establish in each of the 5 Great Lakes at least 1 facility capable of monitoring the atmospheric deposition of hazardous air pollutants in both dry and wet conditions.

(B) The Administrator shall use the data provided by the network to identify and track the movement of hazardous air pollutants through the Great Lakes, to determine the portion of water pollution loadings attributable to atmospheric deposition of such pollutants, and to support development of remedial action plans and other management plans as required by the Great Lakes Water Quality Agreement.

(C) The Administrator shall assure that the data collected by the Great Lakes atmospheric deposition monitoring network is in a format compatible with databases sponsored by the International Joint Commission, Canada, and the several States of the Great Lakes region.

(3) Monitoring for the Chesapeake Bay and Lake Champlain

The Administrator shall establish at the Chesapeake Bay and Lake Champlain atmospheric deposition stations to monitor deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) within the Chesapeake Bay and Lake Champlain watersheds. The Administrator shall determine the role of air deposition in the pollutant loadings of the Chesapeake Bay and Lake Champlain, investigate the sources of air pollutants deposited in the watersheds, evaluate the health and environmental effects of such pollutant loadings, and shall sample such pollutants in biota, fish and wildlife within the watersheds, as necessary to characterize such effects.

(4) Monitoring for coastal waters

The Administrator shall design and deploy atmospheric deposition monitoring networks for coastal waters and their watersheds and shall make any information collected through such networks available to the public. As part of this effort, the Administrator shall conduct research to develop and improve deposition monitoring methods, and to determine the relative contribution of atmospheric pollutants to pollutant loadings. For purposes of this subsection, "coastal waters" shall mean estuaries selected pursuant to section 320(a)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1330(a)(2)(A)] or listed pursuant to section 320(a)(2)(B) of such Act [33 U.S.C. 1330(a)(2)(B)] or estuarine research reserves designated pursuant to section 1461 of title 16.

(5) Report

Within 3 years of November 15, 1990, and biennially thereafter, the Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall submit to the Congress a report on the results of any monitoring, studies, and investigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of—

(A) the contribution of atmospheric deposition to pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(B) the environmental and public health effects of any pollution which is attributable to atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(C) the source or sources of any pollution to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters which is attributable to atmospheric deposition;

(D) whether pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain or coastal waters cause or contribute to exceedances of drinking water standards pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.] or water quality standards pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] or, with respect to the Great Lakes, exceedances of the specific objectives of the Great Lakes Water Quality Agreement; and

(E) a description of any revisions of the requirements, standards, and limitations pursuant to this chapter and other applicable Federal laws as are necessary to assure protection of human health and the environment.

(6) Additional regulation

As part of the report to Congress, the Administrator shall determine whether the other provisions of this section are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including such effects resulting from indirect exposure pathways, associated with atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters of hazardous air pollutants (and their atmospheric transformation products). The Administrator shall take into consideration the tendency of such pollutants to bioaccumulate. Within 5 years after November 15, 1990, the Administrator shall, based on such report and determination, promulgate, in accordance with this section, such further emission standards or control measures as may be necessary and appropriate to prevent such effects, including effects due to bioaccumulation and indirect exposure pathways. Any requirements promulgated pursuant to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 7627(a) of this title.

(n) Other provisions

(1) Electric utility steam generating units

(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this chapter. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

(B) The Administrator shall conduct, and transmit to the Congress not later than 4 years after November 15, 1990, a study of mercury emissions from electric utility steam generating units, municipal waste combustion units, and other sources, including area sources. Such study shall consider the rate and mass of such emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions, and the costs of such technologies.

(C) The National Institute of Environmental Health Sciences shall conduct, and transmit to the Congress not later than 3 years after November 15, 1990, a study to determine the threshold level of mercury exposure below which adverse human health effects are not expected to occur. Such study shall include a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health.

(2) Coke oven production technology study

(A) The Secretary of the Department of Energy and the Administrator shall jointly undertake a

6-year study to assess coke oven production emission control technologies and to assist in the development and commercialization of technically practicable and economically viable control technologies which have the potential to significantly reduce emissions of hazardous air pollutants from coke oven production facilities. In identifying control technologies, the Secretary and the Administrator shall consider the range of existing coke oven operations and battery design and the availability of sources of materials for such coke ovens as well as alternatives to existing coke oven production design.

(B) The Secretary and the Administrator are authorized to enter into agreements with persons who propose to develop, install and operate coke production emission control technologies which have the potential for significant emissions reductions of hazardous air pollutants provided that Federal funds shall not exceed 50 per centum of the cost of any project assisted pursuant to this paragraph.

(C) On completion of the study, the Secretary shall submit to Congress a report on the results of the study and shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke oven production facilities to reduce residual risks remaining after implementation of the standard under subsection (d).

(D) There are authorized to be appropriated $5,000,000 for each of the fiscal years 1992 through 1997 to carry out the program authorized by this paragraph.

(3) Publicly owned treatment works

The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions. The Administrator may prescribe uniform sampling, modeling and risk assessment methods for use in implementing this subsection.

(4) Oil and gas wells; pipeline facilities

(A) Notwithstanding the provisions of subsection (a), emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

(B) The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source category under subsection (c), except that the Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

(5) Hydrogen sulfide

The Administrator is directed to assess the hazards to public health and the environment resulting from the emission of hydrogen sulfide associated with the extraction of oil and natural gas resources. To the extent practicable, the assessment shall build upon and not duplicate work conducted for an assessment pursuant to section 8002(m) of the Solid Waste Disposal Act [42 U.S.C. 6982(m)] and shall reflect consultation with the States. The assessment shall include a review of existing State and industry control standards, techniques and enforcement. The Administrator shall report to the Congress within 24 months after November 15, 1990, with the findings of such assessment, together with any recommendations, and shall, as appropriate, develop and implement a control strategy for emissions of hydrogen sulfide to protect human

health and the environment, based on the findings of such assessment, using authorities under this chapter including sections [3] 7411 of this title and this section.

(6) Hydrofluoric acid

Not later than 2 years after November 15, 1990, the Administrator shall, for those regions of the country which do not have comprehensive health and safety regulations with respect to hydrofluoric acid, complete a study of the potential hazards of hydrofluoric acid and the uses of hydrofluoric acid in industrial and commercial applications to public health and the environment considering a range of events including worst-case accidental releases and shall make recommendations to the Congress for the reduction of such hazards, if appropriate.

(7) RCRA facilities

In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], the Administrator shall take into account any regulations of such emissions which are promulgated under such subtitle and shall, to the maximum extent practicable and consistent with the provisions of this section, ensure that the requirements of such subtitle and this section are consistent.

(o) National Academy of Sciences study

(1) Request of the Academy

Within 3 months of November 15, 1990, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of—

(A) risk assessment methodology used by the Environmental Protection Agency to determine the carcinogenic risk associated with exposure to hazardous air pollutants from source categories and subcategories subject to the requirements of this section; and

(B) improvements in such methodology.

(2) Elements to be studied

In conducting such review, the National Academy of Sciences should consider, but not be limited to, the following—

(A) the techniques used for estimating and describing the carcinogenic potency to humans of hazardous air pollutants; and

(B) the techniques used for estimating exposure to hazardous air pollutants (for hypothetical and actual maximally exposed individuals as well as other exposed individuals).

(3) Other health effects of concern

To the extent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist, including, but not limited to, inheritable genetic mutations, birth defects, and reproductive dysfunctions.

(4) Report

A report on the results of such review shall be submitted to the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the Risk Assessment and Management Commission established by section 303 of the Clean Air Act Amendments of 1990 and the Administrator not later than 30 months after November 15, 1990.

(5) Assistance

The Administrator shall assist the Academy in gathering any information the Academy deems necessary to carry out this subsection. The Administrator may use any authority under this chapter to obtain information from any person, and to require any person to conduct tests, keep and produce records, and make reports respecting research or other activities conducted by such person as necessary to carry out this subsection.

(6) Authorization

Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as

are required shall be available to carry out this subsection.

(7) Guidelines for carcinogenic risk assessment

The Administrator shall consider, but need not adopt, the recommendations contained in the report of the National Academy of Sciences prepared pursuant to this subsection and the views of the Science Advisory Board, with respect to such report. Prior to the promulgation of any standard under subsection (f), and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the National Academy of Sciences will not be implemented. The publication of such revised Guidelines shall be a final Agency action for purposes of section 7607 of this title.

(p) Mickey Leland National Urban Air Toxics Research Center

(1) Establishment

The Administrator shall oversee the establishment of a National Urban Air Toxics Research Center, to be located at a university, a hospital, or other facility capable of undertaking and maintaining similar research capabilities in the areas of epidemiology, oncology, toxicology, pulmonary medicine, pathology, and biostatistics. The center shall be known as the Mickey Leland National Urban Air Toxics Research Center. The geographic site of the National Urban Air Toxics Research Center should be further directed to Harris County, Texas, in order to take full advantage of the well developed scientific community presence on-site at the Texas Medical Center as well as the extensive data previously compiled for the comprehensive monitoring system currently in place.

(2) Board of Directors

The National Urban Air Toxics Research Center shall be governed by a Board of Directors to be comprised of 9 members, the appointment of which shall be allocated pro rata among the Speaker of the House, the Majority Leader of the Senate and the President. The members of the Board of Directors shall be selected based on their respective academic and professional backgrounds and expertise in matters relating to public health, environmental pollution and industrial hygiene. The duties of the Board of Directors shall be to determine policy and research guidelines, submit views from center sponsors and the public and issue periodic reports of center findings and activities.

(3) Scientific Advisory Panel

The Board of Directors shall be advised by a Scientific Advisory Panel, the 13 members of which shall be appointed by the Board, and to include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Center for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct peer review and evaluate research results. The Panel shall assist the Board in developing the research agenda, reviewing proposals and applications, and advise on the awarding of research grants.

(4) Funding

The center shall be established and funded with both Federal and private source funds.

(q) Savings provision

(1) Standards previously promulgated

Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990] shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such

Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 7607 of this title is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(2) Special rule

Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from such plants and stacks.

(3) Other categories

Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

(4) Medical facilities

Notwithstanding paragraph (1), no standard promulgated under this section prior to November 15, 1990, with respect to medical research or treatment facilities shall take effect for two years following November 15, 1990, unless the Administrator makes a determination pursuant to a rulemaking under subsection (d)(9). If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of this section shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in subsection (d)(9).

(r) Prevention of accidental releases

(1) Purpose and general duty

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654 of title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 7604 of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

(2) Definitions

(A) The term "accidental release" means an unanticipated emission of a regulated substance or

other extremely hazardous substance into the ambient air from a stationary source.

(B) The term "regulated substance" means a substance listed under paragraph (3).

(C) The term "stationary source" means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

(D) The term "retail facility" means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

(3) List of substances

The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know [4] Act of 1986 [42 U.S.C. 11001 et seq.], with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b).

(4) Factors to be considered

In listing substances under paragraph (3), the Administrator—

(A) shall consider—

(i) the severity of any acute adverse health effects associated with accidental releases of the substance;

(ii) the likelihood of accidental releases of the substance; and

(iii) the potential magnitude of human exposure to accidental releases of the substance; and

(B) shall not list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility under this subsection solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.

(5) Threshold quantity

At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be

anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

(6) Chemical Safety Board

(A) There is hereby established an independent safety board to be known as the Chemical Safety and Hazard Investigation Board.

(B) The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

(C) The Board shall—

(i) investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;

(ii) issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.] to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

(iii) establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

(D) The Board may utilize the expertise and experience of other agencies.

(E) The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to assure coordination of functions and to limit duplication of activities which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases which are transportation related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health Administration so as to limit duplication of activities. In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

(F) The Board is authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards. To the extent practicable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies and associations and organizations from the industrial, commercial, and nonprofit sectors.

(G) No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.

(H) Not later than 18 months after November 15, 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by paragraph (8)(B) [5] in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

(I) Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will—

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation; [6]

(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator [7] shall indicate whether the Secretary will—

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation; [6]

(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

(K) Within 2 years after November 15, 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.]. Any such recommendations shall be specific and shall identify the regulated substance or class of

regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

(L) The Board, or upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)—

(i) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence and may require by order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require; and

(ii) upon presenting appropriate credentials and a written notice of inspection authority, enter any property where an accidental release causing a fatality, serious injury or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C) and inspect at reasonable times records, files, papers, processes, controls, and facilities and take such samples as are relevant to such investigation.

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act [29 U.S.C. 651 et seq.].

(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this chapter, including the subpoena power provided in section 7607(a)(1) of this title.

(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 6101 of title 41 to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 7413 and 7414 of this title. Any request for information from the owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, 7603, 7604 and 7607 of this title and any other enforcement provisions of this chapter, as a request made by the Administrator under section 7414 of this title and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

(Q) Consistent with subsection [8] (G) and section 7414(c) of this title any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person's competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this chapter or when relevant under any proceeding under this chapter. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress.

(R) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared

testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this chapter, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of title 5 to officers or employees of the Board.

(S) The Board shall submit an annual report to the President and to the Congress which shall include, but not be limited to, information on accidental releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, the actions which have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement such recommendations, an identification of priorities for study and investigation in the succeeding year, progress in the development of risk-reduction technologies and the response to and implementation of significant research findings on chemical safety in the public and private sector.

(7) Accident prevention

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

(B)(i) Within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such

substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 7414(c) of this title. The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 7413, 7414, 7416, 7420, 7604, and 7607 of this title and other enforcement provisions of this chapter, be treated as a standard in effect under subsection (d).

(F) Notwithstanding the provisions of subchapter V or this section, no stationary source shall be

required to apply for, or operate pursuant to, a permit issued under such subchapter solely because such source is subject to regulations or requirements under this subsection.

(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(H) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—

(i) DEFINITIONS.—In this subparagraph:

(I) COVERED PERSON.—The term "covered person" means—

(aa) an officer or employee of the United States;

(bb) an officer or employee of an agent or contractor of the Federal Government;

(cc) an officer or employee of a State or local government;

(dd) an officer or employee of an agent or contractor of a State or local government;

(ee) an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases;

(ff) an officer or employee or an agent or contractor of an entity described in item (ee); and

(gg) a qualified researcher under clause (vii).

(II) OFFICIAL USE.—The term "official use" means an action of a Federal, State, or local government agency or an entity referred to in subclause (I)(ee) intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(III) OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—The term "off-site consequence analysis information" means those portions of a risk management plan, excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator from those portions.

(IV) RISK MANAGEMENT PLAN.—The term "risk management plan" means a risk management plan submitted to the Administrator by an owner or operator of a stationary source under subparagraph (B)(iii).

(ii) REGULATIONS.—Not later than 1 year after August 5, 1999, the President shall—

(I) assess—

(aa) the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet; and

(bb) the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(II) based on the assessment under subclause (I), promulgate regulations governing the distribution of off-site consequence analysis information in a manner that, in the opinion of the President, minimizes the likelihood of accidental releases and the risk described in subclause (I)(aa) and the likelihood of harm to public health and welfare, and—

(aa) allows access by any member of the public to paper copies of off-site consequence analysis information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction;

(bb) allows other public access to off-site consequence analysis information as appropriate;

(cc) allows access for official use by a covered person described in any of items (cc) through (ff) of clause (i)(I) (referred to in this subclause as a "State or local covered person") to off-site consequence analysis information relating to stationary sources located in the person's State;

(dd) allows a State or local covered person to provide, for official use, off-site consequence analysis information relating to stationary sources located in the person's

State to a State or local covered person in a contiguous State; and

(ee) allows a State or local covered person to obtain for official use, by request to the Administrator, off-site consequence analysis information that is not available to the person under item (cc).

(iii) AVAILABILITY UNDER FREEDOM OF INFORMATION ACT.—

(I) FIRST YEAR.—Off-site consequence analysis information, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 during the 1-year period beginning on August 5, 1999.

(II) AFTER FIRST YEAR.—If the regulations under clause (ii) are promulgated on or before the end of the period described in subclause (I), off-site consequence analysis information covered by the regulations, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 after the end of that period.

(III) APPLICABILITY.—Subclauses (I) and (II) apply to off-site consequence analysis information submitted to the Administrator before, on, or after August 5, 1999.

(iv) AVAILABILITY OF INFORMATION DURING TRANSITION PERIOD.—The Administrator shall make off-site consequence analysis information available to covered persons for official use in a manner that meets the requirements of items (cc) through (ee) of clause (ii)(II), and to the public in a form that does not make available any information concerning the identity or location of stationary sources, during the period—

(I) beginning on August 5, 1999; and

(II) ending on the earlier of the date of promulgation of the regulations under clause (ii) or the date that is 1 year after August 5, 1999.

(v) PROHIBITION ON UNAUTHORIZED DISCLOSURE OF INFORMATION BY COVERED PERSONS.—

(I) IN GENERAL.—Beginning on August 5, 1999, a covered person shall not disclose to the public off-site consequence analysis information in any form, or any statewide or national ranking of identified stationary sources derived from such information, except as authorized by this subparagraph (including the regulations promulgated under clause (ii)). After the end of the 1-year period beginning on August 5, 1999, if regulations have not been promulgated under clause (ii), the preceding sentence shall not apply.

(II) CRIMINAL PENALTIES.—Notwithstanding section 7413 of this title, a covered person that willfully violates a restriction or prohibition established by this subparagraph (including the regulations promulgated under clause (ii)) shall, upon conviction, be fined for an infraction under section 3571 of title 18 (but shall not be subject to imprisonment) for each unauthorized disclosure of off-site consequence analysis information, except that subsection (d) of such section 3571 shall not apply to a case in which the offense results in pecuniary loss unless the defendant knew that such loss would occur. The disclosure of off-site consequence analysis information for each specific stationary source shall be considered a separate offense. The total of all penalties that may be imposed on a single person or organization under this item shall not exceed $1,000,000 for violations committed during any 1 calendar year.

(III) APPLICABILITY.—If the owner or operator of a stationary source makes off-site consequence analysis information relating to that stationary source available to the public without restriction—

(aa) subclauses (I) and (II) shall not apply with respect to the information; and

(bb) the owner or operator shall notify the Administrator of the public availability of the information.

(IV) LIST.—The Administrator shall maintain and make publicly available a list of all

stationary sources that have provided notification under subclause (III)(bb).

(vi) NOTICE.—The Administrator shall provide notice of the definition of official use as provided in clause (i)(III) [9] and examples of actions that would and would not meet that definition, and notice of the restrictions on further dissemination and the penalties established by this chapter to each covered person who receives off-site consequence analysis information under clause (iv) and each covered person who receives off-site consequence analysis information for an official use under the regulations promulgated under clause (ii).

(vii) QUALIFIED RESEARCHERS.—

(I) IN GENERAL.—Not later than 180 days after August 5, 1999, the Administrator, in consultation with the Attorney General, shall develop and implement a system for providing off-site consequence analysis information, including facility identification, to any qualified researcher, including a qualified researcher from industry or any public interest group.

(II) LIMITATION ON DISSEMINATION.—The system shall not allow the researcher to disseminate, or make available on the Internet, the off-site consequence analysis information, or any portion of the off-site consequence analysis information, received under this clause.

(viii) READ-ONLY INFORMATION TECHNOLOGY SYSTEM.—In consultation with the Attorney General and the heads of other appropriate Federal agencies, the Administrator shall establish an information technology system that provides for the availability to the public of off-site consequence analysis information by means of a central data base under the control of the Federal Government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

(ix) VOLUNTARY INDUSTRY ACCIDENT PREVENTION STANDARDS.—The Environmental Protection Agency, the Department of Justice, and other appropriate agencies may provide technical assistance to owners and operators of stationary sources and participate in the development of voluntary industry standards that will help achieve the objectives set forth in paragraph (1).

(x) EFFECT ON STATE OR LOCAL LAW.—

(I) IN GENERAL.—Subject to subclause (II), this subparagraph (including the regulations promulgated under this subparagraph) shall supersede any provision of State or local law that is inconsistent with this subparagraph (including the regulations).

(II) AVAILABILITY OF INFORMATION UNDER STATE LAW.—Nothing in this subparagraph precludes a State from making available data on the off-site consequences of chemical releases collected in accordance with State law.

(xi) REPORT.—

(I) IN GENERAL.—Not later than 3 years after August 5, 1999, the Attorney General, in consultation with appropriate State, local, and Federal Government agencies, affected industry, and the public, shall submit to Congress a report that describes the extent to which regulations promulgated under this paragraph have resulted in actions, including the design and maintenance of safe facilities, that are effective in detecting, preventing, and minimizing the consequences of releases of regulated substances that may be caused by criminal activity. As part of this report, the Attorney General, using available data to the extent possible, and a sampling of covered stationary sources selected at the discretion of the Attorney General, and in consultation with appropriate State, local, and Federal governmental agencies, affected industry, and the public, shall review the vulnerability of covered stationary sources to criminal and terrorist activity, current industry practices regarding site security, and security of transportation of regulated substances. The Attorney General shall submit this report, containing the results of the review, together with recommendations, if any, for reducing vulnerability of covered stationary sources to criminal and terrorist activity, to the Committee

on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate and other relevant committees of Congress.

(II) INTERIM REPORT.—Not later than 12 months after August 5, 1999, the Attorney General shall submit to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate, and other relevant committees of Congress, an interim report that includes, at a minimum—

(aa) the preliminary findings under subclause (I);

(bb) the methods used to develop the findings; and

(cc) an explanation of the activities expected to occur that could cause the findings of the report under subclause (I) to be different than the preliminary findings.

(III) AVAILABILITY OF INFORMATION.—Information that is developed by the Attorney General or requested by the Attorney General and received from a covered stationary source for the purpose of conducting the review under subclauses (I) and (II) shall be exempt from disclosure under section 552 of title 5 if such information would pose a threat to national security.

(xii) SCOPE.—This subparagraph—

(I) applies only to covered persons; and

(II) does not restrict the dissemination of off-site consequence analysis information by any covered person in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from off-site consequence analysis information.

(xiii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator and the Attorney General such sums as are necessary to carry out this subparagraph (including the regulations promulgated under clause (ii)), to remain available until expended.

(8) Research on hazard assessments

The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for hazard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

(9) Order authority

(A) In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the stationary source is located, take other action under this paragraph including, but not limited to, issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 7603 of this title rather than this paragraph whenever the authority of such section is adequate to protect human health and the environment.

(B) Orders issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 7603 of this title.

(C) Within 180 days after November 15, 1990, the Administrator shall publish guidance for using the order authorities established by this paragraph. Such guidance shall provide for the

coordinated use of the authorities of this paragraph with other emergency powers authorized by section 9606 of this title, sections 311(c), 308, 309 and 504(a) of the Federal Water Pollution Control Act [33 U.S.C. 1321(c), 1318, 1319, 1364(a)], sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act [42 U.S.C. 6927, 6928, 6934, 6973], sections 1445 and 1431 of the Safe Drinking Water Act [42 U.S.C. 300j–4, 300i], sections 5 and 7 of the Toxic Substances Control Act [15 U.S.C. 2604, 2606], and sections 7413, 7414, and 7603 of this title.

(10) Presidential review

The President shall conduct a review of release prevention, mitigation and response authorities of the various Federal agencies and shall clarify and coordinate agency responsibilities to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources which may exist. The President may utilize the resources and solicit the recommendations of the Chemical Safety and Hazard Investigation Board in conducting such review. At the conclusion of such review, but not later than 24 months after November 15, 1990, the President shall transmit a message to the Congress on the release prevention, mitigation and response activities of the Federal Government making such recommendations for change in law as the President may deem appropriate. Nothing in this paragraph shall be interpreted, construed or applied to authorize the President to modify or reassign release prevention, mitigation or response authorities otherwise established by law.

(11) State authority

Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

(s) Periodic report

Not later than January 15, 1993 and every 3 years thereafter, the Administrator shall prepare and transmit to the Congress a comprehensive report on the measures taken by the Agency and by the States to implement the provisions of this section. The Administrator shall maintain a database on pollutants and sources subject to the provisions of this section and shall include aggregate information from the database in each annual report. The report shall include, but not be limited to—

(1) a status report on standard-setting under subsections (d) and (f);

(2) information with respect to compliance with such standards including the costs of compliance experienced by sources in various categories and subcategories;

(3) development and implementation of the national urban air toxics program; and

(4) recommendations of the Chemical Safety and Hazard Investigation Board with respect to the prevention and mitigation of accidental releases.

(July 14, 1955, ch. 360, title I, §112, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1685; amended Pub. L. 95–95, title I, §§109(d)(2), 110, title IV, §401(c), Aug. 7, 1977, 91 Stat. 701, 703, 791; Pub. L. 95–623, §13(b), Nov. 9, 1978, 92 Stat. 3458; Pub. L. 101–549, title III, §301, Nov. 15, 1990, 104 Stat. 2531; Pub. L. 102–187, Dec. 4, 1991, 105 Stat. 1285; Pub. L. 105–362, title IV, §402(b), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106–40, §§2, 3(a), Aug. 5, 1999, 113 Stat. 207, 208.)

EDITORIAL NOTES

REFERENCES IN TEXT

The date of enactment, referred to in subsec. (a)(11), probably means the date of enactment of Pub. L. 101–549, which amended this section generally and was approved Nov. 15, 1990.

The Atomic Energy Act, referred to in subsec. (d)(9), probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsecs. (e)(5) and (m)(1)(D), (5)(D), is act June

30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. Title II of the Act is classified generally to subchapter II (§1281 et seq.) of chapter 26 of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (k)(3)(C), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Federal Insecticide, Fungicide and Rodenticide Act, referred to in subsec. (k)(3)(C), probably means the Federal Insecticide, Fungicide, and Rodenticide Act, act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Resource Conservation and Recovery Act, referred to in subsec. (k)(3)(C), probably means the Resource Conservation and Recovery Act of 1976, Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2796, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

The Safe Drinking Water Act, referred to in subsec. (m)(1)(D), (5)(D), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (n)(7), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 303 of the Clean Air Act Amendments of 1990, referred to in subsec. (o)(4), probably means section 303 of Pub. L. 101–549, which is set out below.

The Clean Air Act Amendments of 1990, referred to in subsec. (q)(1)–(3), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Emergency Planning and Community Right-To-Know Act of 1986, referred to in subsec. (r)(3), is title III of Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1728, which is classified generally to chapter 116 (§11001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Occupational Safety and Health Act, referred to in subsec. (r)(6)(C)(ii), (K), (L), probably means the Occupational Safety and Health Act of 1970, Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

In subsec. (r)(6)(N), "section 6101 of title 41" substituted for "section 5 of title 41 of the United States Code" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section was formerly classified to section 1857c–7 of this title.

AMENDMENTS

1999—Subsec. (r)(2)(D). Pub. L. 106–40, §2(5), added subpar. (D).

Subsec. (r)(4). Pub. L. 106–40, §2, substituted "Administrator—

"(A) shall consider—"

for "Administrator shall consider each of the following criteria—" in introductory provisions, redesignated subpars. (A) to (C) as cls. (i) to (iii), respectively, of subpar. (A) and added subpar. (B).

Subsec. (r)(7)(H). Pub. L. 106–40, §3(a), added subpar. (H).

1998—Subsec. (n)(2)(C). Pub. L. 105–362 substituted "On completion of the study, the Secretary shall submit to Congress a report on the results of the study and" for "The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study".

1991—Subsec. (b)(1). Pub. L. 102–187 struck out "7783064 Hydrogen sulfide" from list of pollutants.

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), definitions; in subsec. (b), list of hazardous air pollutants, emission standards, and

pollution control techniques; in subsec. (c), prohibited acts and exemption; in subsec. (d), State implementation and enforcement; and in subsec. (e), design, equipment, work practice, and operational standards.

1978—Subsec. (e)(5). Pub. L. 95–623 added par. (5).

1977—Subsec. (a)(1). Pub. L. 95–95, §401(c), substituted "causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness" for "may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness".

Subsec. (d)(1). Pub. L. 95–95, §109(d)(2), struck out "(except with respect to stationary sources owned or operated by the United States)" after "implement and enforce such standards".

Subsec. (e). Pub. L. 95–95, §110, added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (m)(5), (r)(6)(C)(ii), and (s) of this section are listed, respectively, as the 8th item on page 162, the 9th item on page 198, and the 9th item on page 162), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

REPORTS

Pub. L. 106–40, §3(b), Aug. 5, 1999, 113 Stat. 213, provided that:

"(1) DEFINITION OF ACCIDENTAL RELEASE.—In this subsection, the term 'accidental release' has the meaning given the term in section 112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2)).

"(2) REPORT ON STATUS OF CERTAIN AMENDMENTS.—Not later than 2 years after the date of enactment of this Act [Aug. 5, 1999], the Comptroller General of the United States shall submit to Congress a report on the status of the development of amendments to the National Fire Protection Association Code for Liquefied Petroleum Gas that will result in the provision of information to local emergency response

personnel concerning the off-site effects of accidental releases of substances exempted from listing under section 112(r)(4)(B) of the Clean Air Act (as added by section 3).

"(3) REPORT ON COMPLIANCE WITH CERTAIN INFORMATION SUBMISSION REQUIREMENTS .—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that—

"(A) describes the level of compliance with Federal and State requirements relating to the submission to local emergency response personnel of information intended to help the local emergency response personnel respond to chemical accidents or related environmental or public health threats; and

"(B) contains an analysis of the adequacy of the information required to be submitted and the efficacy of the methods for delivering the information to local emergency response personnel."

REEVALUATION OF REGULATIONS

Pub. L. 106–40, §3(c), Aug. 5, 1999, 113 Stat. 213, provided that: "The President shall reevaluate the regulations promulgated under this section within 6 years after the enactment of this Act [Aug. 5, 1999]. If the President determines not to modify such regulations, the President shall publish a notice in the Federal Register stating that such reevaluation has been completed and that a determination has been made not to modify the regulations. Such notice shall include an explanation of the basis of such decision."

PUBLIC MEETING DURING MORATORIUM PERIOD

Pub. L. 106–40, §4, Aug. 5, 1999, 113 Stat. 214, provided that:

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Aug. 5, 1999], each owner or operator of a stationary source covered by section 112(r)(7)(B)(ii) of the Clean Air Act [42 U.S.C. 7412(r)(7)(B)(ii)] shall convene a public meeting, after reasonable public notice, in order to describe and discuss the local implications of the risk management plan submitted by the stationary source pursuant to section 112(r)(7)(B)(iii) of the Clean Air Act, including a summary of the off-site consequence analysis portion of the plan. Two or more stationary sources may conduct a joint meeting. In lieu of conducting such a meeting, small business stationary sources as defined in section 507(c)(1) of the Clean Air Act [42 U.S.C. 7661f(c)(1)] may comply with this section by publicly posting a summary of the off-site consequence analysis information for their facility not later than 180 days after the enactment of this Act. Not later than 10 months after the date of enactment of this Act, each such owner or operator shall send a certification to the director of the Federal Bureau of Investigation stating that such meeting has been held, or that such summary has been posted, within 1 year prior to, or within 6 months after, the date of the enactment of this Act. This section shall not apply to sources that employ only Program 1 processes within the meaning of regulations promulgated under section 112(r)(7)(B)(i) of the Clean Air Act.

"(b) ENFORCEMENT.—The Administrator of the Environmental Protection Agency may bring an action in the appropriate United States district court against any person who fails or refuses to comply with the requirements of this section, and such court may issue such orders, and take such other actions, as may be necessary to require compliance with such requirements."

RISK ASSESSMENT AND MANAGEMENT COMMISSION

Pub. L. 101–549, title III, §303, Nov. 15, 1990, 104 Stat. 2574, provided that:

"(a) ESTABLISHMENT.—There is hereby established a Risk Assessment and Management Commission (hereafter referred to in this section as the 'Commission'), which shall commence proceedings not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and which shall make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

"(b) CHARGE.—The Commission shall consider—

"(1) the report of the National Academy of Sciences authorized by section 112(o) of the Clean Air Act [42 U.S.C. 7412(o)], the use and limitations of risk assessment in establishing emission or effluent standards, ambient standards, exposure standards, acceptable concentration levels, tolerances or other environmental criteria for hazardous substances that present a risk of carcinogenic effects or other chronic health effects and the suitability of risk assessment for such purposes;

"(2) the most appropriate methods for measuring and describing cancer risks or risks of other chronic health effects from exposure to hazardous substances considering such alternative approaches as the lifetime risk of cancer or other effects to the individual or individuals most exposed to emissions from a source or sources on both an actual and worst case basis, the range of such risks, the total number of health

effects avoided by exposure reductions, effluent standards, ambient standards, exposures standards, acceptable concentration levels, tolerances and other environmental criteria, reductions in the number of persons exposed at various levels of risk, the incidence of cancer, and other public health factors;

"(3) methods to reflect uncertainties in measurement and estimation techniques, the existence of synergistic or antagonistic effects among hazardous substances, the accuracy of extrapolating human health risks from animal exposure data, and the existence of unquantified direct or indirect effects on human health in risk assessment studies;

"(4) risk management policy issues including the use of lifetime cancer risks to individuals most exposed, incidence of cancer, the cost and technical feasibility of exposure reduction measures and the use of site-specific actual exposure information in setting emissions standards and other limitations applicable to sources of exposure to hazardous substances; and

"(5) and comment on the degree to which it is possible or desirable to develop a consistent risk assessment methodology, or a consistent standard of acceptable risk, among various Federal programs.

"(c) MEMBERSHIP.—Such Commission shall be composed of ten members who shall have knowledge or experience in fields of risk assessment or risk management, including three members to be appointed by the President, two members to be appointed by the Speaker of the House of Representatives, one member to be appointed by the Minority Leader of the House of Representatives, two members to be appointed by the Majority Leader of the Senate, one member to be appointed by the Minority Leader of the Senate, and one member to be appointed by the President of the National Academy of Sciences. Appointments shall be made not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

"(d) ASSISTANCE FROM AGENCIES.—The Administrator of the Environmental Protection Agency and the heads of all other departments, agencies, and instrumentalities of the executive branch of the Federal Government shall, to the maximum extent practicable, assist the Commission in gathering such information as the Commission deems necessary to carry out this section subject to other provisions of law.

"(e) STAFF AND CONTRACTS.—

"(1) In the conduct of the study required by this section, the Commission is authorized to contract (in accordance with Federal contract law) with nongovernmental entities that are competent to perform research or investigations within the Commission's mandate, and to hold public hearings, forums, and workshops to enable full public participation.

"(2) The Commission may appoint and fix the pay of such staff as it deems necessary in accordance with the provisions of title 5, United States Code. The Commission may request the temporary assignment of personnel from the Environmental Protection Agency or other Federal agencies.

"(3) The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chair, shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS–18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

"(f) REPORT.—A report containing the results of all Commission studies and investigations under this section, together with any appropriate legislative recommendations or administrative recommendations, shall be made available to the public for comment not later than 42 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and shall be submitted to the President and to the Congress not later than 48 months after such date of enactment. In the report, the Commission shall make recommendations with respect to the appropriate use of risk assessment and risk management in Federal regulatory programs to prevent cancer or other chronic health effects which may result from exposure to hazardous substances. The Commission shall cease to exist upon the date determined by the Commission, but not later than 9 months after the submission of such report.

"(g) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the activities of the Commission established by this section."

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

EXECUTIVE DOCUMENTS

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Aug. 19, 1993, 58 F.R. 52397, provided:

Memorandum for the Administrator of the Environmental Protection Agency

WHEREAS, the Environmental Protection Agency, the agencies and departments that are members of the National Response Team (authorized under Executive Order No. 12580, 52 Fed. Reg. 2923 (1987) [42 U.S.C. 9615 note]), and other Federal agencies and departments undertake emergency release prevention, mitigation, and response activities pursuant to various authorities;

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(r)(10) of the Clean Air Act (the "Act") (section 7412(r)(10) of title 42 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [42 U.S.C. 7401 et seq.], I hereby:

(1) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to conduct a review of release prevention, mitigation, and response authorities of Federal agencies in order to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources that may exist, to the extent such review is required by section 112(r)(10) of the Act; and

(2) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to prepare and transmit a message to the Congress concerning the release prevention, mitigation, and response activities of the Federal Government with such recommendations for change in law as you deem appropriate, to the extent such message is required by section 112(r)(10) of the Act.

The authority delegated by this memorandum may be further redelegated within the Environmental Protection Agency.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Jan. 27, 2000, 65 F.R. 8631, provided:

Memorandum for the Attorney General[,] the Administrator of the Environmental Protection Agency[, and] the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 112(r)(7)(H) of the Clean Air Act ("Act") (42 U.S.C. 7412(r)(7)(H)), as added by section 3 of the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Public Law 106–40), and section 301 of title 3, United States Code, I hereby delegate to:

(1) the Attorney General the authority vested in the President under section 112(r)(7)(H)(ii)(I)(aa) of the Act to assess the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet;

(2) the Administrator of the Environmental Protection Agency (EPA) the authority vested in the President under section 112(r)(7)(H)(ii)(I)(bb) of the Act to assess the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(3) the Attorney General and the Administrator of EPA, jointly, the authority vested in the President under section 112(r)(7)(H)(ii)(II) of the Act to promulgate regulations, based on these assessments, governing the distribution of off-site consequence analysis information. These regulations, in proposed and final form, shall be subject to review and approval by the Director of the Office of Management and Budget.

The Administrator of EPA is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

FLEXIBLE IMPLEMENTATION OF THE MERCURY AND AIR TOXICS STANDARDS RULE

Memorandum of President of the United States, Dec. 21, 2011, 76 F.R. 80727, provided:

Memorandum for the Administrator of the Environmental Protection Agency

Today's issuance, by the Environmental Protection Agency (EPA), of the final Mercury and Air Toxics Standards rule for power plants (the "MATS Rule") represents a major step forward in my Administration's efforts to protect public health and the environment.

This rule, issued after careful consideration of public comments, prescribes standards under section 112 of the Clean Air Act to control emissions of mercury and other toxic air pollutants from power plants, which collectively are among the largest sources of such pollution in the United States. The EPA estimates that by substantially reducing emissions of pollutants that contribute to neurological damage, cancer, respiratory illnesses, and other health risks, the MATS Rule will produce major health benefits for millions of Americans—including children, older Americans, and other vulnerable populations. Consistent with

Executive Order 13563 (Improving Regulation and Regulatory Review), the estimated benefits of the MATS Rule far exceed the estimated costs.

The MATS Rule can be implemented through the use of demonstrated, existing pollution control technologies. The United States is a global market leader in the design and manufacture of these technologies, and it is anticipated that U.S. firms and workers will provide much of the equipment and labor needed to meet the substantial investments in pollution control that the standards are expected to spur.

These new standards will promote the transition to a cleaner and more efficient U.S. electric power system. This system as a whole is critical infrastructure that plays a key role in the functioning of all facets of the U.S. economy, and maintaining its stability and reliability is of critical importance. It is therefore crucial that implementation of the MATS Rule proceed in a cost-effective manner that ensures electric reliability.

Analyses conducted by the EPA and the Department of Energy (DOE) indicate that the MATS Rule is not anticipated to compromise electric generating resource adequacy in any region of the country. The Clean Air Act offers a number of implementation flexibilities, and the EPA has a long and successful history of using those flexibilities to ensure a smooth transition to cleaner technologies.

The Clean Air Act provides 3 years from the effective date of the MATS Rule for sources to comply with its requirements. In addition, section 112(i)(3)(B) of the Act allows the issuance of a permit granting a source up to one additional year where necessary for the installation of controls. As you stated in the preamble to the MATS Rule, this additional fourth year should be broadly available to sources, consistent with the requirements of the law.

The EPA has concluded that 4 years should generally be sufficient to install the necessary emission control equipment, and DOE has issued analysis consistent with that conclusion. While more time is generally not expected to be needed, the Clean Air Act offers other important flexibilities as well. For example, section 113(a) of the Act provides the EPA with flexibility to bring sources into compliance over the course of an additional year, should unusual circumstances arise that warrant such flexibility.

To address any concerns with respect to electric reliability while assuring MATS' public health benefits, I direct you to take the following actions:

1. Building on the information and guidance that you have provided to the public, relevant stakeholders, and permitting authorities in the preamble of the MATS Rule, work with State and local permitting authorities to make the additional year for compliance with the MATS Rule provided under section 112(i)(3)(B) of the Clean Air Act broadly available to sources, consistent with law, and to invoke this flexibility expeditiously where justified.

2. Promote early, coordinated, and orderly planning and execution of the measures needed to implement the MATS Rule while maintaining the reliability of the electric power system. Consistent with Executive Order 13563, this process should be designed to "promote predictability and reduce uncertainty," and should include engagement and coordination with DOE, the Federal Energy Regulatory Commission, State utility regulators, Regional Transmission Organizations, the North American Electric Reliability Corporation and regional electric reliability organizations, other grid planning authorities, electric utilities, and other stakeholders, as appropriate.

3. Make available to the public, including relevant stakeholders, information concerning any anticipated use of authorities: (a) under section 112(i)(3)(B) of the Clean Air Act in the event that additional time to comply with the MATS Rule is necessary for the installation of technology; and (b) under section 113(a) of the Clean Air Act in the event that additional time to comply with the MATS Rule is necessary to address a specific and documented electric reliability issue. This information should describe the process for working with entities with relevant expertise to identify circumstances where electric reliability concerns might justify allowing additional time to comply.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

ORDERLY IMPLEMENTATION OF THE AIR TOXICS STANDARDS FOR ETHYLENE OXIDE COMMERCIAL STERILIZERS

Memorandum of President of the United States, Jan. 16, 2025, 90 F.R. 6773, provided:

Memorandum for the Administrator of the Environmental Protection Agency and the Secretary of Health and Human Services

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

SECTION 1. *Policy*. The strengthened and updated Clean Air Act standards for ethylene oxide (EtO) emitted into the air from commercial sterilizing facilities issued by the Environmental Protection Agency (EPA) on April 5, 2024, National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, Final Rule, 89 FR 24,090 (Apr. 5, 2024) ("EtO Rule"), achieved a new milestone in my Administration's efforts to protect public health for all Americans and to advance the objective of my Administration's Cancer Moonshot initiative to prevent cancer before it starts. EtO has been associated with elevated cancer risks in communities around the United States and can be particularly harmful to children. The loss of loved ones from environmentally related cancer is a tragedy that the Nation can and must work together to end, once and for all.

The EtO Rule was issued after careful consideration of public comments and public hearings. In this rule, EPA set standards under section 112 of the Clean Air Act [42 U.S.C. 7412], as amended (the "Act") (42 U.S.C. 7401 et seq.), to control emissions from commercial sterilizers through the use of demonstrated and achievable pollution control technologies and practices. These standards will significantly reduce emissions of the toxic air pollutant EtO.

The EtO Rule applies to facilities that sterilize medical products, including medical devices and pharmaceuticals. Sterilization is critical to maintaining a safe supply of medical devices for patients and hospitals and providing health care to millions of Americans to help them stay healthy and fight diseases, including cancer. Consequently, EPA worked closely with the Department of Health and Human Services, including the Food and Drug Administration, to develop a final rule that protects communities exposed to pollution from sterilization facilities while also mitigating and managing the potential risk of any medical device supply disruptions.

EPA concluded that sterilization facilities will be able to install the appropriate technology to meet the standards of the EtO Rule before the compliance deadlines mandated by the Act. The EtO Rule also recognized that the President's authority under section 112(i)(4) of the Clean Air Act, 42 U.S.C. 7412(i)(4), to exempt individual facilities from compliance for a set period of time may provide an important mechanism to address the possibility that a facility may be unable to install all appropriate technology before the compliance deadline. 89 FR at 24,103. It is of vital national importance to ensure the reduction of EtO emissions to the level that EPA determined is required to protect public health pursuant to the Clean Air Act, while also avoiding the national security and public health effects that could result from a significant disruption to the medical device supply chain.

It is the policy of my Administration to safeguard the reliability of our Nation's supply of safe medical products. To advance orderly implementation of the EtO Rule, I am therefore establishing a process, provided below, for considering requests for Presidential exemptions, the duration of which shall be as short as possible and no longer than two years. This process will ensure consideration of such requests in the exceptional circumstances in which a commercial sterilizer can demonstrate that, notwithstanding due diligence and best efforts, it will be unable to meet a covered standard or limitation required by the EtO Rule before the compliance deadline due to the unavailability of control technology for the facility, leading to likely shutdown of the facility, and the best available information demonstrates that the shutdown of the facility will likely lead to a serious disruption to the supply of medical products, such as medical devices and pharmaceuticals, necessary for America's national security and public health.

To achieve the EtO Rule's critical health protections as soon as practicable, while safeguarding the supply of safe medical products from disruption that would compromise the health and welfare of the American people, I direct you to take the following actions:

SEC. 2. *Implementation of a Process for Considering Presidential Exemptions*. The Administrator of the EPA (Administrator) shall receive requests for a Presidential exemption from a standard or limitation in the EtO Rule under section 112(i)(4) of the Act (42 U.S.C. 7412(i)(4)), review them, and advise the President regarding whether to grant them through the following process:

(a) Any commercial sterilizer seeking such an exemption shall submit a request to the Administrator no earlier than 12 months and no later than 4 months before the compliance deadline for which an exemption is sought. The request shall include:

(i) specific information of sufficient detail to enable verification of the reason or reasons that the technology to implement the applicable standard or limitation is unavailable for installation and that, notwithstanding its due diligence and best efforts, the facility cannot be brought into compliance before the compliance deadline for the covered standard or limitation (e.g., contracts, documentation of communication with vendors or suppliers);

(ii) a plan for procuring, installing, and operating the technology as soon as feasible in order to achieve compliance with the EtO Rule, and an assurance as described in subsection (h)(ii) of this section;

(iii) a list of all available practicable measures (i.e., technological and operational) that have already

been taken or that are planned to advance compliance and additional measures, if any, that will be implemented to reduce the emissions of EtO and resulting risks during the exemption period;

(iv) a list of any alternative steps available, in progress, or already taken to try to avoid the need for additional time for compliance;

(v) the type or types of products sterilized at the facility, the volume of products sterilized at the facility, and the facility's annual sterilization capacity; and

(vi) the name, title, and signature of the responsible official who is certifying the accuracy of the request.

(b) In reviewing an exemption request, and the information provided pursuant to this section, the Administrator, in consultation with the Secretary of Health and Human Services (Secretary), shall consider:

(i) whether the technology to implement a covered standard or limitation will be unavailable in time for installation and operation of the technology at a specific facility before the compliance deadline for such standard or limitation, due, for example, to shortages of labor, parts, control technology supply, supply-chain disruption, or other factors out of the facility's control;

(ii) the amount of time needed for installation and operation to occur in order to achieve compliance with the EtO Rule;

(iii) the risk of a serious disruption to the supply of medical products (including pharmaceuticals and medical devices) should the facility be required to temporarily pause sterilization activities or reduce capacity until installation and operation can occur (including any potential alternatives to assure a sufficient supply of sterilization and sterilized medical products);

(iv) the potential effect of any such disruption on public health and welfare, and any other information that may be relevant to an evaluation of whether granting an exemption is in the national security interests of the United States; and

(vi) [sic] any other information that the Administrator, in consultation with the Secretary, deems relevant.

(c) No later than 30 days after receiving a request pursuant to subsection (a) of this section, the Administrator shall confirm receipt of the request, notify the requester of any additional information needed to evaluate the request, set a deadline of no later than 15 days for the requester to provide the requested information, and provide public notification that the request was submitted (including the name of, the location of, and any other information regarding the facility requesting the exemption that the Administrator, in consultation with the Secretary, deems relevant and appropriate to publish).

(d) As soon as practicable and no later than 30 days after receiving all necessary information to evaluate a request pursuant to this section, the Administrator, in consultation with the Secretary, shall provide the Chairman of the Council on Environmental Quality (CEQ) with the request and accompanying information from the requester, any additional information that the Administrator deems relevant, and a recommendation regarding whether an exemption is warranted, including the basis for the recommendation, and if recommending that the President grant an exemption: the recommended duration, and any other accompanying terms or conditions (such as a schedule for status reports regarding planned steps and progress to achieve compliance with the EtO Rule).

(e) As soon as practicable and generally within 45 days after receiving a recommendation from the Administrator pursuant to subsection (d) of this section, the Chairman of CEQ, in consultation with the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the Director of the Office of Pandemic Preparedness and Response Policy, and the Director of the Office of Science and Technology Policy, shall advise the President concerning the request for an exemption.

(f) As expeditiously as practicable after the grant or denial of any exemption by the President under this process, and no later than 10 days after such a grant or denial, the Administrator shall notify the applicant.

(g) Within 60 days of the grant of any exemption by the President under this process, the Administrator shall make publicly available online the name of, location of, and any other appropriate and relevant information regarding the facility receiving the exemption and the duration of any exemption, and shall submit to Congress the report required by section 112(i)(4) of the Act (42 U.S.C. 7412(i)(4)) on behalf of the President.

(h) The Administrator shall, as appropriate:

(i) provide technical assistance to any facility that receives an exemption to promote compliance with the EtO Rule;

(ii) seek information and assurance from any facility that requests an exemption that the facility will use its best efforts and will take reasonable and appropriate steps to demonstrate diligent action to install and operate necessary technology as expeditiously as practicable (including to fulfill any accompanying

terms or conditions) to achieve compliance with the EtO Rule; and

(iii) inform the Chairman of CEQ when installation of such technology is complete.

SEC. 3. *Federal Coordination*. The Secretary, in consultation with the Administrator, shall consider taking additional steps, as appropriate, to further advance the goal of protecting the public from cancer and other harms from EtO exposure, including spurring innovation to reduce exposure to EtO and other carcinogenic air pollutants and to expand access to safe, effective, and reliable alternative methods for sterilization of medical equipment and pharmaceuticals that do not depend on EtO, and continuing to strengthen the resilience of our Nation's medical supply chain. Within 2 years of the date of this memorandum, the Secretary shall provide a report to the Chairman of CEQ regarding progress toward this directive and any steps taken or planned.

SEC. 4. *General Provisions*. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Administrator is authorized and directed to publish this memorandum in the Federal Register.

J.R. BIDEN, JR.

[1] See References in Text note below.

[2] So in original. Probably should be "effects".

[3] So in original. Probably should be "section".

[4] So in original. Probably should be "Right-To-Know".

[5] So in original. Probably should be paragraph "(7)(B)".

[6] So in original. The word "or" probably should appear.

[7] So in original. The word "Administrator" probably should be "Secretary".

[8] So in original. Probably should be "subparagraph".

[9] So in original. Probably should be "(i)(II)".

§7413. Federal enforcement

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d), or

(C) bring a civil action in accordance with subsection (b).

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d), or

(C) bringing a civil action in accordance with subsection (b).

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d),

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c).

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the

construction of new sources or the modification of existing sources, the Administrator may—

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies; [1]

(B) issue an administrative penalty order in accordance with subsection (d), or

(C) bring a civil action under subsection (b).

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II).

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

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411(e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475(a) of this title (relating to preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a(a) or 7661b(c) of this title (relating to permits), or any requirement or prohibition of subchapter IV–A (relating to acid deposition control), or subchapter VI (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than

subchapter II) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter [2]

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV–A, V, or VI shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to

by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602(e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV–A, V, or VI, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II); or

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

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any

administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604(a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the

economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607(a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604(a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV–A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,[3] or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

(July 14, 1955, ch. 360, title I, §113, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1686; amended Pub. L. 92–157, title III, §302(b), (c), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93–319, §6(a)(1)–(3), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title I, §§111, 112(a), Aug. 7, 1977, 91 Stat.

704, 705; Pub. L. 95–190, §14(a)(10)–(21), (b)(1), Nov. 16, 1977, 91 Stat. 1400, 1404; Pub. L. 97–23, §2, July 17, 1981, 95 Stat. 139; Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857c–8 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), finding of violation, notice, compliance order, civil action, State failure to enforce plan, and construction or modification of major stationary sources; in subsec. (b), violations by owners or operators of major stationary sources; in subsec. (c), penalties; in subsec. (d), final compliance orders; and in subsec. (e), steel industry compliance extension.

1981—Subsec. (e). Pub. L. 97–23 added subsec. (e).

1977—Subsec. (a)(5). Pub. L. 95–95, §111(a), added par. (5).

Subsec. (b). Pub. L. 95–95, §111(b), (c), substituted "shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person" for "may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person" in provisions preceding par. (1), inserted references to subsec. (d)(5) of this section, sections 7419 and 7620 of this title, and regulations under part in par. (3), inserted reference to subsec. (d) of this section in par. (4), added par. (5), and, in provisions following par. (5), authorized the commencement of civil actions to recover noncompliance penalties and nonpayment penalties under section 7420 of this title, expanded jurisdictional provisions to authorize actions in districts in which the violation occurred and to authorize the district court to restrain violations, to require compliance, to assess civil penalties, and to collect penalties under section 7420 of this title, enumerated factors to be taken into consideration in determining the amount of civil penalties, and authorized awarding of costs to the party or parties against whom the action was brought in cases where the court finds that the action was unreasonable.

Subsec. (b)(3). Pub. L. 95–190, §14(a)(10), (11), inserted "or" after "ozone);", and substituted "7624" for "7620", "conversion), section" for "conversion) section", and "orders), or" for "orders) or".

Subsec. (c)(1). Pub. L. 95–95, §111(d)(1), (2), substituted "any order issued under section 7419 of this title or under subsection (a) or (d) of this section" for "any order issued by the Administrator under subsection (a)" in subpar. (B), struck out reference to section 119(g) (as in effect before the date of the enactment of Pub. L. 95–95) in subpar. (C), and added subpar. (D).

Subsec. (c)(1)(B). Pub. L. 95–190, §14(a)(12), inserted "or" after "section,".

Subsec. (c)(1)(D). Pub. L. 95–190, §14(a)(13), substituted "1977 subsection" for "1977) subsection" and "penalties), or" for "penalties) or".

Subsec. (c)(3). Pub. L. 95–95, §111(d)(3), added par. (3).

Subsec. (d). Pub. L. 95–95, §112(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 95–190, §14(a)(14), substituted "to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order" for "an order for any stationary source" and "such requirement" for "any requirement of an applicable implementation plan".

Subsec. (d)(1)(E). Pub. L. 95–190, §14(a)(15), inserted provision relating to exemption under section 7420(a)(2)(B) or (C) of this title, provision relating to noncompliance penalties effective July 1, 1979, and reference to subsec. (b)(3) or (g) of section 7420 of this title.

Subsec. (d)(2). Pub. L. 95–190, §14(a)(16), inserted provisions relating to determinations by the Administrator of compliance with requirements of this chapter of State orders issued under this subsection.

Subsec. (d)(4)(A). Pub. L. 95–190, §14(a)(17), substituted "title) upon" for "title upon".

Subsec. (d)(5)(A). Pub. L. 95–190, §14(a)(18), substituted "an additional period for" for "an additional period of".

Subsec. (d)(8). Pub. L. 95–190, §14(a)(19), struck out reference to par. (3) of this subsection.

Subsec. (d)(10). Pub. L. 95–190, §14(a)(20), substituted "in effect" for "issued", "Federal" for "other", and "and no action under" for "or".

Subsec. (d)(11). Pub. L. 95–190, §14(a)(21), substituted "and in effect" for "(and approved by the

Administrator)".

1974—Subsec. (a)(3). Pub. L. 93–319, §6(a)(1), inserted reference to section 1857c–10(g) of this title (relating to energy-related authorities).

Subsecs. (b)(3), (c)(1)(C). Pub. L. 93–319, §6(a)(2), (3), inserted reference to section 1857c–10(g) of this title.

1971—Subsec. (b)(2). Pub. L. 92–157, §302(b), inserted "(A)" before "during" and ", or (B)" after "assumed enforcement".

Subsec. (c)(1)(A). Pub. L. 92–157, §302(c), inserted "(i)" before "during" and ", or (ii)" after "assumed enforcement".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

[1] So in original. The semicolon probably should be a comma.

[2] So in original. Probably should be followed by a comma.

[3] So in original. The comma probably should not appear.

§7414. Recordkeeping, inspections, monitoring, and entry

(a) Authority of Administrator or authorized representative

For the purpose (i) of developing or assisting in the development of any implementation plan under section 7410 or section 7411(d) of this title, any standard of performance under section 7411 of this title, any emission standard under section 7412 of this title,,[1] or any regulation of solid waste combustion under section 7429 of this title, or any regulation under section 7429 of this title (relating to solid waste combustion), (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter (except a provision of subchapter II with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title with respect to a provision of subchapter II) on a one-time, periodic or continuous basis to—

(A) establish and maintain such records;

(B) make such reports;

(C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;

(D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);

(E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;

(F) submit compliance certifications in accordance with subsection (a)(3); and

(G) provide such other information as the Administrator may reasonably require; and [2]

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises of such person or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which such person is required to sample under paragraph (1).[3]

(3) The [4] Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this chapter. The Administrator shall promulgate rules to provide guidance and to implement this paragraph within 2 years after November 15, 1990.

(b) State enforcement

(1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section.

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Availability of records, reports, and information to public; disclosure of trade secrets

Any records, reports or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(d) Notice of proposed entry, inspection, or monitoring

(1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 7413(d) [5] of this title, before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) with respect to such standard, limitation, or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 7410(c) of this title.

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

(July 14, 1955, ch. 360, title I, §114, as added Pub. L. 91–604, §4(a), Dec. 31, 1970, 84 Stat. 1687; amended Pub. L. 93–319, §6(a)(4), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title I, §§109(d)(3), 113, title III, §305(d), Aug. 7, 1977, 91 Stat. 701, 709, 776; Pub. L. 95–190, §14(a)(22), (23), Nov. 16, 1977, 91 Stat. 1400; Pub. L. 101–549, title III, §302(c), title VII, §702(a), (b), Nov. 15, 1990, 104 Stat. 2574, 2680, 2681.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (d)(1), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

CODIFICATION

Section was formerly classified to section 1857c–9 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, §702(a)(1), which directed that "or" be struck out in first sentence immediately before "any emission standard under section 7412 of this title," could not be executed because of the prior amendment by Pub. L. 101–549, §302(c), see below.

Pub. L. 101–549, §702(a)(2), inserted "or any regulation under section 7429 of this title (relating to solid waste combustion)," before "(ii) of determining".

Pub. L. 101–549, §302(c), struck out "or" after "performance under section 7411 of this title," and inserted ", or any regulation of solid waste combustion under section 7429 of this title," after "standard under section 7412 of this title".

Subsec. (a)(1). Pub. L. 101–549, §702(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the Administrator may require any person who owns or operates any emission source or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title) with respect to a provision of subchapter II of this chapter to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information as he may reasonably require; and".

Subsec. (a)(3). Pub. L. 101–549, §702(b), added par. (3).

1977—Subsec. (a). Pub. L. 95–190, §14(a)(22), inserted reference to subchapter II of this chapter and "new" before "motor" in two places.

Pub. L. 95–95, §305(d), substituted "carrying out any provision of this chapter (except with respect to a manufacturer of motor vehicles or motor vehicle engines)" for "carrying out sections 119 or 303" in cl. (iii) preceding par. (1), substituted "any person subject to any requirement of this chapter (other than a manufacturer subject to the provisions of sections 7525(c) or 7542 of this title)" for "the owner or operator of any emission source" in par. (1), substituted "any premises of such person" for "any premises in which an emission source is located" in subpar. (A) of par. (2), and substituted "emissions which such person is required to sample" for "emissions which the owner or operator of such source is required to sample" in subpar. (B) of subpar. (2).

Subsec. (a)(1). Pub. L. 95–190, §14(a)(23), inserted reference to subchapter II of this chapter and "who owns or operates any emission source or who is" after "any person".

Subsec. (b)(1). Pub. L. 95–95, §109(d)(3), struck out "(except with respect to new sources owned or operated by the United States)" after "to carry out this section".

Subsec. (d). Pub. L. 95–95, §113, added subsec. (d).

1974—Subsec. (a). Pub. L. 93–319 inserted reference to section 119.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original.

[2] So in original. The "and" probably should not appear.

[3] So in original. The period probably should be "; and".

[4] So in original. Probably should not be capitalized.

[5] See References in Text note below.

§7415. International air pollution

(a) Endangerment of public health or welfare in foreign countries from pollution emitted in United States

Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United

States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

(b) Prevention or elimination of endangerment

The notice of the Administrator shall be deemed to be a finding under section 7410(a)(2)(H)(ii) of this title which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a). Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) Reciprocity

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

(d) Recommendations

Recommendations issued following any abatement conference conducted prior to August 7, 1977, shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 7409 of this title unless the Administrator, after consultation with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.

(July 14, 1955, ch. 360, title I, §115, formerly §5, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 396; renumbered §105 and amended Pub. L. 89–272, title I, §§101(2), (3), 102, Oct. 20, 1965, 79 Stat. 992, 995, renumbered §108 and amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 491, renumbered §115 and amended Pub. L. 91–604, §§4(a), (b)(2)–(10), 15(c)(2), Dec. 31, 1970, 84 Stat. 1678, 1688, 1689, 1713; Pub. L. 95–95, title I, §114, Aug. 7, 1977, 91 Stat. 710.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857d of this title.

AMENDMENTS

1977—Pub. L. 95–95 completely revised section by substituting provisions establishing a mechanism for the Administrator to trigger a revision of a State implementation plan under section 7410(a)(2)(H) upon a petition of an international agency or the Secretary of State if he finds that emissions originating in a State endanger the health or welfare of persons in a foreign country for provisions calling for the abatement of air pollution by means of conference procedures.

1970—Subsec. (a). Pub. L. 91–604, §4(b)(2), inserted "and which is covered by subsection (b) or (c)" after "persons".

Subsec. (b). Pub. L. 91–604, §§4(b)(3), (4), (5), 15(c)(2), redesignated former subsec. (d)(1)(A), (B), and (C) as (b)(1), (2), and (3), substituted "Administrator" for "Secretary" wherever appearing, and added subsec. (b)(4). Former subsec. (b), which related to the encouragement of municipal, State, and interstate action to abate air pollution, was struck out.

Subsec. (c). Pub. L. 91–604, §§4(b)(3), (6), 15(c)(2), redesignated former subsec. (d)(1)(D) as (c) and substituted "Administrator" for "Secretary" and "Secretary of Health, Education, and Welfare" wherever appearing and "subsection" for "subparagraph" wherever appearing. Former subsec. (c), which related to the procedure for the promulgation of State air quality standards, was struck out.

Subsec. (d). Pub. L. 91–604, §§4(b)(4), (6), (7), (8), 15(c)(2), redesignated former subsec. (d)(2) and (3) as (d)(1) and (2), in (d)(1) substituted "Administrator" for "Secretary" wherever appearing and "any conference under this section" for "such conference", and in (d)(2) substituted "Administrator" for "Secretary". Former subsec. (d)(1)(A), (B), and (C) were redesignated as (b)(1), (2), and (3), respectively, and subsec. (d)(1)(D) was redesignated as (c).

Subsec. (e). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (f). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" wherever appearing and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (g). Pub. L. 91–604, §§4(b)(9), 15(c)(2), substituted "Administrator" for "Secretary" and "subsection (c)" for "subparagraph (D) of subsection (d)".

Subsecs. (i), (j). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (k). Pub. L. 91–604, §4(b)(3), (10), substituted provisions relating to compliance with any requirement of an applicable implementation plan or with any standard prescribed under section 7411 of this title or section 7412 of this title, for provisions relating to the enjoining of imminent and substantial endangerment from pollution sources.

1967—Subsec. (b). Pub. L. 90–148 substituted reference to subsec. (c), (h), or (k) of this section for reference to subsec. (g) of this section.

Subsecs. (c), (d). Pub. L. 90–148 added subsec. (c), redesignated former subsec. (c) as (d), inserted in par. (2) provisions for the delivery prior to the conference of a Federal report to agencies and interested parties covering matters before the conference, raised from three weeks to thirty days the required notice of the conference, and inserted provisions for notice by newspapers, presentation of views on the Federal report, and transcript of proceedings. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 90–148 redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f) and amended.

Subsec. (f). Pub. L. 90–148 redesignated former subsec. (e) as (f) and inserted in par. (1) requirement that all interested parties be given a reasonable opportunity to present evidence to the hearing board. Former subsec. (f) redesignated (g) and amended.

Subsec. (g). Pub. L. 90–148 redesignated former subsec. (f) as (g) and substituted reference to subsec. (d) of this section for reference to subsec. (c) of this section. Former subsec. (g) redesignated (h) and amended.

Subsec. (h). Pub. L. 90–148 redesignated former subsec. (g) as (h) and substituted reference to subsec. (g) of this section for reference to subsec. (f) of this section. Former subsec. (h) redesignated (i) and amended.

Subsec. (i). Pub. L. 90–148 redesignated former subsec. (h) as (i) and substituted reference to subsec. (f) of this section for reference to subsec. (e) of this section and raised the per diem maximum from $50 to $100. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 90–148 redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 90–148 added subsec. (k).

1965—Subsec. (b). Pub. L. 89–272, §101(2), substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter".

Subsec. (c)(1)(D). Pub. L. 89–272, §102(a), added subpar. (D).

Subsec. (d)(3). Pub. L. 89–272, §101(2), substituted "subchapter" for "chapter".

Subsec. (f)(1). Pub. L. 89–272, §102(b), designated existing provisions as cl. (A) and added cl. (B).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

UNITED STATES-CANADIAN NEGOTIATIONS ON AIR QUALITY

Pub. L. 95–426, title VI, §612, Oct. 7, 1978, 92 Stat. 990, provided that:

"(a) The Congress finds that—

"(1) the United States and Canada share a common environment along a 5,500 mile border;

"(2) the United States and Canada are both becoming increasingly concerned about the effects of

pollution, particularly that resulting from power generation facilities, since the facilities of each country affect the environment of the other;

"(3) the United States and Canada have subscribed to international conventions; have joined in the environmental work of the United Nations, the Organization for Economic Cooperation and Development, and other international environmental forums; and have entered into and implemented effectively the provisions of the historic Boundary Waters Treaty of 1909; and

"(4) the United States and Canada have a tradition of cooperative resolution of issues of mutual concern which is nowhere more evident than in the environmental area.

"(b) It is the sense of the Congress that the President should make every effort to negotiate a cooperative agreement with the Government of Canada aimed at preserving the mutual airshed of the United States and Canada so as to protect and enhance air resources and insure the attainment and maintenance of air quality protective of public health and welfare.

"(c) It is further the sense of the Congress that the President, through the Secretary of State working in concert with interested Federal agencies and the affected States, should take whatever diplomatic actions appear necessary to reduce or eliminate any undesirable impact upon the United States and Canada resulting from air pollution from any source."

§7416. Retention of State authority

Except as otherwise provided in sections 1857c–10(c), (e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

(July 14, 1955, ch. 360, title I, §116, formerly §109, as added Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 497; renumbered §116 and amended Pub. L. 91–604, §4(a), (c), Dec. 31, 1970, 84 Stat. 1678, 1689; Pub. L. 93–319, §6(b), June 22, 1974, 88 Stat. 259; Pub. L. 95–190, §14(a)(24), Nov. 16, 1977, 91 Stat. 1400.)

EDITORIAL NOTES

REFERENCES IN TEXT

1857c–10(c), (e), and (f) (as in effect before August 7, 1977), referred to in text, was in the original "119(c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)" meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, §3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413 of this title was subsequently amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857d–1 of this title.

AMENDMENTS

1977—Pub. L. 95–190 inserted reference to specified provisions in effect before Aug. 7, 1977.

1974—Pub. L. 93–319 inserted reference to section 1857c–10(c), (e), and (f).

1970—Pub. L. 91–604, §4(c), substituted provisions which authorized any State or political subdivision thereof to adopt or enforce, except as otherwise provided, emission standards or limitations under the

specified conditions, or any requirement respecting control or abatement of air pollution, for provisions which authorized any State, political subdivision, or intermunicipal or interstate agency to adopt standards and plans to achieve a higher level of air quality than approved by the Secretary.

STATUTORY NOTES AND RELATED SUBSIDIARIES

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7417. Advisory committees

(a) Establishment; membership

In order to obtain assistance in the development and implementation of the purposes of this chapter including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics or technology.

(b) Compensation

The members of any other advisory committees appointed pursuant to this chapter who are not officers or employees of the United States while attending conferences or meetings or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(c) [1] Consultations by Administrator

Prior to—

(1) issuing criteria for an air pollutant under section 7408(a)(2) of this title,

(2) publishing any list under section 7411(b)(1)(A) or section 7412(b)(1)(A) [2] of this title,

(3) publishing any standard under section 7411 or section 7412 of this title, or

(4) publishing any regulation under section 7521(a) of this title,

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independence experts, and Federal departments and agencies.

(July 14, 1955, ch. 360, title I, §117 formerly §6, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 399; renumbered §106, Pub. L. 89–272, title I, §101(3), Oct. 20, 1965, 79 Stat. 992; renumbered §110 and amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 498; renumbered §117 and amended Pub. L. 91–604, §§4(a), (d), 15(c)(2), Dec. 31, 1970, 84 Stat. 1678, 1689, 1713; Pub. L. 95–95, title I, §115, Aug. 7, 1977, 91 Stat. 711; Pub. L. 95–623, §13(c), Nov. 9, 1978, 92 Stat. 3458.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7412(b)(1), referred to in subsec. (c)(2), was amended generally by Pub. L. 101–549, title III, §301, Nov. 15, 1990, 104 Stat. 2531, and, as so amended, no longer contains a subpar. (A).

CODIFICATION

Subsec. (c) was originally enacted as subsec. (f) but has been redesignated (c) for purposes of codification in view of the failure of Pub. L. 95–95 to redesignate subsec. (f) as (c) after repealing former subsecs. (a) and (b) and redesignating former subsecs. (d) and (e) as (a) and (b).

Section was formerly classified to section 1857e of this title.

AMENDMENTS

1978—Subsec. (c)(3). Pub. L. 95–623 substituted "7411" for "7411(b)(1)(B)" and "7412" for "7412(b)(1)(B)".

1977—Subsec. (a). Pub. L. 95–95, §115(1), (2), redesignated subsec. (d) as (a). Former subsec. (a), establishing an Air Quality Advisory Board in the Environmental Protection Agency, was struck out.

Subsec. (b). Pub. L. 95–95, §115(1)–(3), redesignated subsec. (e) as (b) and substituted "The members of any other advisory committees" for "The members of the Board and other advisory committees" and "conferences or meetings or while otherwise serving" for "conferences or meetings of the Board or while otherwise serving". Former subsec. (b), setting out the duties of the Air Quality Advisory Board, was struck out.

Subsecs. (c) to (e). Pub. L. 95–95, §115(1), (2), struck out subsec. (c) which related to clerical and technical assistance for the Air Quality Advisory Board, and redesignated subsecs. (d) and (e) as (a) and (b), respectively.

1970—Subsec. (a). Pub. L. 91–604, §15(c)(2), substituted "Environmental Protection Agency" for "Department of Health, Education, and Welfare" and "Administrator" for "Secretary".

Subsec. (b). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (c). Pub. L. 91–604, §15(c)(2), substituted "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsecs. (d), (e). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (f). Pub. L. 91–604, §4(d), added subsec. (f).

1967—Subsec. (a). Pub. L. 90–148 substituted provisions establishing in the Department of Health, Education, and Welfare an Air Quality Advisory Board and providing for the appointment and term of its members for provisions directing the Secretary to maintain liaison with manufacturers looking toward development of devices and fuels to reduce pollutants in automotive exhaust and to appoint a technical committee and call it together from time to time to evaluate progress and develop and recommend research programs.

Subsec. (b). Pub. L. 90–148 substituted provision setting out the duties of the Air Quality Advisory Board for provisions requiring the Secretary to make semi-annual reports to Congress on measures being taken toward the resolution of vehicle exhaust pollution problems.

Subsecs. (c) to (e). Pub. L. 90–148 added subsecs. (c) to (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 1013 of Title 5, Government Organization and Employees.

[1] *See Codification note below.*

[2] *See References in Text note below.*

§7418. Control of pollution from Federal facilities

(a) General compliance

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.

(b) Exemption

The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 7411 of this title, and an exemption from section 7412 of this title may be granted only in accordance with section 7412(i)(4) of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(c) Government vehicles

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government shall comply with all applicable provisions of a valid inspection and maintenance program established under the provisions of subpart 2 of part D or subpart 3 of part D except for such vehicles that are considered military tactical vehicles.

(d) Vehicles operated on Federal installations

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility shall require all employees which operate motor vehicles on the property or facility to furnish proof of compliance with the applicable requirements of any vehicle inspection and maintenance program established under the provisions of subpart 2 of part D or subpart 3 of part D for the State in which such property or facility is located (without regard to whether such vehicles are registered in the State). The installation shall use one of the following methods to establish proof of compliance—

(1) presentation by the vehicle owner of a valid certificate of compliance from the vehicle inspection and maintenance program;

(2) presentation by the vehicle owner of proof of vehicle registration within the geographic area covered by the vehicle inspection and maintenance program (except for any program whose enforcement mechanism is not through the denial of vehicle registration);

(3) another method approved by the vehicle inspection and maintenance program administrator.

(July 14, 1955, ch. 360, title I, §118, formerly, §7, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 399; renumbered §107, Pub. L. 89–272, title I, §101(3), Oct. 20, 1965, 79 Stat. 992; renumbered §111 and amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 499; renumbered §118 and amended Pub. L. 91–604, §§4(a), 5, Dec. 31, 1970, 84 Stat. 1678, 1689; Pub. L. 95–95, title I, §116, Aug. 7, 1977, 91 Stat. 711; Pub. L. 101–549, title I, §101(e), title II, §235, title III, §302(d), Nov. 15, 1990, 104 Stat. 2409, 2530, 2574.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, §235, inserted heading.

Pub. L. 101–549, §101(e), amended second sentence generally. Prior to amendment, second sentence read as follows: "The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner."

Subsec. (b). Pub. L. 101–549, §302(d), substituted "section 7412(i)(4) of this title" for "section 7412(c) of this title".

Subsecs. (c), (d). Pub. L. 101–549, §235, added subsecs. (c) and (d).

1977—Subsec. (a). Pub. L. 95–95, §116(a), designated existing first sentence as subsec. (a) and inserted provisions enumerating the legal and administrative areas to which the compliance requirements apply and directing that agencies, officers, agents, and employees not be immune and that officers, agents, or employees of the United States not be personally liable for civil penalties for which they are not otherwise liable.

Subsec. (b). Pub. L. 95–95, §116(b), designated second and following existing sentences as subsec. (b) and inserted provisions authorizing the President to exempt weaponry, equipment, aircraft, vehicles, and other classes and categories of property of the Armed Forces and the National Guard from compliance but to reconsider the need for such an exemption at three-year intervals.

1970—Pub. L. 91–604, §5, struck out lettered designations (a) and (b), and, as so redesignated, substituted provisions requiring Federal facilities to comply with Federal, State, local, and interstate air pollution control and abatement requirements and provisions authorizing the President to exempt, under the specified terms and conditions, any emission source of any department, etc., in the executive branch from compliance with control and abatement requirements, for provisions requiring, to the extent practicable and consistent with the

interests of the United States and within any available appropriations, Federal facilities to cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency to prevent and control air pollution and provisions authorizing the Secretary to establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any facility was required to obtain a permit, under the specified terms and conditions, for the discharge of any matter into the air of the United States.

1967—Pub. L. 90–148 reenacted section without change.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 20 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 11282

Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, which provided for the prevention, control, and abatement of air pollution from Federal activities, was superseded by Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for the prevention, control, and abatement of air pollution at Federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

§7419. Primary nonferrous smelter orders

(a) Issuance; hearing; enforcement orders; statement of grounds for application; findings

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

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

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

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

(2)(A) An order issued under this section to a primary nonferrous smelter shall be referred to as a "primary nonferrous smelter order". No primary nonferrous smelter may receive both an enforcement order under section 7413(d) [1] of this title and a primary nonferrous smelter order under this section.

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

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

(3) For the purposes of sections 7410, 7604, and 7607 of this title, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

(b) Prerequisites to issuance of orders

A primary nonferrous smelter order under this section may be issued to a primary nonferrous smelter if—

(1) such smelter is in existence on August 7, 1977;

(2) the requirement of the applicable implementation plan with respect to which the order is issued is an emission limitation or standard for sulfur oxides which is necessary and intended to be itself sufficient to enable attainment and maintenance of national primary and secondary ambient air quality standards for sulfur oxides; and

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

(c) Second orders

(1) A second order issued to a smelter under this section shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable. The increments of progress shall be limited to requiring compliance with subsection (d) and, in the case of a second order, to procuring, installing, and operating the necessary means of emission limitation as expeditiously as practicable after the Administrator

determines such means have been adequately demonstrated to be reasonably available within the meaning of subsection (b)(3).

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

(d) Interim measures; continuous emission reduction technology

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

(B) Such interim requirements shall include—

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

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

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

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

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

(2) The requirement of paragraph (1) for the use of continuous emission reduction technology may be waived with respect to a particular smelter by the State or the Administrator, after notice and a hearing on the record, and upon a showing by the owner or operator of the smelter that such requirement would be so costly as to necessitate permanent or prolonged temporary cessation of operations of the smelter. Upon application for such waiver, the Administrator shall be notified and shall, within ninety days, hold a hearing on the record in accordance with section 554 of title 5. At such hearing the Administrator shall require the smelter involved to present information relating to any alleged cessation of operations and the detailed reasons or justifications therefor. On the basis of such hearing the Administrator shall make findings of fact as to the effect of such requirement and on the alleged cessation of operations and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public, and shall be taken into account by the State or the Administrator in making the decision whether or not to grant such waiver.

(3) In order to obtain information for purposes of a waiver under paragraph (2), the Administrator may, on his own motion, conduct an investigation and use the authority of section 7621 of this title.

(4) In the case of any smelter which on August 7, 1977, uses continuous emission reduction technology and supplemental controls and which receives an initial primary nonferrous smelter order under this section, no additional continuous emission reduction technology shall be required as a condition of such order unless the Administrator determines, at any time, after notice and public hearing, that such additional continuous emission reduction technology is adequately demonstrated to be reasonably available for the primary nonferrous smelter industry.

(e) Termination of orders

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

(f) Violation of requirements

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

(1) enforce such requirement under section 7413 of this title,

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

(3) give notice of noncompliance and commence action under section 7420 of this title, or

(4) take any appropriate combination of such actions.

(July 14, 1955, ch. 360, title I, §119, as added Pub. L. 95–95, title I, §117(b), Aug. 7, 1977, 91 Stat. 712; amended Pub. L. 95–190, §14(a)(25)–(27), Nov. 16, 1977, 91 Stat. 1401.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (a)(2)(A), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

PRIOR PROVISIONS

A prior section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, §3, 88 Stat. 248, was classified to section 1857c–10 of this title and provided for the authority to deal with energy shortages, prior to repeal by Pub. L. 95–95, title I, §112(b)(1), Aug. 7, 1977, 91 Stat. 709, which provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95–190, §14(a)(25), added par. (3).

Subsec. (d)(3). Pub. L. 95–190, §14(a)(26), substituted "7621" for "7619".

Subsec. (e). Pub. L. 95–190, §14(a)(27), substituted "an order under this section" for "such order".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] *See References in Text note below.*

§7420. Noncompliance penalty

(a) Assessment and collection

(1)(A) Not later than 6 months after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against persons referred to in paragraph (2)(A).

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

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

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

(i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title), which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or

(ii) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under section 7411, 7477, 7603, or 7412 of this title, or

(iii) a stationary source which is not in compliance with any requirement of subchapter IV–A, V, or VI of this chapter, or

(iv) any source referred to in clause (i), (ii), or (iii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title which is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, suspension, or consent decree.

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

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

(i) a conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 7413(d)(5) [1] of this title or section 1857c–10 [1] of this title (as in effect before August 7, 1977);

(ii) in the case of a coal-burning source granted an extension under the second sentence of section 1857c–10(c)(1) [1] of this title (as in effect before August 7, 1977), a prohibition from using petroleum products or natural gas or both, by reason of an order under the provisions of section 792(a) and (b) of title 15 or under any legislation which amends or supersedes such provisions;

(iii) the use of innovative technology sanctioned by an enforcement order under section 7413(d)(4) [1] of this title;

(iv) an inability to comply with any such requirement, for which inability the source has received an order under section 7413(d) [1] of this title (or an order under section 7413 of this title

issued before August 7, 1977) which has the effect of permitting a delay or violation of any requirement of this chapter (including a requirement of an applicable implementation plan) which inability results from reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source; or

(v) the conditions by reason of which a temporary emergency suspension is authorized under section 7410(f) or (g) of this title.

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

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

(b) Regulations

Regulations under subsection (a) shall—

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

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

(A) the State does not have a delegation of authority in effect under subsection (a)(1)(B)(i), or

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

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

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

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

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

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

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

(7) require payment, in accordance with subsection (d), of the penalty by each person to whom notice of noncompliance is given under paragraph (3) with respect to each noncomplying source

for which such notice is given unless there has been a final determination granting a petition under paragraph (4)(B) with respect to such source;

(8) authorize the State or the Administrator to adjust (and from time to time to readjust) the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under paragraph (4), if the Administrator finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of this section; and

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

In any case in which the State establishes a noncompliance penalty under this section, the State shall provide notice thereof to the Administrator. A noncompliance penalty established by a State under this section shall apply unless the Administrator, within ninety days after the date of receipt of notice of the State penalty assessment under this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator. If the Administrator objects, he shall immediately establish a substitute noncompliance penalty applicable to such source.

(c) Contract to assist in determining amount of penalty assessment or payment schedule

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

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

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

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

(d) Payment

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

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

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

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

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

(3)(A) The assessed penalty required under this section shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments (determined without regard to any

adjustment or any subtraction under paragraph (2)(B)) after the first payment shall be equal.

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

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

(i) two years after August 7, 1977, in the case of a source for which notice of noncompliance under subsection (b)(3) is issued on or before the date two years after August 7, 1977, or

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

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

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

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

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

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

(e) Judicial review

Any action pursuant to this section, including any objection of the Administrator under the last sentence of subsection (b), shall be considered a final action for purposes of judicial review of any penalty under section 7607 of this title.

(f) Other orders, payments, sanctions, or requirements

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

(g) More stringent emission limitations or other requirements

In the case of any emission limitation or other requirement approved or promulgated by the Administrator under this chapter after August 7, 1977, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation or requirement approved or promulgated before August 7, 1977, the date for imposition of the non-compliance penalty under this section, shall be either July 1, 1979, or the date on which the source is required to be in full compliance with such emission limitation or requirement, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation or requirement.

(July 14, 1955, ch. 360, title I, §120, as added Pub. L. 95–95, title I, §118, Aug. 7, 1977, 91 Stat. 714; amended Pub. L. 95–190, §14(a)(28)–(38), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101–549, title

VII, §710(a), Nov. 15, 1990, 104 Stat. 2684.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (a)(2)(B), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

Section 1857c–10 of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(i), was in the original "section 119 (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, §3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Section 1857c–10(c)(1) of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(ii), was in the original "section 119(c)(1) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)." See paragraph set out above for explanation of codification.

AMENDMENTS

1990—Subsec. (a)(2)(A). Pub. L. 101–549 inserted reference to sections 7477 and 7603 of this title in cl. (ii), added cl. (iii), and redesignated former cl. (iii) as (iv) and inserted reference to cl. (iii).

1977—Subsec. (a)(2)(A). Pub. L. 95–190, §14(a)(28), (29), in cls. (i) and (iii) inserted provisions relating to consent decrees wherever appearing.

Subsec. (a)(2)(B). Pub. L. 95–190, §14(a)(30), (31), in cl. (i) inserted reference to section 7413(d)(5) of this title, and in cls. (i) and (ii) inserted provision relating to orders in effect under section 1857c–10 of this title before Aug. 7, 1977, wherever appearing.

Subsec. (b). Pub. L. 95–190, §14(a)(34)–(36), in closing provisions inserted provisions relating to notice to the Administrator when a noncompliance penalty is established by a State, and substituted references to noncompliance for references to delayed compliance in two places, "source" for "facility", and "receipt of notice of the State penalty assessment" for "publication of the proposed penalty".

Subsec. (b)(2)(A). Pub. L. 95–190, §14(a)(33), substituted "(a)(1)(B)(i)" for "(e)".

Subsec. (b)(8). Pub. L. 95–190, §14(a)(32), substituted "(4)" for "(6)".

Subsec. (d)(2)(A). Pub. L. 95–190, §14(a)(37), inserted provisions relating to inclusion of the economic value of a delay in compliance, and substituted "such a delay" for "a delay in compliance beyond July 1, 1979,".

Subsec. (e). Pub. L. 95–190, §14(a)(38), substituted "subsection, shall" for "subsection shall".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] *See References in Text note below.*

§7421. Consultation

In carrying out the requirements of this chapter requiring applicable implementation plans to contain—

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

(2) any measure referred to—

(A) in part D (pertaining to nonattainment requirements), or

(B) in part C (pertaining to prevention of significant deterioration),

and in carrying out the requirements of section 7413(d) [1] of this title (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after August 7, 1977, as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before November 15, 1990) to ensure adequate consultation. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection [2] may petition for judicial review of such action on the basis of a violation of the requirements of this section.

(July 14, 1955, ch. 360, title I, §121, as added Pub. L. 95–95, title I, §119, Aug. 7, 1977, 91 Stat. 719; amended Pub. L. 101–549, title I, §108(h), Nov. 15, 1990, 104 Stat. 2467.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in text, was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

AMENDMENTS

1990—Pub. L. 101–549 amended penultimate sentence generally. Prior to amendment, penultimate sentence read as follows: "Such regulations shall be promulgated after notice and opportunity for public hearing and not later than 6 months after August 7, 1977."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] *See References in Text note below.*

[2] *So in original.*

§7422. Listing of certain unregulated pollutants

(a) Radioactive pollutants, cadmium, arsenic, and polycyclic organic matter

Not later than one year after August 7, 1977 (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadmium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list

published under section 7408(a)(1) or 7412(b)(1)(A) [1] of this title (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 7411(b)(1)(A) of this title, or take any combination of such actions.

(b) Revision authority

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

(c) Consultation with Nuclear Regulatory Commission; interagency agreement; notice and hearing

(1) Before listing any source material, special nuclear,[2] or byproduct material (or component or derivative thereof) as provided in subsection (a), the Administrator shall consult with the Nuclear Regulatory Commission.

(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this chapter, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this chapter respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

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

(July 14, 1955, ch. 360, title I, §122, as added Pub. L. 95–95, title I, §120(a), Aug. 7, 1977, 91 Stat. 720.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7412(b)(1), referred to in subsec. (a), was amended generally by Pub. L. 101–549, title III, §301, Nov. 15, 1990, 104 Stat. 2531, and, as so amended, no longer contains a subpar. (A).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY BY ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY

Pub. L. 95–95, title I, §120(b), Aug. 7, 1977, 91 Stat. 721, directed Administrator of Environmental Protection Agency to conduct a study, in conjunction with other appropriate agencies, concerning effect on public health and welfare of sulfates, radioactive pollutants, cadmium, arsenic, and polycyclic organic matter which are present or may reasonably be anticipated to occur in the ambient air, such study to include a thorough investigation of how sulfates are formed and how to protect public health and welfare from the injurious effects, if any, of sulfates, cadmium, arsenic, and polycyclic organic matter.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

[1] *See References in Text note below.*

[2] *So in original. The word "material" probably should precede the comma.*

§7423. Stack heights

(a) Heights in excess of good engineering practice; other dispersion techniques

The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this subchapter shall not be affected in any manner by—

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

(2) any other dispersion technique.

The preceding sentence shall not apply with respect to stack heights in existence before December 31, 1970, or dispersion techniques implemented before such date. In establishing an emission limitation for coal-fired steam electric generating units which are subject to the provisions of section 7418 of this title and which commenced operation before July 1, 1957, the effect of the entire stack height of stacks for which a construction contract was awarded before February 8, 1974, may be taken into account.

(b) Dispersion technique

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

(c) Regulations; good engineering practice

Not later than six months after August 7, 1977, the Administrator, shall after notice and opportunity for public hearing, promulgate regulations to carry out this section. For purposes of this section, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles (as determined by the Administrator). For purposes of this section such height shall not exceed two and a half times the height of such source unless the owner or operator of the source demonstrates, after notice and opportunity for public hearing, to the satisfaction of the Administrator, that a greater height is necessary as provided under the preceding sentence. In no event may the Administrator prohibit any increase in any stack height or restrict in any manner the stack height of any source.

(July 14, 1955, ch. 360, title I, §123, as added Pub. L. 95–95, title I, §121, Aug. 7, 1977, 91 Stat. 721.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7424. Assurance of adequacy of State plans

(a) State review of implementation plans which relate to major fuel burning sources

As expeditiously as practicable but not later than one year after August 7, 1977, each State shall review the provisions of its implementation plan which relate to major fuel burning sources and shall determine—

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

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

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

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

(b) Plan revision

(1) Not later than eighteen months after August 7, 1977, the Administrator shall review the submissions of the States under subsection (a) and shall require each State to revise its plan if, in the judgment of the Administrator, such plan revision is necessary to assure that such plan will be adequate to assure compliance with the requirements of this chapter in such State on a reliable and long-term basis, taking into account the actual or potential prohibitions on use of petroleum products or natural gas, or both, under any other authority of law.

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

(July 14, 1955, ch. 360, title I, §124, as added Pub. L. 95–95, title I, §122, Aug. 7, 1977, 91 Stat. 722.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7425. Measures to prevent economic disruption or unemployment

(a) Determination that action is necessary

After notice and opportunity for a public hearing—

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

(2) the Administrator, or

(3) the President (or his designee),

may determine that action under subsection (b) of this section is necessary to prevent or minimize significant local or regional economic disruption or unemployment which would otherwise result from use by such source (or class or category) of—

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

(B) petroleum products,

(C) natural gas, or

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

to comply with the requirements of a State implementation plan.

(b) Use of locally or regionally available coal or coal derivatives to comply with implementation plan requirements

Upon a determination under subsection (a)—

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

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

(3) the President

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

(c) Contracts; schedules

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

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

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

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

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

(d) Existing or new major fuel burning stationary sources

This section applies only to existing or new major fuel burning stationary sources—

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

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

(e) Actions not to be deemed modifications of major fuel burning stationary sources

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

(f) Treatment of prohibitions, rules, or orders as requirements or parts of plans under other provisions

For purposes of sections 7413 and 7420 of this title a prohibition under subsection (b), and a corresponding rule or order under subsection (c), shall be treated as a requirement of section 7413 of this title. For purposes of any plan (or portion thereof) promulgated under section 7410(c) of this title, any rule or order under subsection (c) corresponding to a prohibition under subsection (b), shall be treated as a part of such plan. For purposes of section 7413 of this title, a prohibition under subsection (b), applicable to any source, and a corresponding rule or order under subsection (c), shall be treated as part of the applicable implementation plan for the State in which subject source is located.

(g) Delegation of Presidential authority

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

(h) "Locally or regionally available coal or coal derivatives" defined

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

(July 14, 1955, ch. 360, title I, §125, as added Pub. L. 95–95, title I, §122, Aug. 7, 1977, 91 Stat. 722.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7426. Interstate pollution abatement

(a) Written notice to all nearby States

Each applicable implementation plan shall—

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

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

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

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

(2) identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after August 7, 1977.

(b) Petition for finding that major sources emit or would emit prohibited air pollutants

Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section. Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

(c) Violations; allowable continued operation

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

(1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section, or

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

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission

limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 7410(a)(2)(D)(ii) of this title or this section as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from being eligible for an enforcement order under section 7413(d) [1] of this title after the expiration of such period during which the Administrator has permitted continuous operation.

(July 14, 1955, ch. 360, title I, §126, as added Pub. L. 95–95, title I, §123, Aug. 7, 1977, 91 Stat. 724; amended Pub. L. 95–190, §14(a)(39), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101–549, title I, §109(a), Nov. 15, 1990, 104 Stat. 2469.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (c), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–549, §109(a)(1), inserted "or group of stationary sources" after "any major source" and substituted "section 7410(a)(2)(D)(ii) of this title or this section" for "section 7410(a)(2)(E)(i) of this title".

Subsec. (c). Pub. L. 101–549, §109(a)(2)(A), which directed the insertion of "this section and" after "violation of", was executed by making the insertion after first reference to "violation of" to reflect the probable intent of Congress.

Pub. L. 101–549, §109(a)(2)(B), substituted "section 7410(a)(2)(D)(ii) of this title or this section" for "section 7410(a)(2)(E)(i) of this title" in par. (1) and penultimate sentence.

1977—Subsec. (a)(1). Pub. L. 95–190 substituted "(relating to significant deterioration of air quality)" for ", relating to significant deterioration of air quality".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] *See References in Text note below.*

§7427. Public notification

(a) Warning signs; television, radio, or press notices or information

Each State plan shall contain measures which will be effective to notify the public during any calendar [1] on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information.

(b) Grants

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

(July 14, 1955, ch. 360, title I, §127, as added Pub. L. 95–95, title I, §124, Aug. 7, 1977, 91 Stat. 725.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. Probably should be "calendar year".

§7428. State boards

(a) [1] Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

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

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

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

(July 14, 1955, ch. 360, title I, §128, as added Pub. L. 95–95, title I, §125, Aug. 7, 1977, 91 Stat. 725.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. Section enacted without a subsec. (b).

§7429. Solid waste combustion

(a) New source performance standards

(1) In general

(A) The Administrator shall establish performance standards and other requirements pursuant to section 7411 of this title and this section for each category of solid waste incineration units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines (under section 7411(d) of this title and this section) and other requirements applicable to existing units.

(B) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity greater than 250 tons per day combusting municipal waste shall be promulgated not later than 12 months after November 15, 1990. Nothing in this subparagraph shall alter any schedule for the promulgation of standards applicable to such units under section 7411 of

this title pursuant to any settlement and consent decree entered by the Administrator before November 15, 1990: *Provided*, That, such standards are subsequently modified pursuant to the schedule established in this subparagraph to include each of the requirements of this section.

(C) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity equal to or less than 250 tons per day combusting municipal waste and units combusting hospital waste, medical waste and infectious waste shall be promulgated not later than 24 months after November 15, 1990.

(D) Standards under section 7411 of this title and this section applicable to solid waste incineration units combusting commercial or industrial waste shall be proposed not later than 36 months after November 15, 1990, and promulgated not later than 48 months after November 15, 1990.

(E) Not later than 18 months after November 15, 1990, the Administrator shall publish a schedule for the promulgation of standards under section 7411 of this title and this section applicable to other categories of solid waste incineration units.

(2) Emissions standard

Standards applicable to solid waste incineration units promulgated under section 7411 of this title and this section shall reflect the maximum degree of reduction in emissions of air pollutants listed under section [1] (a)(4) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards. The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator. Emissions standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category (excluding units which first met lowest achievable emissions rates 18 months before the date such standards are proposed or 30 months before the date such standards are promulgated, whichever is later).

(3) Control methods and technologies

Standards under section 7411 of this title and this section applicable to solid waste incineration units shall be based on methods and technologies for removal or destruction of pollutants before, during, or after combustion, and shall incorporate for new units siting requirements that minimize, on a site specific basis, to the maximum extent practicable, potential risks to public health or the environment.

(4) Numerical emissions limitations

The performance standards promulgated under section 7411 of this title and this section and applicable to solid waste incineration units shall specify numerical emission limitations for the following substances or mixtures: particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. The Administrator may promulgate numerical emissions limitations or provide for the monitoring of postcombustion concentrations of surrogate substances, parameters or periods of residence time in excess of stated temperatures with respect to pollutants other than those listed in this paragraph.

(5) Review and revision

Not later than 5 years following the initial promulgation of any performance standards and other requirements under this section and section 7411 of this title applicable to a category of solid waste incineration units, and at 5 year intervals thereafter, the Administrator shall review, and in accordance with this section and section 7411 of this title, revise such standards and requirements.

(b) Existing units

(1) Guidelines

Performance standards under this section and section 7411 of this title for solid waste incineration units shall include guidelines promulgated pursuant to section 7411(d) of this title and this section applicable to existing units. Such guidelines shall include, as provided in this section, each of the elements required by subsection (a) (emissions limitations, notwithstanding any restriction in section 7411(d) of this title regarding issuance of such limitations), subsection (c) (monitoring), subsection (d) (operator training), subsection (e) (permits), and subsection (h)(4) [2] (residual risk).

(2) State plans

Not later than 1 year after the Administrator promulgates guidelines for a category of solid waste incineration units, each State in which units in the category are operating shall submit to the Administrator a plan to implement and enforce the guidelines with respect to such units. The State plan shall be at least as protective as the guidelines promulgated by the Administrator and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of this section not later than 3 years after the State plan is approved by the Administrator but not later than 5 years after the guidelines were promulgated. The Administrator shall approve or disapprove any State plan within 180 days of the submission, and if a plan is disapproved, the Administrator shall state the reasons for disapproval in writing. Any State may modify and resubmit a plan which has been disapproved by the Administrator.

(3) Federal plan

The Administrator shall develop, implement and enforce a plan for existing solid waste incineration units within any category located in any State which has not submitted an approvable plan under this subsection with respect to units in such category within 2 years after the date on which the Administrator promulgated the relevant guidelines. Such plan shall assure that each unit subject to the plan is in compliance with all provisions of the guidelines not later than 5 years after the date the relevant guidelines are promulgated.

(c) Monitoring

The Administrator shall, as part of each performance standard promulgated pursuant to subsection (a) and section 7411 of this title, promulgate regulations requiring the owner or operator of each solid waste incineration unit—

(1) to monitor emissions from the unit at the point at which such emissions are emitted into the ambient air (or within the stack, combustion chamber or pollution control equipment, as appropriate) and at such other points as necessary to protect public health and the environment;

(2) to monitor such other parameters relating to the operation of the unit and its pollution control technology as the Administrator determines are appropriate; and

(3) to report the results of such monitoring.

Such regulations shall contain provisions regarding the frequency of monitoring, test methods and procedures validated on solid waste incineration units, and the form and frequency of reports containing the results of monitoring and shall require that any monitoring reports or test results indicating an exceedance of any standard under this section shall be reported separately and in a manner that facilitates review for purposes of enforcement actions. Such regulations shall require that copies of the results of such monitoring be maintained on file at the facility concerned and that copies shall be made available for inspection and copying by interested members of the public during business hours.

(d) Operator training

Not later than 24 months after November 15, 1990, the Administrator shall develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators. The Administrator may authorize any State to

implement a model program for the training of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators, if the State has adopted a program which is at least as effective as the model program developed by the Administrator. Beginning on the date 36 months after the date on which performance standards and guidelines are promulgated under subsection (a) and section 7411 of this title for any category of solid waste incineration units it shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from such unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this subsection.

(e) Permits

Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) and section 7411 of this title applicable to a category of solid waste incineration units, or (2) the effective date of a permit program under subchapter V in the State in which the unit is located, whichever is later, each unit in the category shall operate pursuant to a permit issued under this subsection and subchapter V. Permits required by this subsection may be renewed according to the provisions of subchapter V. Notwithstanding any other provision of this chapter, each permit for a solid waste incineration unit combusting municipal waste issued under this chapter shall be issued for a period of up to 12 years and shall be reviewed every 5 years after date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Administrator or State determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed 5 years, and only after public comment and public hearing. No permit for a solid waste incineration unit may be issued under this chapter by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit. Notwithstanding any other provision of this subsection, the Administrator or the State shall require the owner or operator of any unit to comply with emissions limitations or implement any other measures, if the Administrator or the State determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment. The Administrator's determination under the preceding sentence is a discretionary decision.

(f) Effective date and enforcement

(1) New units

Performance standards and other requirements promulgated pursuant to this section and section 7411 of this title and applicable to new solid waste incineration units shall be effective as of the date 6 months after the date of promulgation.

(2) Existing units

Performance standards and other requirements promulgated pursuant to this section and section 7411 of this title and applicable to existing solid waste incineration units shall be effective as expeditiously as practicable after approval of a State plan under subsection (b)(2) (or promulgation of a plan by the Administrator under subsection (b)(3)) but in no event later than 3 years after the State plan is approved or 5 years after the date such standards or requirements are promulgated, whichever is earlier.

(3) Prohibition

After the effective date of any performance standard, emission limitation or other requirement promulgated pursuant to this section and section 7411 of this title, it shall be unlawful for any owner or operator of any solid waste incineration unit to which such standard, limitation or requirement applies to operate such unit in violation of such limitation, standard or requirement or for any other person to violate an applicable requirement of this section.

(4) Coordination with other authorities

For purposes of sections 7411(e), 7413, 7414, 7416, 7420, 7603, 7604, 7607 of this title and other provisions for the enforcement of this chapter, each performance standard, emission

limitation or other requirement established pursuant to this section by the Administrator or a State or local government, shall be treated in the same manner as a standard of performance under section 7411 of this title which is an emission limitation.

(g) Definitions

For purposes of section 306 of the Clean Air Act Amendments of 1990 and this section only—

(1) Solid waste incineration unit

The term "solid waste incineration unit" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C. 6925]. The term "solid waste incineration unit" does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in section 796(17)(C) of title 16, or qualifying cogeneration facilities, as defined in section 796(18)(B) of title 16, which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

(2) New solid waste incineration unit

The term "new solid waste incineration unit" means a solid waste incineration unit the construction of which is commenced after the Administrator proposes requirements under this section establishing emissions standards or other requirements which would be applicable to such unit or a modified solid waste incineration unit.

(3) Modified solid waste incineration unit

The term "modified solid waste incineration unit" means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under subsection (a) if (A) the cumulative cost of the modifications, over the life of the unit, exceed 50 per centum of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or (B) the modification is a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under this section or section 7411 of this title.

(4) Existing solid waste incineration unit

The term "existing solid waste incineration unit" means a solid waste unit which is not a new or modified solid waste incineration unit.

(5) Municipal waste

The term "municipal waste" means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of section 7411 of this title or this section if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

(6) Other terms

The terms "solid waste" and "medical waste" shall have the meanings established by the

Administrator pursuant to the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(h) Other authority

(1) State authority

Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard relating to solid waste incineration units that is more stringent than a regulation, requirement, limitation or standard in effect under this section or under any other provision of this chapter.

(2) Other authority under this chapter

Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to solid waste incineration units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no solid waste incineration unit subject to performance standards under this section and section 7411 of this title shall be subject to standards under section 7412(d) of this title.

(3) Residual risk

The Administrator shall promulgate standards under section 7412(f) of this title for a category of solid waste incineration units, if promulgation of such standards is required under section 7412(f) of this title. For purposes of this [3] preceding sentence only—

(A) the performance standards under subsection (a) and section 7411 of this title applicable to a category of solid waste incineration units shall be deemed standards under section 7412(d)(2) of this title, and

(B) the Administrator shall consider and regulate, if required, the pollutants listed under subsection (a)(4) and no others.

(4) Acid rain

A solid waste incineration unit shall not be a utility unit as defined in subchapter IV–A: *Provided*, That, more than 80 per centum of its annual average fuel consumption measured on a Btu basis, during a period or periods to be determined by the Administrator, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

(5) Requirements of parts C and D

No requirement of an applicable implementation plan under section 7475 of this title (relating to construction of facilities in regions identified pursuant to section 7407(d)(1)(A)(ii) or (iii) of this title) or under section 7502(c)(5) of this title (relating to permits for construction and operation in nonattainment areas) may be used to weaken the standards in effect under this section.

(July 14, 1955, ch. 360, title I, §129, as added Pub. L. 101–549, title III, §305(a), Nov. 15, 1990, 104 Stat. 2577.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 306 of the Clean Air Act Amendments of 1990, referred to in subsec. (g), probably means section 306 of Pub. L. 101–549, which is set out as a note under section 6921 of this title.

The Solid Waste Disposal Act, referred to in subsec. (g)(6), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REVIEW OF ACID GAS SCRUBBING REQUIREMENTS

Pub. L. 101–549, title III, §305(c), Nov. 15, 1990, 104 Stat. 2583, provided that: "Prior to the promulgation

of any performance standard for solid waste incineration units combusting municipal waste under section 111 or section 129 of the Clean Air Act [42 U.S.C. 7411, 7429], the Administrator shall review the availability of acid gas scrubbers as a pollution control technology for small new units and for existing units (as defined in 54 Federal Register 52190 (December 20, 1989)[)], taking into account the provisions of subsection (a)(2) of section 129 of the Clean Air Act."

[1] So in original. Probably should be "subsection".

[2] So in original. Probably should be subsection "(h)(3)".

[3] So in original. Probably should be "the".

§7430. Emission factors

Within 6 months after November 15, 1990, and at least every 3 years thereafter, the Administrator shall review and, if necessary, revise, the methods ("emission factors") used for purposes of this chapter to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen from sources of such air pollutants (including area sources and mobile sources). In addition, the Administrator shall establish emission factors for sources for which no such methods have previously been established by the Administrator. The Administrator shall permit any person to demonstrate improved emissions estimating techniques, and following approval of such techniques, the Administrator shall authorize the use of such techniques. Any such technique may be approved only after appropriate public participation. Until the Administrator has completed the revision required by this section, nothing in this section shall be construed to affect the validity of emission factors established by the Administrator before November 15, 1990.

(July 14, 1955, ch. 360, title I, §130, as added Pub. L. 101–549, title VIII, §804, Nov. 15, 1990, 104 Stat. 2689.)

§7431. Land use authority

Nothing in this chapter constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this chapter provides or transfers authority over such land use.

(July 14, 1955, ch. 360, title I, §131, as added Pub. L. 101–549, title VIII, §805, Nov. 15, 1990, 104 Stat. 2689.)

§7432. Clean heavy-duty vehicles

(a) Appropriations

(1) In general

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, $600,000,000, to remain available until September 30, 2031, to carry out this section.

(2) Nonattainment areas

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, $400,000,000, to remain available until September 30, 2031, to make awards under this section to eligible recipients and to eligible contractors that propose to replace eligible vehicles to serve 1 or more communities located in an air quality area designated pursuant to section 7407 of this title as nonattainment for any air pollutant.

(3) Reservation

Of the funds appropriated by paragraph (1), the Administrator shall reserve 3 percent for administrative costs necessary to carry out this section.

(b) Program

Beginning not later than 180 days after August 16, 2022, the Administrator shall implement a program to make awards of grants and rebates to eligible recipients, and to make awards of contracts to eligible contractors for providing rebates, for up to 100 percent of costs for—

(1) the incremental costs of replacing an eligible vehicle that is not a zero-emission vehicle with a zero-emission vehicle, as determined by the Administrator based on the market value of the vehicles;

(2) purchasing, installing, operating, and maintaining infrastructure needed to charge, fuel, or maintain zero-emission vehicles;

(3) workforce development and training to support the maintenance, charging, fueling, and operation of zero-emission vehicles; and

(4) planning and technical activities to support the adoption and deployment of zero-emission vehicles.

(c) Applications

To seek an award under this section, an eligible recipient or eligible contractor shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator shall prescribe.

(d) Definitions

For purposes of this section:

(1) Eligible contractor

The term "eligible contractor" means a contractor that has the capacity—

(A) to sell, lease, license, or contract for service zero-emission vehicles, or charging or other equipment needed to charge, fuel, or maintain zero-emission vehicles, to individuals or entities that own, lease, license, or contract for service an eligible vehicle; or

(B) to arrange financing for such a sale, lease, license, or contract for service.

(2) Eligible recipient

The term "eligible recipient" means—

(A) a State;

(B) a municipality;

(C) an Indian tribe; or

(D) a nonprofit school transportation association.

(3) Eligible vehicle

The term "eligible vehicle" means a Class 6 or Class 7 heavy-duty vehicle as defined in section 1037.801 of title 40, Code of Federal Regulations (as in effect on August 16, 2022).

(4) Greenhouse gas

The term "greenhouse gas" means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.

(5) Zero-emission vehicle

The term "zero-emission vehicle" means a vehicle that has a drivetrain that produces, under any possible operational mode or condition, zero exhaust emissions of—

(A) any air pollutant that is listed pursuant to section 7408(a) of this title (or any precursor to such an air pollutant); and

(B) any greenhouse gas.

(July 14, 1955, ch. 360, title I, §132, as added Pub. L. 117–169, title VI, §60101, Aug. 16, 2022, 136 Stat. 2063.)

§7433. Grants to reduce air pollution at ports

(a) Appropriations

(1) General assistance

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, $2,250,000,000, to remain available until September 30, 2027, to award rebates and grants to eligible recipients on a competitive basis—

(A) to purchase or install zero-emission port equipment or technology for use at, or to directly serve, one or more ports;

(B) to conduct any relevant planning or permitting in connection with the purchase or installation of such zero-emission port equipment or technology; and

(C) to develop qualified climate action plans.

(2) Nonattainment areas

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, $750,000,000, to remain available until September 30, 2027, to award rebates and grants to eligible recipients to carry out activities described in paragraph (1) with respect to ports located in air quality areas designated pursuant to section 7407 of this title as nonattainment for an air pollutant.

(b) Limitation

Funds awarded under this section shall not be used by any recipient or subrecipient to purchase or install zero-emission port equipment or technology that will not be located at, or directly serve, the one or more ports involved.

(c) Administration of funds

Of the funds made available by this section, the Administrator shall reserve 2 percent for administrative costs necessary to carry out this section.

(d) Definitions

In this section:

(1) Eligible recipient

The term "eligible recipient" means—

(A) a port authority;

(B) a State, regional, local, or Tribal agency that has jurisdiction over a port authority or a port;

(C) an air pollution control agency; or

(D) a private entity that—

(i) applies for a grant under this section in partnership with an entity described in any of subparagraphs (A) through (C); and

(ii) owns, operates, or uses the facilities, cargo-handling equipment, transportation equipment, or related technology of a port.

(2) Greenhouse gas

The term "greenhouse gas" means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.

(3) Qualified climate action plan

The term "qualified climate action plan" means a detailed and strategic plan that—

(A) establishes goals, implementation strategies, and accounting and inventory practices to reduce emissions at one or more ports of—

(i) greenhouse gases;

(ii) an air pollutant that is listed pursuant to section 7408(a) of this title (or any precursor to such an air pollutant); and

(iii) hazardous air pollutants;

(B) includes a strategy to collaborate with, communicate with, and address potential effects on low-income and disadvantaged near-port communities and other stakeholders that may be affected by implementation of the plan; and

(C) describes how an eligible recipient has implemented or will implement measures to increase the resilience of the one or more ports involved.

(4) Zero-emission port equipment or technology

The term "zero-emission port equipment or technology" means human-operated equipment or human-maintained technology that—

(A) produces zero emissions of any air pollutant that is listed pursuant to section 7408(a) of this title (or any precursor to such an air pollutant) and any greenhouse gas other than water vapor; or

(B) captures 100 percent of the emissions described in subparagraph (A) that are produced by an ocean-going vessel at berth.

(July 14, 1955, ch. 360, title I, §133, as added Pub. L. 117–169, title VI, §60102, Aug. 16, 2022, 136 Stat. 2064.)

§7434. Repealed. Pub. L. 119–21, title VI, §60002, July 4, 2025, 139 Stat. 154

Section, act July 14, 1955, ch. 360, title I, §134, as added Pub. L. 117–169, title VI, §60103, Aug. 16, 2022, 136 Stat. 2066, provided appropriations and fundings standards for a greenhouse gas reduction fund.

§7435. Low emissions electricity program

(a) Appropriation

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, to remain available until September 30, 2031—

(1) $17,000,000 for consumer-related education and partnerships with respect to reductions in greenhouse gas emissions that result from domestic electricity generation and use;

(2) $17,000,000 for education, technical assistance, and partnerships within low-income and disadvantaged communities with respect to reductions in greenhouse gas emissions that result from domestic electricity generation and use;

(3) $17,000,000 for industry-related outreach, technical assistance, and partnerships with respect to reductions in greenhouse gas emissions that result from domestic electricity generation and use;

(4) $17,000,000 for outreach and technical assistance to, and partnerships with, State, Tribal, and local governments with respect to reductions in greenhouse gas emissions that result from domestic electricity generation and use;

(5) $1,000,000 to assess, not later than 1 year after August 16, 2022, the reductions in greenhouse gas emissions that result from changes in domestic electricity generation and use that are anticipated to occur on an annual basis through fiscal year 2031; and

(6) $18,000,000 to ensure that reductions in greenhouse gas emissions are achieved through use of the existing authorities of this chapter, incorporating the assessment under paragraph (5).

(b) Administration of funds

Of the amounts made available under subsection (a), the Administrator shall reserve 2 percent for the administrative costs necessary to carry out activities pursuant to that subsection.

(c) Definition of greenhouse gas

In this section, the term "greenhouse gas" means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.

(July 14, 1955, ch. 360, title I, §135, as added Pub. L. 117–169, title VI, §60107, Aug. 16, 2022, 136 Stat. 2069.)

§7436. Methane emissions and waste reduction incentive program for petroleum and natural gas systems

(a) Incentives for methane mitigation and monitoring

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, $850,000,000, to remain available until September 30, 2028—

(1) for grants, rebates, contracts, loans, and other activities of the Environmental Protection Agency for the purposes of providing financial and technical assistance to owners and operators of applicable facilities to prepare and submit greenhouse gas reports under subpart W of part 98 of title 40, Code of Federal Regulations;

(2) for grants, rebates, contracts, loans, and other activities of the Environmental Protection Agency authorized under subsections (a) through (c) of section 7403 of this title for methane emissions monitoring;

(3) for grants, rebates, contracts, loans, and other activities of the Environmental Protection Agency for the purposes of providing financial and technical assistance to reduce methane and other greenhouse gas emissions from petroleum and natural gas systems, mitigate legacy air pollution from petroleum and natural gas systems, and provide funding for—

(A) improving climate resiliency of communities and petroleum and natural gas systems;

(B) improving and deploying industrial equipment and processes that reduce methane and other greenhouse gas emissions and waste;

(C) supporting innovation in reducing methane and other greenhouse gas emissions and waste from petroleum and natural gas systems;

(D) permanently shutting in and plugging wells on non-Federal land;

(E) mitigating health effects of methane and other greenhouse gas emissions, and legacy air pollution from petroleum and natural gas systems in low-income and disadvantaged communities; and

(F) supporting environmental restoration; and

(4) to cover all direct and indirect costs required to administer this section, prepare inventories, gather empirical data, and track emissions.

(b) Incentives for methane mitigation from conventional wells

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, $700,000,000, to remain available until September 30, 2028, for activities described in paragraphs (1) through (4) of subsection (a) at marginal conventional wells.

(c) Waste emissions charge

The Administrator shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to subpart W of part 98 of title 40, Code of Federal Regulations, regardless of the reporting threshold under that subpart.

(d) Applicable facility

For purposes of this section, the term "applicable facility" means a facility within the following

industry segments, as defined in subpart W of part 98 of title 40, Code of Federal Regulations:

(1) Offshore petroleum and natural gas production.
(2) Onshore petroleum and natural gas production.
(3) Onshore natural gas processing.
(4) Onshore natural gas transmission compression.
(5) Underground natural gas storage.
(6) Liquefied natural gas storage.
(7) Liquefied natural gas import and export equipment.
(8) Onshore petroleum and natural gas gathering and boosting.
(9) Onshore natural gas transmission pipeline.

(e) Charge amount

The amount of a charge under subsection (c) for an applicable facility shall be equal to the product obtained by multiplying—

(1) the number of metric tons of methane emissions reported pursuant to subpart W of part 98 of title 40, Code of Federal Regulations, for the applicable facility that exceed the applicable annual waste emissions threshold listed in subsection (f) during the previous reporting period; and

(2)(A) $900 for emissions reported for calendar year 2024;

(B) $1,200 for emissions reported for calendar year 2025; or

(C) $1,500 for emissions reported for calendar year 2026 and each year thereafter.

(f) Waste emissions threshold

(1) Petroleum and natural gas production

With respect to imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed in paragraph (1) or (2) of subsection (d), the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed—

(A) 0.20 percent of the natural gas sent to sale from such facility; or

(B) 10 metric tons of methane per million barrels of oil sent to sale from such facility, if such facility sent no natural gas to sale.

(2) Nonproduction petroleum and natural gas systems

With respect to imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed in paragraph (3), (6), (7), or (8) of subsection (d), the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.05 percent of the natural gas sent to sale from or through such facility.

(3) Natural gas transmission

With respect to imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed in paragraph (4), (5), or (9) of subsection (d), the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.11 percent of the natural gas sent to sale from or through such facility.

(4) Common ownership or control

In calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d).

(5) Exemption

Charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay, as determined by the Administrator, in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation.

(6) Exemption for regulatory compliance

(A) In general

Charges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 7411 of this title upon a determination by the Administrator that—

(i) methane emissions standards and plans pursuant to subsections (b) and (d) of section 7411 of this title have been approved and are in effect in all States with respect to the applicable facilities; and

(ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the proposed rule of the Administrator entitled "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" (86 Fed. Reg. 63110 (November 15, 2021)), if such rule had been finalized and implemented.

(B) Resumption of charge

If the conditions in clause (i) or (ii) of subparagraph (A) cease to apply after the Administrator has made the determination in that subparagraph, the applicable facility will again be subject to the charge under subsection (c) beginning in the first calendar year in which the conditions in either clause (i) or (ii) of that subparagraph are no longer met.

(7) Plugged wells

Charges shall not be imposed with respect to the emissions rate from any well that has been permanently shut-in and plugged in the previous year in accordance with all applicable closure requirements, as determined by the Administrator.

(g) Period

The charge under subsection (c) shall be imposed and collected beginning with respect to emissions reported for calendar year 2034 and for each year thereafter.

(h) Reporting

Not later than 2 years after August 16, 2022, the Administrator shall revise the requirements of subpart W of part 98 of title 40, Code of Federal Regulations, to ensure the reporting under such subpart, and calculation of charges under subsections (e) and (f) of this section, are based on empirical data, including data collected pursuant to subsection (a)(4), accurately reflect the total methane emissions and waste emissions from the applicable facilities, and allow owners and operators of applicable facilities to submit empirical emissions data, in a manner to be prescribed by the Administrator, to demonstrate the extent to which a charge under subsection (c) is owed.

(i) Definition of greenhouse gas

In this section, the term "greenhouse gas" means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.

(July 14, 1955, ch. 360, title I, §136, as added Pub. L. 117–169, title VI, §60113, Aug. 16, 2022, 136 Stat. 2073; amended Pub. L. 119–21, title VI, §60012(b), July 4, 2025, 139 Stat. 156.)

EDITORIAL NOTES

AMENDMENTS

2025—Subsec. (g). Pub. L. 119–21 substituted "calendar year 2034" for "calendar year 2024".

§7437. Greenhouse gas air pollution plans and implementation grants

(a) Appropriations

(1) Greenhouse gas air pollution planning grants

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any amounts in the Treasury not otherwise appropriated, $250,000,000, to remain available until September 30, 2031, to carry out subsection (b).

(2) Greenhouse gas air pollution implementation grants

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any amounts in the Treasury not otherwise appropriated, $4,750,000,000, to remain available until September 30, 2026, to carry out subsection (c).

(3) Administrative costs

Of the funds made available under paragraph (2), the Administrator shall reserve 3 percent for administrative costs necessary to carry out this section, to provide technical assistance to eligible entities, to develop a plan that could be used as a model by grantees in developing a plan under subsection (b), and to model the effects of plans described in this section.

(b) Greenhouse gas air pollution planning grants

The Administrator shall make a grant to at least one eligible entity in each State for the costs of developing a plan for the reduction of greenhouse gas air pollution to be submitted with an application for a grant under subsection (c). Each such plan shall include programs, policies, measures, and projects that will achieve or facilitate the reduction of greenhouse gas air pollution. Not later than 270 days after August 16, 2022, the Administrator shall publish a funding opportunity announcement for grants under this subsection.

(c) Greenhouse gas air pollution reduction implementation grants

(1) In general

The Administrator shall competitively award grants to eligible entities to implement plans developed under subsection (b).

(2) Application

To apply for a grant under this subsection, an eligible entity shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator shall require, which such application shall include information regarding the degree to which greenhouse gas air pollution is projected to be reduced in total and with respect to low-income and disadvantaged communities.

(3) Terms and conditions

The Administrator shall make funds available to a grantee under this subsection in such amounts, upon such a schedule, and subject to such conditions based on its performance in implementing its plan submitted under this section and in achieving projected greenhouse gas air pollution reduction, as determined by the Administrator.

(d) Definitions

In this section:

(1) Eligible entity

The term "eligible entity" means—

(A) a State;
(B) an air pollution control agency;
(C) a municipality;
(D) an Indian tribe; and
(E) a group of one or more entities listed in subparagraphs (A) through (D).

(2) Greenhouse gas

The term "greenhouse gas" means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.

(July 14, 1955, ch. 360, title I, §137, as added Pub. L. 117–169, title VI, §60114, Aug. 16, 2022, 136

Stat. 2076.)

§7438. Environmental and climate justice block grants

(a) Appropriation

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated—

(1) $2,800,000,000 to remain available until September 30, 2026, to award grants for the activities described in subsection (b); and

(2) $200,000,000 to remain available until September 30, 2026, to provide technical assistance to eligible entities related to grants awarded under this section.

(b) Grants

(1) In general

The Administrator shall use amounts made available under subsection (a)(1) to award grants for periods of up to 3 years to eligible entities to carry out activities described in paragraph (2) that benefit disadvantaged communities, as defined by the Administrator.

(2) Eligible activities

An eligible entity may use a grant awarded under this subsection for—

(A) community-led air and other pollution monitoring, prevention, and remediation, and investments in low- and zero-emission and resilient technologies and related infrastructure and workforce development that help reduce greenhouse gas emissions and other air pollutants;

(B) mitigating climate and health risks from urban heat islands, extreme heat, wood heater emissions, and wildfire events;

(C) climate resiliency and adaptation;

(D) reducing indoor toxics and indoor air pollution; or

(E) facilitating engagement of disadvantaged communities in State and Federal advisory groups, workshops, rulemakings, and other public processes.

(3) Eligible entities

In this subsection, the term "eligible entity" means—

(A) a partnership between—

(i) an Indian tribe, a local government, or an institution of higher education; and

(ii) a community-based nonprofit organization;

(B) a community-based nonprofit organization; or

(C) a partnership of community-based nonprofit organizations.

(c) Administrative costs

The Administrator shall reserve 7 percent of the amounts made available under subsection (a) for administrative costs to carry out this section.

(d) Definition of greenhouse gas

In this section, the term "greenhouse gas" means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.

(July 14, 1955, ch. 360, title I, §138, as added Pub. L. 117–169, title VI, §60201, Aug. 16, 2022, 136 Stat. 2078.)

PART B—OZONE PROTECTION

§§7450 to 7459. Repealed. Pub. L. 101–549, title VI, §601, Nov. 15, 1990, 104 Stat. 2648

Section 7450, act July 14, 1955, ch. 360, title I, §150, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 725, set forth Congressional declaration of purpose.

Section 7451, act July 14, 1955, ch. 360, title I, §151, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 726, set forth Congressional findings.

Section 7452, act July 14, 1955, ch. 360, title I, §152, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 726, set forth definitions applicable to this part.

Section 7453, act July 14, 1955, ch. 360, title I, §153, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 726, related to studies by Environmental Protection Agency.

Section 7454, act July 14, 1955, ch. 360, title I, §154, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 728; amended Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, related to research and monitoring activities by Federal agencies.

Section 7455, act July 14, 1955, ch. 360, title I, §155, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 729, related to reports on progress of regulation.

Section 7456, act July 14, 1955, ch. 360, title I, §156, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 729, authorized President to enter into international agreements to foster cooperative research.

Section 7457, act July 14, 1955, ch. 360, title I, §157, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 729, related to promulgation of regulations.

Section 7458, act July 14, 1955, ch. 360, title I, §158, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 730, set forth other provisions of law that would be unaffected by this part.

Section 7459, act July 14, 1955, ch. 360, title I, §159, as added Aug. 7, 1977, Pub. L. 95–95, title I, §126, 91 Stat. 730, related to authority of States to protect the stratosphere.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SIMILAR PROVISIONS

For provisions relating to stratospheric ozone protection, see section 7671 et seq. of this title.

PART C—PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

SUBPART I—CLEAN AIR

§7470. Congressional declaration of purpose

The purposes of this part are as follows:

(1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipate [1] to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air) [2], notwithstanding attainment and maintenance of all national ambient air quality standards;

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

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

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

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

(July 14, 1955, ch. 360, title I, §160, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 731.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

GUIDANCE DOCUMENT

Pub. L. 95–95, title I, §127(c), Aug. 7, 1977, 91 Stat. 741, required Administrator, not later than 1 year after Aug. 7, 1977, to publish a guidance document to assist States in carrying out their functions under part C of title I of the Clean Air Act (this part) with respect to pollutants for which national ambient air quality standards are promulgated.

STUDY AND REPORT ON PROGRESS MADE IN PROGRAM RELATING TO SIGNIFICANT DETERIORATION OF AIR QUALITY

Pub. L. 95–95, title I, §127(d), Aug. 7, 1977, 91 Stat. 742, directed Administrator, not later than 2 years after Aug. 7, 1977, to complete a study and report to Congress on progress made in carrying out part C of title I of the Clean Air Act (this part) and the problems associated in carrying out such section.

[1] So in original. Probably should be "anticipated".

[2] So in original. Section was enacted without an opening parenthesis.

§7471. Plan requirements

In accordance with the policy of section 7401(b)(1) of this title, each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to section 7407 of this title as attainment or unclassifiable.

(July 14, 1955, ch. 360, title I, §161, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 731; amended Pub. L. 101–549, title I, §110(1), Nov. 15, 1990, 104 Stat. 2470.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–549 substituted "designated pursuant to section 7407 of this title as attainment or unclassifiable" for "identified pursuant to section 7407(d)(1)(D) or (E) of this title".

§7472. Initial classifications

(a) Areas designated as class I

Upon the enactment of this part, all—

(1) international parks,

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

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

(4) national parks which exceed six thousand acres in size,

and which are in existence on August 7, 1977, shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before August 7, 1977, shall be class I areas which may be redesignated as provided in this part. The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(b) Areas designated as class II

All areas in such State designated pursuant to section 7407(d) of this title as attainment or unclassifiable which are not established as class I under subsection (a) shall be class II areas unless redesignated under section 7474 of this title.

(July 14, 1955, ch. 360, title I, §162, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 731; amended Pub. L. 95–190, §14(a)(40), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101–549, title I, §§108(m), 110(2), Nov. 15, 1990, 104 Stat. 2469, 2470.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, §108(m), inserted at end "The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990."

Subsec. (b). Pub. L. 101–549, §110(2), substituted "designated pursuant to section 7407(d) of this title as attainment or unclassifiable" for "identified pursuant to section 7407(d)(1)(D) or (E) of this title".

1977—Subsec. (a)(4). Pub. L. 95–190 inserted a comma after "size".

§7473. Increments and ceilings

(a) Sulfur oxide and particulate matter; requirement that maximum allowable increases and maximum allowable concentrations not be exceeded

In the case of sulfur oxide and particulate matter, each applicable implementation plan shall contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded. In the case of any maximum allowable increase (except an allowable increase specified under section 7475(d)(2)(C)(iv) of this title) for a pollutant based on concentrations permitted under national ambient air quality standards for any period other than an annual period, such regulations shall permit such maximum allowable increase to be exceeded during one such period per year.

(b) Maximum allowable increases in concentrations over baseline concentrations

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

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

Twenty-four-hour maximum	5
Three-hour maximum	25

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

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

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

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

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

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

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

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

(c) Orders or rules for determining compliance with maximum allowable increases in ambient concentrations of air pollutants

(1) In the case of any State which has a plan approved by the Administrator for purposes of

carrying out this part, the Governor of such State may, after notice and opportunity for public hearing, issue orders or promulgate rules providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account:

(A) concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 792(a) and (b) of title 15 (or any subsequent legislation which supersedes such provisions) over the emissions from such sources before the effective date of such order.[1]

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

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

(D) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration determined in accordance with section 7479(4) of this title.

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

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

(July 14, 1955, ch. 360, title I, §163, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 732; amended Pub. L. 95–190, §14(a)(41), Nov. 16, 1977, 91 Stat. 1401.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c)(1)(B), is act June 10, 1920, ch. 285, 41 Stat. 1063, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–190 inserted "section" before "7475".

[1] So in original. The period probably should be a comma.

§7474. Area redesignation

(a) Authority of States to redesignate areas

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

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

(2) a national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres in size.

The extent of the areas referred to in paragraph [1] (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990. Any area (other than an area referred to in paragraph (1) or (2) or an area established as class I under the first sentence of section 7472(a) of this title) may be redesignated by the State as class III if—

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

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

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

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

(b) Notice and hearing; notice to Federal land manager; written comments and recommendations; regulations; disapproval of redesignation

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

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

(C) The Administrator shall promulgate regulations not later than six months after August 7, 1977, to assure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major emitting facility which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class III.

(2) The Administrator may disapprove the redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this section or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(c) Indian reservations

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

(d) Review of national monuments, primitive areas, and national preserves

The Federal Land Manager shall review all national monuments, primitive areas, and national preserves, and shall recommend any appropriate areas for redesignation as class I where air quality related values are important attributes of the area. The Federal Land Manager shall report such recommendations, within [2] supporting analysis, to the Congress and the affected States within one year after August 7, 1977. The Federal Land Manager shall consult with the appropriate States before making such recommendations.

(e) Resolution of disputes between State and Indian tribes

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

(July 14, 1955, ch. 360, title I, §164, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 733; amended Pub. L. 95–190, §14(a)(42), (43), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101–549, title I, §108(n), Nov. 15, 1990, 104 Stat. 2469.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, which directed the insertion of "The extent of the areas referred to in paragraph (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990." before "Any area (other than an area referred to in paragraph (1) or (2))", was executed by making the insertion before "Any area (other than an area referred to in paragraph (1) or (2)", to reflect the probable intent of Congress.

1977—Subsec. (b)(2). Pub. L. 95–190, §14(a)(42), inserted "or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section" after "this section".

Subsec. (e). Pub. L. 95–190, §14(a)(43), inserted "an" after "If any State affected by the redesignation of".

[1] So in original. Probably should be "paragraphs".

[2] So in original. Probably should be "with".

§7475. Preconstruction requirements

(a) Major emitting facilities on which construction is commenced

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless—

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

(2) the proposed permit has been subject to a review in accordance with this section, the

required analysis has been conducted in accordance with regulations promulgated by the Administrator, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;

(3) the owner or operator of such facility demonstrates, as required pursuant to section 7410(j) of this title, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this chapter;

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

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

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

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

(8) in the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under section 7411 of this title has been promulgated subsequent to August 7, 1977, for such source category, the Administrator has approved the determination of best available technology as set forth in the permit.

(b) Exception

The demonstration pertaining to maximum allowable increases required under subsection (a)(3) shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with subsection (a)(4), will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

(c) Permit applications

Any completed permit application under section 7410 of this title for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

(d) Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

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

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

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

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

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

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

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

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

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

(ii) In any case in which the Governor recommends a variance under this subparagraph in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that such variance is in the national interest. No Presidential finding shall

be reviewable in any court. The variance shall take effect if the President approves the Governor's recommendations. The President shall approve or disapprove such recommendation within ninety days after his receipt of the recommendations of the Governor and the Federal Land Manager.

(iii) In the case of a permit issued pursuant to this subparagraph, such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the following maximum allowable increases for such areas over the baseline concentration for such pollutant and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

MAXIMUM ALLOWABLE INCREASE
(In micrograms per cubic meter)

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

(iv) For purposes of clause (iii), the term "high terrain area" means with respect to any facility, any area having an elevation of 900 feet or more above the base of the stack of such facility, and the term "low terrain area" means any area other than a high terrain area.

(e) Analysis; continuous air quality monitoring data; regulations; model adjustments

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

(2) Effective one year after August 7, 1977, the analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the State, in accordance with regulations promulgated by the Administrator, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

(3) The Administrator shall within six months after August 7, 1977, promulgate regulations respecting the analysis required under this subsection which regulations—

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

(B) shall require an analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from such facility for each pollutant regulated under this chapter which will be emitted from, or which results from the construction or operation of, such facility, the size and nature of the proposed facility, the degree of continuous emission reduction which could be achieved by such facility, and such other factors as may be relevant in determining the effect of emissions from a proposed facility on any air quality control region,

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

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

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

(July 14, 1955, ch. 360, title I, §165, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 735; amended Pub. L. 95–190, §14(a)(44)–(51), Nov. 16, 1977, 91 Stat. 1402.)

EDITORIAL NOTES

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95–190, §14(a)(44), substituted "part;" for "part:".

Subsec. (a)(3). Pub. L. 95–190, §14(a)(45), inserted provision making applicable requirement of section 7410(j) of this title.

Subsec. (b). Pub. L. 95–190, §14(a)(46), inserted "cause or" before "contribute" and struck out "actual" before "allowable emissions".

Subsec. (d)(2)(C). Pub. L. 95–190, §14(a)(47)–(49), in cl. (ii) substituted "contribute" for "contrbute", in cl. (iii) substituted "quality-related" for "quality related" and "concentrations which" for "concentrations, which", and in cl. (iv) substituted "such facility" for "such sources" and "will not cause or contribute to concentrations of such pollutant which exceed" for "together with all other sources, will not exceed".

Subsec. (d)(2)(D). Pub. L. 95–190, §14(a)(50), (51), in cl. (iii) substituted provisions relating to determinations of amounts of emissions of sulfur oxides from facilities, for provisions relating to determinations of amounts of emissions of sulfur oxides from sources operating under permits issued pursuant to this subpar., together with all other sources, and added cl. (iv).

§7476. Other pollutants

(a) Hydrocarbons, carbon monoxide, petrochemical oxidants, and nitrogen oxides

In the case of the pollutants hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, the Administrator shall conduct a study and not later than two years after August 7, 1977, promulgate regulations to prevent the significant deterioration of air quality which would result from the emissions of such pollutants. In the case of pollutants for which national ambient air quality standards are promulgated after August 7, 1977, he shall promulgate such regulations not more than 2 years after the date of promulgation of such standards.

(b) Effective date of regulations

Regulations referred to in subsection (a) shall become effective one year after the date of promulgation. Within 21 months after such date of promulgation such plan revision shall be submitted to the Administrator who shall approve or disapprove the plan within 25 months after such date or [1] promulgation in the same manner as required under section 7410 of this title.

(c) Contents of regulations

Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 7401 and section 7470 of this title.

(d) Specific measures to fulfill goals and purposes

The regulations of the Administrator under subsection (a) shall provide specific measures at least as effective as the increments established in section 7473 of this title to fulfill such goals and purposes, and may contain air quality increments, emission density requirements, or other measures.

(e) Area classification plan not required

With respect to any air pollutant for which a national ambient air quality standard is established other than sulfur oxides or particulate matter, an area classification plan shall not be required under

this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under section 7410(c) of this title contains other provisions which when considered as a whole, the Administrator finds will carry out the purposes in section 7470 of this title at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this section applies.

(f) PM–10 increments

The Administrator is authorized to substitute, for the maximum allowable increases in particulate matter specified in section 7473(b) of this title and section 7475(d)(2)(C)(iv) of this title, maximum allowable increases in particulate matter with an aerodynamic diameter smaller than or equal to 10 micrometers. Such substituted maximum allowable increases shall be of equal stringency in effect as those specified in the provisions for which they are substituted. Until the Administrator promulgates regulations under the authority of this subsection, the current maximum allowable increases in concentrations of particulate matter shall remain in effect.

(July 14, 1955, ch. 360, title I, §166, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 739; amended Pub. L. 101–549, title I, §105(b), Nov. 15, 1990, 104 Stat. 2462.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (f). Pub. L. 101–549 added subsec. (f).

[1] *So in original. Probably should be "of".*

§7477. Enforcement

The Administrator shall, and a State may, take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction or modification of a major emitting facility which does not conform to the requirements of this part, or which is proposed to be constructed in any area designated pursuant to section 7407(d) of this title as attainment or unclassifiable and which is not subject to an implementation plan which meets the requirements of this part.

(July 14, 1955, ch. 360, title I, §167, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 101–549, title I, §110(3), title VII, §708, Nov. 15, 1990, 104 Stat. 2470, 2684.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–549, §708, substituted "construction or modification of a major emitting facility" for "construction of a major emitting facility".

Pub. L. 101–549, §110(3), substituted "designated pursuant to section 7407(d) as attainment or unclassifiable" for "included in the list promulgated pursuant to paragraph (1)(D) or (E) of subsection (d) of section 7407 of this title".

§7478. Period before plan approval

(a) Existing regulations to remain in effect

Until such time as an applicable implementation plan is in effect for any area, which plan meets

the requirements of this part to prevent significant deterioration of air quality with respect to any air pollutant, applicable regulations under this chapter prior to August 7, 1977, shall remain in effect to prevent significant deterioration of air quality in any such area for any such pollutant except as otherwise provided in subsection (b).

(b) Regulations deemed amended; construction commenced after June 1, 1975

If any regulation in effect prior to August 7, 1977, to prevent significant deterioration of air quality would be inconsistent with the requirements of section 7472(a), section 7473(b) or section 7474(a) of this title, then such regulations shall be deemed amended so as to conform with such requirements. In the case of a facility on which construction was commenced (in accordance with the definition of "commenced" in section 7479(2) of this title) after June 1, 1975, and prior to August 7, 1977, the review and permitting of such facility shall be in accordance with the regulations for the prevention of significant deterioration in effect prior to August 7, 1977.

(July 14, 1955, ch. 360, title I, §168, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 95–190, §14(a)(52), Nov. 16, 1977, 91 Stat. 1402.)

EDITORIAL NOTES

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–190 substituted "(in accordance with the definition of 'commenced' in section 7479(2) of this title)" for "in accordance with this definition".

§7479. Definitions

For purposes of this part—

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

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

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

(C) The term "construction" when used in connection with any source or facility, includes the modification (as defined in section 7411(a) of this title) of any source or facility.

(3) The term "best available control technology" means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 or 7412 of this title. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990.

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

(July 14, 1955, ch. 360, title I, §169, as added Pub. L. 95–95, title I, §127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 95–190, §14(a)(54), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101–549, title III, §305(b), title IV, §403(d), Nov. 15, 1990, 104 Stat. 2583, 2631.)

EDITORIAL NOTES

AMENDMENTS

1990—Par. (1). Pub. L. 101–549, §305(b), struck out "two hundred and" after "municipal incinerators capable of charging more than".

Par. (3). Pub. L. 101–549, §403(d), directed the insertion of ", clean fuels," after "including fuel cleaning,", which was executed by making the insertion after "including fuel cleaning" to reflect the probable intent of Congress, and inserted at end "Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990."

1977—Par. (2)(C). Pub. L. 95–190 added subpar. (C).

STATUTORY NOTES AND RELATED SUBSIDIARIES

STUDY OF MAJOR EMITTING FACILITIES WITH POTENTIAL OF EMITTING 250 TONS PER YEAR

Pub. L. 95–95, title I, §127(b), Aug. 7, 1977, 91 Stat. 741, directed Administrator, within 1 year after Aug. 7, 1977, to report to Congress on consequences of that portion of definition of "major emitting facility" under this subpart which applies to facilities with potential to emit 250 tons per year or more.

SUBPART II—VISIBILITY PROTECTION

EDITORIAL NOTES

CODIFICATION

As originally enacted, subpart II of part C of subchapter I of this chapter was added following section 7478 of this title. Pub. L. 95–190, §14(a)(53), Nov. 16, 1977, 91 Stat. 1402, struck out subpart II and inserted such subpart following section 7479 of this title.

§7491. Visibility protection for Federal class I areas

(a) Impairment of visibility; list of areas; study and report

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

(2) Not later than six months after August 7, 1977, the Secretary of the Interior in consultation with other Federal land managers shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identifications. Not later than one year after August 7, 1977, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value.

(3) Not later than eighteen months after August 7, 1977, the Administrator shall complete a study and report to Congress on available methods for implementing the national goal set forth in paragraph (1). Such report shall include recommendations for—

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

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

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

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

(4) Not later than twenty-four months after August 7, 1977, and after notice and public hearing, the Administrator shall promulgate regulations to assure (A) reasonable progress toward meeting the national goal specified in paragraph (1), and (B) compliance with the requirements of this section.

(b) Regulations

Regulations under subsection (a)(4) shall—

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

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

(A) except as otherwise provided pursuant to subsection (c), a requirement that each major stationary source which is in existence on August 7, 1977, but which has not been in operation for more than fifteen years as of such date, and which, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) for

controlling emissions from such source for the purpose of eliminating or reducing any such impairment, and

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

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

(c) Exemptions

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

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

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

(d) Consultations with appropriate Federal land managers

Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 7410(c) of this title) shall consult in person with the appropriate Federal land manager or managers and shall include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

(e) Buffer zones

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

(f) Nondiscretionary duty

For purposes of section 7604(a)(2) of this title, the meeting of the national goal specified in subsection (a)(1) by any specific date or dates shall not be considered a "nondiscretionary duty" of the Administrator.

(g) Definitions

For the purpose of this section—

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

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

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

(4) the term "as expeditiously as practicable" means as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section (or the date of promulgation of such a plan revision in the case of action by the Administrator under section 7410(c) of this title for purposes of this section);

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

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

(7) the term "major stationary source" means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities.

(July 14, 1955, ch. 360, title I, §169A, as added Pub. L. 95–95, title I, §128, Aug. 7, 1977, 91 Stat. 742.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7492. Visibility

(a) Studies

(1) The Administrator, in conjunction with the National Park Service and other appropriate Federal agencies, shall conduct research to identify and evaluate sources and source regions of both visibility impairment and regions that provide predominantly clean air in class I areas. A total of $8,000,000 per year for 5 years is authorized to be appropriated for the Environmental Protection Agency and the other Federal agencies to conduct this research. The research shall include—

(A) expansion of current visibility related monitoring in class I areas;

(B) assessment of current sources of visibility impairing pollution and clean air corridors;

(C) adaptation of regional air quality models for the assessment of visibility;

(D) studies of atmospheric chemistry and physics of visibility.

(2) Based on the findings available from the research required in subsection (a)(1) as well as other available scientific and technical data, studies, and other available information pertaining to visibility source-receptor relationships, the Administrator shall conduct an assessment and evaluation that identifies, to the extent possible, sources and source regions of visibility impairment including natural sources as well as source regions of clear air for class I areas. The Administrator shall produce interim findings from this study within 3 years after November 15, 1990.

(b) Impacts of other provisions

Within 24 months after November 15, 1990, the Administrator shall conduct an assessment of the progress and improvements in visibility in class I areas that are likely to result from the

implementation of the provisions of the Clean Air Act Amendments of 1990 other than the provisions of this section. Every 5 years thereafter the Administrator shall conduct an assessment of actual progress and improvement in visibility in class I areas. The Administrator shall prepare a written report on each assessment and transmit copies of these reports to the appropriate committees of Congress.

(c) Establishment of visibility transport regions and commissions

(1) Authority to establish visibility transport regions

Whenever, upon the Administrator's motion or by petition from the Governors of at least two affected States, the Administrator has reason to believe that the current or projected interstate transport of air pollutants from one or more States contributes significantly to visibility impairment in class I areas located in the affected States, the Administrator may establish a transport region for such pollutants that includes such States. The Administrator, upon the Administrator's own motion or upon petition from the Governor of any affected State, or upon the recommendations of a transport commission established under subsection (b) of this section [1] may—

(A) add any State or portion of a State to a visibility transport region when the Administrator determines that the interstate transport of air pollutants from such State significantly contributes to visibility impairment in a class I area located within the transport region, or

(B) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the protection or enhancement of visibility in any class I area in the region.

(2) Visibility transport commissions

Whenever the Administrator establishes a transport region under subsection (c)(1), the Administrator shall establish a transport commission comprised of (as a minimum) each of the following members:

(A) the Governor of each State in the Visibility Transport Region, or the Governor's designee;

(B) The [2] Administrator or the Administrator's designee; and

(C) A [2] representative of each Federal agency charged with the direct management of each class I area or areas within the Visibility Transport Region.

(3) Ex officio members

All representatives of the Federal Government shall be ex officio members.

(4) Chapter 10 of title 5

The visibility transport commissions shall be exempt from the requirements of chapter 10 of title 5.

(d) Duties of visibility transport commissions

A Visibility Transport Commission—

(1) shall assess the scientific and technical data, studies, and other currently available information, including studies conducted pursuant to subsection (a)(1), pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the Visibility Transport Region; and

(2) shall, within 4 years of establishment, issue a report to the Administrator recommending what measures, if any, should be taken under this chapter to remedy such adverse impacts. The report required by this subsection shall address at least the following measures:

(A) the establishment of clean air corridors, in which additional restrictions on increases in emissions may be appropriate to protect visibility in affected class I areas;

(B) the imposition of the requirements of part D of this subchapter affecting the construction of new major stationary sources or major modifications to existing sources in such clean air

corridors specifically including the alternative siting analysis provisions of section 7503(a)(5) of this title; and

(C) the promulgation of regulations under section 7491 of this title to address long range strategies for addressing regional haze which impairs visibility in affected class I areas.

(e) Duties of Administrator

(1) The Administrator shall, taking into account the studies pursuant to subsection (a)(1) and the reports pursuant to subsection (d)(2) and any other relevant information, within eighteen months of receipt of the report referred to in subsection (d)(2) of this section, carry out the Administrator's regulatory responsibilities under section 7491 of this title, including criteria for measuring "reasonable progress" toward the national goal.

(2) Any regulations promulgated under section 7491 of this title pursuant to this subsection shall require affected States to revise within 12 months their implementation plans under section 7410 of this title to contain such emission limits, schedules of compliance, and other measures as may be necessary to carry out regulations promulgated pursuant to this subsection.

(f) Grand Canyon visibility transport commission

The Administrator pursuant to subsection (c)(1) shall, within 12 months, establish a visibility transport commission for the region affecting the visibility of the Grand Canyon National Park.

(July 14, 1955, ch. 360, title I, §169B, as added Pub. L. 101–549, title VIII, §816, Nov. 15, 1990, 104 Stat. 2695; amended Pub. L. 117–286, §4(a)(269), Dec. 27, 2022, 136 Stat. 4335.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (b), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

AMENDMENTS

2022—Subsec. (c)(4). Pub. L. 117–286 substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act."

[1] So in original. Words "subsection (b) of this section" probably should be "paragraph (2)".

[2] So in original. Probably should not be capitalized.

PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

SUBPART 1—NONATTAINMENT AREAS IN GENERAL

§7501. Definitions

For the purpose of this part—

(1) REASONABLE FURTHER PROGRESS.—The term "reasonable further progress" means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.

(2) NONATTAINMENT AREA.—The term "nonattainment area" means, for any air pollutant, an area which is designated "nonattainment" with respect to that pollutant within the meaning of

section 7407(d) of this title.

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

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

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

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

(4) The terms "modifications" and "modified" mean the same as the term "modification" as used in section 7411(a)(4) of this title.

(July 14, 1955, ch. 360, title I, §171, as added Pub. L. 95–95, title I, §129(b), Aug. 7, 1977, 91 Stat. 745; amended Pub. L. 101–549, title I, §102(a)(2), Nov. 15, 1990, 104 Stat. 2412.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–549, §102(a)(2)(A), struck out "and section 7410(a)(2)(I) of this title" after "purpose of this part".

Pars. (1), (2). Pub. L. 101–549, §102(a)(2)(B), (C), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

"(1) The term 'reasonable further progress' means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 7410(a)(2)(I) of this title and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 7502(a) of this title.

"(2) The term 'nonattainment area' means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under subparagraphs (A) through (C) of section 7407(d)(1) of this title."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Part effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7502. Nonattainment plan provisions in general

(a) Classifications and attainment dates

(1) Classifications

(A) On or after the date the Administrator promulgates the designation of an area as a nonattainment area pursuant to section 7407(d) of this title with respect to any national ambient air quality standard (or any revised standard, including a revision of any standard in effect on November 15, 1990), the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

(B) The Administrator shall publish a notice in the Federal Register announcing each classification under subparagraph (A), except the Administrator shall provide an opportunity for at least 30 days for written comment. Such classification shall not be subject to the provisions of sections 553 through 557 of title 5 (concerning notice and comment) and shall not be subject to judicial review until the Administrator takes final action under subsection (k) or (l) of section 7410 of this title (concerning action on plan submissions) or section 7509 of this title (concerning sanctions) with respect to any plan submissions required by virtue of such classification.

(C) This paragraph shall not apply with respect to nonattainment areas for which classifications are specifically provided under other provisions of this part.

(2) Attainment dates for nonattainment areas

(A) The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section 7407(d) of this title, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(B) The attainment date for an area designated nonattainment with respect to a secondary national ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable after the date such area was designated nonattainment under section 7407(d) of this title.

(C) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the attainment date determined by the Administrator under subparagraph (A) or (B) if—

(i) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(ii) in accordance with guidance published by the Administrator, no more than a minimal number of exceedances of the relevant national ambient air quality standard has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this subparagraph for a single nonattainment area.

(D) This paragraph shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part.

(b) Schedule for plan submissions

At the time the Administrator promulgates the designation of an area as nonattainment with respect to a national ambient air quality standard under section 7407(d) of this title, the Administrator shall establish a schedule according to which the State containing such area shall submit a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) and section 7410(a)(2) of this title. Such schedule shall at a minimum, include a date or dates, extending no later than 3 years from the date of the nonattainment designation, for the submission of a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) and section 7410(a)(2) of this title.

(c) Nonattainment plan provisions

The plan provisions (including plan items) required to be submitted under this part shall comply with each of the following:

(1) In general

Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing

sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

(2) RFP

Such plan provisions shall require reasonable further progress.

(3) Inventory

Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

(4) Identification and quantification

Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 7503(a)(1)(B) of this title, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.

(5) Permits for new and modified major stationary sources

Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 7503 of this title.

(6) Other measures

Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.

(7) Compliance with section 7410(a)(2)

Such plan provisions shall also meet the applicable provisions of section 7410(a)(2) of this title.

(8) Equivalent techniques

Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) Contingency measures

Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

(d) Plan revisions required in response to finding of plan inadequacy

Any plan revision for a nonattainment area which is required to be submitted in response to a finding by the Administrator pursuant to section 7410(k)(5) of this title (relating to calls for plan revisions) must correct the plan deficiency (or deficiencies) specified by the Administrator and meet all other applicable plan requirements of section 7410 of this title and this part. The Administrator may reasonably adjust the dates otherwise applicable under such requirements to such revision (except for attainment dates that have not yet elapsed), to the extent necessary to achieve a consistent

application of such requirements. In order to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this chapter, the Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States which shall be available to the public, taking into consideration any such guidelines, interpretations, or information provided before November 15, 1990.

(e) Future modification of standard

If the Administrator relaxes a national primary ambient air quality standard after November 15, 1990, the Administrator shall, within 12 months after the relaxation, promulgate requirements applicable to all areas which have not attained that standard as of the date of such relaxation. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.

(July 14, 1955, ch. 360, title I, §172, as added Pub. L. 95–95, title I, §129(b), Aug. 7, 1977, 91 Stat. 746; amended Pub. L. 95–190, §14(a)(55), (56), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101–549, title I, §102(b), Nov. 15, 1990, 104 Stat. 2412.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), expeditious attainment of national ambient air quality standards; in subsec. (b), requisite provisions of plan; and in subsec. (c), attainment of applicable standard not later than July 1, 1987.

1977—Subsec. (b)(4). Pub. L. 95–190, §14(a)(55), substituted "subsection (a)" for "paragraph (1)".

Subsec. (c). Pub. L. 95–190, §14(a)(56), substituted "December 31" for "July 1".

STATUTORY NOTES AND RELATED SUBSIDIARIES

NONATTAINMENT AREAS

Pub. L. 95–95, title I, §129(a), Aug. 7, 1977, 91 Stat. 745, as amended by Pub. L. 95–190, §14(b)(2), (3), Nov. 16, 1977, 91 Stat. 1404, provided that:

"(1) Before July 1, 1979, the interpretative regulation of the Administrator of the Environmental Protection Agency published in 41 Federal Register 55524–30, December 21, 1976, as may be modified by rule of the Administrator, shall apply except that the baseline to be used for determination of appropriate emission offsets under such regulation shall be the applicable implementation plan of the State in effect at the time of application for a permit by a proposed major stationary source (within the meaning of section 302 of the Clean Air Act) [section 7602 of this title].

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

"(A) an inventory of emissions of the applicable pollutant for each nonattainment area (as defined in section 171 of the Clean Air Act [section 7501 of this title]) that identifies the type, quantity, and source of such pollutant so as to provide information sufficient to demonstrate that the requirements of subparagraph (C) are being met;

"(B) an enforceable permit program which—

"(i) requires new or modified major stationary sources to meet emission limitations at least as stringent as required under the permit requirements referred to in paragraphs (2) and (3) of section 173 of the Clean Air Act [section 7503 of this title] (relating to lowest achievable emission rate and compliance by other sources) and which assures compliance with the annual reduction requirements of subparagraph (C); and

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

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

The Administrator shall terminate such waiver if in his judgment the reduction in emissions actually being attained is less than the reduction on which the waiver was conditioned pursuant to subparagraph (C), or if the Administrator determines that the State is no longer in compliance with any requirement of this paragraph.

Upon application by the State, the Administrator may reinstate a waiver terminated under the preceding sentence if he is satisfied that such State is in compliance with all requirements of this subsection.

"(3) Operating permits may be issued to those applicants who were properly granted construction permits, in accordance with the law and applicable regulations in effect at the time granted, for construction of a new or modified source in areas exceeding national primary air quality standards on or before the date of the enactment of this Act [Aug. 7, 1977] if such construction permits were granted prior to the date of the enactment of this Act and the person issued any such permit is able to demonstrate that the emissions from the source will be within the limitations set forth in such construction permit."

STATE IMPLEMENTATION PLAN REVISION

Pub. L. 95–95, title I, §129(c), Aug. 7, 1977, 91 Stat. 750, as amended by Pub. L. 95–190, §14(b)(4), Nov. 16, 1977, 91 Stat. 1405, provided that: "Notwithstanding the requirements of section 406(d)(2) [set out as an Effective Date of 1977 Amendment note under section 7401 of this title] (relating to date required for submission of certain implementation plan revisions), for purposes of section 110(a)(2) of the Clean Air Act [section 7410(a)(2) of this title] each State in which there is any nonattainment area (as defined in part D of title I of the Clean Air Act) [this part] shall adopt and submit an implementation plan revision which meets the requirements of section 110(a)(2)(I) [section 7410(a)(2)(I) of this title] and part D of title I of the Clean Air Act [this part] not later than January 1, 1979. In the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act [subsec. (a)(2) of this section] (respecting impossibility of attainment before 1983), such State shall adopt and submit to the Administrator a plan revision before July 1, 1982, which meets the requirements of section 172(b) and (c) of such Act [subsecs. (b) and (c) of this section]."

§7503. Permit requirements

(a) In general

The permit program required by section 7502(b)(6) [1] of this title shall provide that permits to construct and operate may be issued if—

(1) in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation plan approved under section 7410 of this title and this part, the permitting agency determines that—

(A) by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources (as determined in accordance with the regulations under this paragraph) prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 7502 of this title) reasonable further progress (as defined in section 7501 of this title); or

(B) in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 7502(c) of this title;

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

(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this chapter; and [2]

(4) the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this part; and

(5) an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

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

(b) Prohibition on use of old growth allowances

Any growth allowance included in an applicable implementation plan to meet the requirements of section 7502(b)(5) of this title (as in effect immediately before November 15, 1990) shall not be valid for use in any area that received or receives a notice under section 7410(a)(2)(H)(ii) of this title (as in effect immediately before November 15, 1990) or under section 7410(k)(1) of this title that its applicable implementation plan containing such allowance is substantially inadequate.

(c) Offsets

(1) The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this part for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Such emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(2) Emission reductions otherwise required by this chapter shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this chapter shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

(d) Control technology information

The State shall provide that control technology information from permits issued under this section will be promptly submitted to the Administrator for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other States and to the general public.

(e) Rocket engines or motors

The permitting authority of a State shall allow a source to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

(1) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

(2) The source demonstrates to the satisfaction of the permitting authority of the State that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(3) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration or other appropriate Federal

agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(4) The source will comply with an alternative measure, imposed by the permitting authority, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the permitting authority may impose an emissions fee to be paid to such authority of a State which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous 3 years. The permitting authority shall utilize the fees in a manner that maximizes the emissions reductions in that area.

(July 14, 1955, ch. 360, title I, §173, as added Pub. L. 95–95, title I, §129(b), Aug. 7, 1977, 91 Stat. 748; amended Pub. L. 95–190, §14(a)(57), (58), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title I, §102(c), Nov. 15, 1990, 104 Stat. 2415.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7502(b) of this title, referred to in subsec. (a), was amended generally by Pub. L. 101–549, title I, §102(b), Nov. 15, 1990, 104 Stat. 2412, and, as so amended, does not contain a par. (6). See section 7502(c)(5) of this title.

AMENDMENTS

1990—Pub. L. 101–549, §102(c)(1), made technical amendment to section catchline.

Pub. L. 101–549, §102(c)(2), (8), designated existing provisions as subsec. (a), inserted heading, and substituted "(1) shall be federally enforceable" for "(1)(A) shall be legally binding" in last sentence.

Subsec. (a)(1). Pub. L. 101–549, §102(c)(3), inserted at beginning "in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation plan approved under section 7410 of this title and this part,".

Subsec. (a)(1)(A). Pub. L. 101–549, §102(c)(4), inserted "sufficient offsetting emissions reductions have been obtained, such that" after "to commence operation," and substituted "(as determined in accordance with the regulations under this paragraph)" for "allowed under the applicable implementation plan".

Subsec. (a)(1)(B). Pub. L. 101–549, §102(c)(5), inserted at beginning "in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted," and substituted "7502(c)" for "7502(b)".

Subsec. (a)(4). Pub. L. 101–549, §102(c)(6), inserted at beginning "the Administrator has not determined that", substituted "not being adequately implemented" for "being carried out", and substituted "; and" for period at end.

Subsec. (a)(5). Pub. L. 101–549, §102(c)(7), added par. (5).

Subsec. (b). Pub. L. 101–549, §102(c)(9), added subsec. (b).

Subsecs. (c) to (e). Pub. L. 101–549, §102(c)(10), added subsecs. (c) to (e).

1977—Par. (1)(A). Pub. L. 95–190, §14(a)(57), inserted "or modified" after "from new" and "applicable" before "implementation plan", and substituted "source" for "facility" wherever appearing.

Par. (4). Pub. L. 95–190, §14(a)(58), added par. (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

FAILURE TO ATTAIN NATIONAL PRIMARY AMBIENT AIR QUALITY STANDARDS UNDER CLEAN AIR ACT

Pub. L. 100–202, §101(f) [title II], Dec. 22, 1987, 101 Stat. 1329–187, 1329–199, provided that: "No restriction or prohibition on construction, permitting, or funding under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of the Clean Air Act [sections 7410(a)(2)(I), 7503(4), 7506(a), (b), 7616 of this title] shall be imposed or take effect during the period prior to August 31, 1988, by reason of (1) the failure of any nonattainment area to attain the national primary ambient air quality standard under the Clean Air Act [this chapter] for photochemical oxidants (ozone) or carbon monoxide (or both) by December 31, 1987, (2) the failure of any State to adopt and submit to the Administrator of the Environmental Protection Agency an implementation plan that meets the requirements of part D of title I of such Act [this part] and provides for

attainment of such standards by December 31, 1987, (3) the failure of any State or designated local government to implement the applicable implementation plan, or (4) any combination of the foregoing. During such period and consistent with the preceding sentence, the issuance of a permit (including required offsets) under section 173 of such Act [this section] for the construction or modification of a source in a nonattainment area shall not be denied solely or partially by reason of the reference contained in section 171(l) of such Act [section 7501(1) of this title] to the applicable date established in section 172(a) [section 7502(a) of this title]. This subsection [probably means the first 3 sentences of this note] shall not apply to any restriction or prohibition in effect under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of such Act prior to the enactment of this section [Dec. 22, 1987]. Prior to August 31, 1988, the Administrator of the Environmental Protection Agency shall evaluate air quality data and make determinations with respect to which areas throughout the nation have attained, or failed to attain, either or both of the national primary ambient air quality standards referred to in subsection (a) [probably means the first 3 sentences of this note] and shall take appropriate steps to designate those areas failing to attain either or both of such standards as nonattainment areas within the meaning of part D of title I of the Clean Air Act."

[1] *See References in Text note below.*

[2] *So in original. The word "and" probably should not appear.*

§7504. Planning procedures

(a) In general

For any ozone, carbon monoxide, or PM–10 nonattainment area, the State containing such area and elected officials of affected local governments shall, before the date required for submittal of the inventory described under sections 7511a(a)(1) and 7512a(a)(1) of this title, jointly review and update as necessary the planning procedures adopted pursuant to this subsection as in effect immediately before November 15, 1990, or develop new planning procedures pursuant to this subsection, as appropriate. In preparing such procedures the State and local elected officials shall determine which elements of a revised implementation plan will be developed, adopted, and implemented (through means including enforcement) by the State and which by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. The implementation plan required by this part shall be prepared by an organization certified by the State, in consultation with elected officials of local governments and in accordance with the determination under the second sentence of this subsection. Such organization shall include elected officials of local governments in the affected area, and representatives of the State air quality planning agency, the State transportation planning agency, the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, the organization responsible for the air quality maintenance planning process under regulations implementing this chapter, and any other organization with responsibilities for developing, submitting, or implementing the plan required by this part. Such organization may be one that carried out these functions before November 15, 1990.

(b) Coordination

The preparation of implementation plan provisions and subsequent plan revisions under the continuing transportation-air quality planning process described in section 7408(e) of this title shall be coordinated with the continuing, cooperative and comprehensive transportation planning process required under section 134 of title 23, and such planning processes shall take into account the requirements of this part.

(c) Joint planning

In the case of a nonattainment area that is included within more than one State, the affected States may jointly, through interstate compact or otherwise, undertake and implement all or part of the planning procedures described in this section.

(July 14, 1955, ch. 360, title I, §174, as added Pub. L. 95–95, title I, §129(b), Aug. 7, 1977, 91 Stat.

748; amended Pub. L. 101–549, title I, §102(d), Nov. 15, 1990, 104 Stat. 2417.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), preparation of implementation plan by designated organization; and in subsec. (b), coordination of plan preparation.

§7505. Environmental Protection Agency grants

(a) Plan revision development costs

The Administrator shall make grants to any organization of local elected officials with transportation or air quality maintenance planning responsibilities recognized by the State under section 7504(a) of this title for payment of the reasonable costs of developing a plan revision under this part.

(b) Uses of grant funds

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

(July 14, 1955, ch. 360, title I, §175, as added Pub. L. 95–95, title I, §129(b), Aug. 7, 1977, 91 Stat. 749.)

§7505a. Maintenance plans

(a) Plan revision

Each State which submits a request under section 7407(d) of this title for redesignation of a nonattainment area for any air pollutant as an area which has attained the national primary ambient air quality standard for that air pollutant shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation. The plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance.

(b) Subsequent plan revisions

8 years after redesignation of any area as an attainment area under section 7407(d) of this title, the State shall submit to the Administrator an additional revision of the applicable State implementation plan for maintaining the national primary ambient air quality standard for 10 years after the expiration of the 10-year period referred to in subsection (a).

(c) Nonattainment requirements applicable pending plan approval

Until such plan revision is approved and an area is redesignated as attainment for any area designated as a nonattainment area, the requirements of this part shall continue in force and effect with respect to such area.

(d) Contingency provisions

Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before

redesignation of the area as an attainment area. The failure of any area redesignated as an attainment area to maintain the national ambient air quality standard concerned shall not result in a requirement that the State revise its State implementation plan unless the Administrator, in the Administrator's discretion, requires the State to submit a revised State implementation plan.

(July 14, 1955, ch. 360, title I, §175A, as added Pub. L. 101–549, title I, §102(e), Nov. 15, 1990, 104 Stat. 2418.)

§7506. Limitations on certain Federal assistance

(a), (b) Repealed. Pub. L. 101–549, title I, §110(4), Nov. 15, 1990, 104 Stat. 2470

(c) Activities not conforming to approved or promulgated plans

(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 7410 of this title. No metropolitan planning organization designated under section 134 of title 23, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. Conformity to an implementation plan means—

(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

(B) that such activities will not—

(i) cause or contribute to any new violation of any standard in any area;

(ii) increase the frequency or severity of any existing violation of any standard in any area; or

(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

(2) Any transportation plan or program developed pursuant to title 23 or chapter 53 of title 49 shall implement the transportation provisions of any applicable implementation plan approved under this chapter applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this chapter. In particular—

(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23 or chapter 53 of title 49, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

(B) no metropolitan planning organization or other recipient of funds under title 23 or chapter 53 of title 49 shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23 or chapter 53 of title 49, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the

Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements—

(i) such a project comes from a conforming plan and program;

(ii) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.

(D) Any project not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

(E) The appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 2 years after the date on which the Administrator—

(i) finds a motor vehicle emissions budget to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004);

(ii) approves an implementation plan that establishes a motor vehicle emissions budget if that budget has not yet been determined to be adequate in accordance with clause (i); or

(iii) promulgates an implementation plan that establishes or revises a motor vehicle emissions budget.

(3) Until such time as the implementation plan revision referred to in paragraph (4)(C) [1] is approved, conformity of such plans, programs, and projects will be demonstrated if—

(A) the transportation plans and programs—

(i) are consistent with the most recent estimates of mobile source emissions;

(ii) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(iii) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 7511a(b)(1) and 7512a(a)(7) of this title; and

(B) the transportation projects—

(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after November 15, 1990, from a transportation program found to conform within 3 years prior to November 15, 1990; and

(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

(4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY.—

(A) IN GENERAL.—The Administrator shall promulgate, and periodically update, criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1).

(B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update, criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects.

(C) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action may be brought against the Administrator and the Secretary of Transportation under section 7604 of this title to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

(D) The procedures and criteria shall, at a minimum—

(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, but the frequency for making conformity determinations on updated transportation plans and programs shall be every 4 years, except in a case in which—

(I) the metropolitan planning organization elects to update a transportation plan or program more frequently; or

(II) the metropolitan planning organization is required to determine conformity in accordance with paragraph (2)(E); and

(iii) address how conformity determinations will be made with respect to maintenance plans.

(E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—Not later than 2 years after August 10, 2005, the procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to sections 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement and enforceability.

(F) Compliance with the rules of the Administrator for determining the conformity of transportation plans, programs, and projects funded or approved under title 23 or chapter 53 of title 49 to State or Federal implementation plans shall not be required for traffic signal synchronization projects prior to the funding, approval or implementation of such projects. The supporting regional emissions analysis for any conformity determination made with respect to a transportation plan, program, or project shall consider the effect on emissions of any such project funded, approved, or implemented prior to the conformity determination.

(5) APPLICABILITY.—This subsection shall apply only with respect to—

(A) a nonattainment area and each pollutant for which the area is designated as a nonattainment area; and

(B) an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 7505a of this title with respect to the specific pollutant for which the area was designated nonattainment.

(6) Notwithstanding paragraph 5,[2] this subsection shall not apply with respect to an area designated nonattainment under section 7407(d)(1) of this title until 1 year after that area is first designated nonattainment for a specific national ambient air quality standard. This paragraph only applies with respect to the national ambient air quality standard for which an area is newly designated nonattainment and does not affect the area's requirements with respect to all other national ambient air quality standards for which the area is designated nonattainment or has been redesignated from nonattainment to attainment with a maintenance plan pursuant to section 7505a [1] of this title (including any pre-existing national ambient air quality standard for a pollutant for which a new or revised standard has been issued).

(7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

(A) IN GENERAL.—Each conformity determination required under this section for a transportation plan under section 134(i) of title 23 or section 5303(i) of title 49 shall require a

demonstration of conformity for the period ending on either the final year of the transportation plan, or at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, the longest of the following periods:

(i) The first 10-year period of any such transportation plan.

(ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emission budget.

(iii) The year after the completion date of a regionally significant project if the project is included in the transportation improvement program or the project requires approval before the subsequent conformity determination.

(B) REGIONAL EMISSIONS ANALYSIS.—The conformity determination shall be accompanied by a regional emissions analysis for the last year of the transportation plan and for any year shown to exceed emission budgets by a prior analysis, if such year extends beyond the applicable period as determined under subparagraph (A).

(C) EXCEPTION.—In any case in which an area has a revision to an implementation plan under section 7505a(b) of this title and the Administrator has found the motor vehicles emissions budgets from that revision to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or has approved the revision, the demonstration of conformity at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, shall be required to extend only through the last year of the implementation plan required under section 7505a(b) of this title.

(D) EFFECT OF ELECTION.—Any election by a metropolitan planning organization under this paragraph shall continue in effect until the metropolitan planning organization elects otherwise.

(E) AIR POLLUTION CONTROL AGENCY DEFINED.—In this paragraph, the term "air pollution control agency" means an air pollution control agency (as defined in section 7602(b) of this title) that is responsible for developing plans or controlling air pollution within the area covered by a transportation plan.

(8) SUBSTITUTION OF TRANSPORTATION CONTROL MEASURES.—

(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan with alternate or additional transportation control measures—

(i) if the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

(ii) if the substitute control measures are implemented—

(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iii) if the substitute and additional control measures are accompanied with evidence of adequate personnel and funding and authority under State or local law to implement, monitor, and enforce the control measures;

(iv) if the substitute and additional control measures were developed through a collaborative process that included—

(I) participation by representatives of all affected jurisdictions (including local air pollution

control agencies, the State air pollution control agency, and State and local transportation agencies);

(II) consultation with the Administrator; and

(III) reasonable public notice and opportunity for comment; and

(v) if the metropolitan planning organization, State air pollution control agency, and the Administrator concur with the equivalency of the substitute or additional control measures.

(B) ADOPTION.—(i) Concurrence by the metropolitan planning organization, State air pollution control agency and the Administrator as required by subparagraph (A)(v) shall constitute adoption of the substitute or additional control measures so long as the requirements of subparagraphs (A)(i), (A)(ii), (A)(iii) and (A)(iv) are met.

(ii) Once adopted, the substitute or additional control measures become, by operation of law, part of the State implementation plan and become federally enforceable.

(iii) Within 90 days of its concurrence under subparagraph (A)(v), the State air pollution control agency shall submit the substitute or additional control measure to the Administrator for incorporation in the codification of the applicable implementation plan. Nothwithstanding [3] any other provision of this chapter, no additional State process shall be necessary to support such revision to the applicable plan.

(C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substitution or addition of a transportation control measure in accordance with this paragraph and the funding or approval of such a control measure shall not be contingent on the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINATION.—The substitution or addition of a transportation control measure in accordance with this paragraph shall not require—

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

(E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—A control measure that is being replaced by a substitute control measure under this paragraph shall remain in effect until the substitute control measure is adopted by the State pursuant to subparagraph (B).

(F) EFFECT OF ADOPTION.—Adoption of a substitute control measure shall constitute rescission of the previously applicable control measure.

(9) LAPSE OF CONFORMITY.—If a conformity determination required under this subsection for a transportation plan under section 134(i) of title 23 or section 5303(i) of title 49 or a transportation improvement program under section 134(j) of such title 23 or under section 5303(j) of such title 49 is not made by the applicable deadline and such failure is not corrected by additional measures to either reduce motor vehicle emissions sufficient to demonstrate compliance with the requirements of this subsection within 12 months after such deadline or other measures sufficient to correct such failures, the transportation plan shall lapse.

(10) LAPSE.—In this subsection, the term "lapse" means that the conformity determination for a transportation plan or transportation improvement program has expired, and thus there is no currently conforming transportation plan or transportation improvement program.

(d) Priority of achieving and maintaining national primary ambient air quality standards

Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this

section to achieve and maintain the national primary ambient air-quality standard. This paragraph extends to, but is not limited to, authority exercised under chapter 53 of title 49, title 23, and the Housing and Urban Development Act.

(July 14, 1955, ch. 360, title I, §176, as added Pub. L. 95–95, title I, §129(b), Aug. 7, 1977, 91 Stat. 749; amended Pub. L. 95–190, §14(a)(59), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title I, §§101(f), 110(4), Nov. 15, 1990, 104 Stat. 2409, 2470; Pub. L. 104–59, title III, §305(b), Nov. 28, 1995, 109 Stat. 580; Pub. L. 104–260, §1, Oct. 9, 1996, 110 Stat. 3175; Pub. L. 106–377, §1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–44; Pub. L. 109–59, title VI, §6011(a)–(f), Aug. 10, 2005, 119 Stat. 1878–1881.)

EDITORIAL NOTES

REFERENCES IN TEXT

Paragraph (4) of subsec. (c), referred to in subsec. (c)(3), was amended by Pub. L. 109–59, title VI, §6011(f), Aug. 10, 2005, 119 Stat. 1881, to redesignate subpar. (C) as (E), strike it out, and add new subpars. (C) and (E). See 2005 Amendment notes below.

Section 7505a of this title, referred to in subsec. (c)(6), was in the original "section 175(A)" and was translated as reading "section 175A", meaning section 175A of act July 14, 1955, which is classified to section 7505a of this title, to reflect the probable intent of Congress.

The Housing and Urban Development Act, referred to in subsec. (d), may be the name for a series of acts sharing the same name but enacted in different years by Pub. L. 89–117, Aug. 10, 1965, 79 Stat. 451; Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476; Pub. L. 91–152, Dec. 24, 1969, 83 Stat. 379; and Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1770, respectively. For complete classification of these Acts to the Code, see Short Title notes set out under section 1701 of Title 12, Banks and Banking, and Tables.

CODIFICATION

In subsecs. (c)(2) and (d), "chapter 53 of title 49" substituted for "the Urban Mass Transportation Act [49 App. U.S.C. 1601 et seq.]" and in subsec. (c)(4)(F) substituted for "Federal Transit Act" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378 (the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation), and of Pub. L. 102–240, title III, §3003(b), Dec. 18, 1991, 105 Stat. 2088, which provided that references in laws to the Urban Mass Transportation Act of 1964 be deemed to be references to the Federal Transit Act.

AMENDMENTS

2005—Subsec. (c)(2)(E). Pub. L. 109–59, §6011(a), added subpar. (E).

Subsec. (c)(4). Pub. L. 109–59, §6011(f)(1)–(3), inserted par. (4) and subpar. (A) headings, in first sentence substituted "The Administrator shall promulgate, and periodically update," for "No later than one year after November 15, 1990, the Administrator shall promulgate", designated second sentence as subpar. (B), inserted heading, substituted "The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update," for "No later than one year after November 15, 1990, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate", designated third sentence as subpar. (C), inserted heading, substituted "A civil action" for "A suit", and redesignated former subpars. (B) to (D) as (D) to (F), respectively.

Subsec. (c)(4)(B)(ii). Pub. L. 109–59, §6011(b), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years; and".

Subsec. (c)(4)(E). Pub. L. 109–59, §6011(f)(4), added subpar. (E) and struck out former subpar. (E) which read as follows: "Such procedures shall also include a requirement that each State shall submit to the Administrator and the Secretary of Transportation within 24 months of November 15, 1990, a revision to its implementation plan that includes criteria and procedures for assessing the conformity of any plan, program, or project subject to the conformity requirements of this subsection."

Subsec. (c)(7) to (10). Pub. L. 109–59, §6011(c)–(e), added pars. (7) to (10).

2000—Subsec. (c)(6). Pub. L. 106–377 added par. (6).

1996—Subsec. (c)(4)(D). Pub. L. 104–260 added subpar. (D).

1995—Subsec. (c)(5). Pub. L. 104–59 added par. (5).

1990—Subsecs. (a), (b). Pub. L. 101–549, §110(4), struck out subsec. (a) which related to approval of projects or award of grants, and subsec. (b) which related to implementation of approved or promulgated

plans.

Subsec. (c). Pub. L. 101–549, §101(f), designated existing provisions as par. (1), struck out "(1)", "(2)", "(3)", and "(4)" before "engage in", "support in", "license or", and "approve, any", respectively, substituted "conform to an implementation plan after it" for "conform to a plan after it", "conform to an implementation plan approved" for "conform to a plan approved", and "conformity to such an implementation plan shall" for "conformity to such a plan shall", inserted "Conformity to an implementation plan means—" followed immediately by subpars. (A) and (B) and closing provisions relating to determination of conformity being based on recent estimates of emissions and the determination of such estimates, and added pars. (2) to (4).

1977—Subsec. (a)(1). Pub. L. 95–190 inserted "national" before "primary".

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATIONS

Pub. L. 109–59, title VI, §6011(g), Aug. 10, 2005, 119 Stat. 1882, provided that: "Not later than 2 years after the date of enactment of this Act [Aug. 10, 2005], the Administrator of the Environmental Protection Agency shall promulgate revised regulations to implement the changes made by this section [amending this section]."

[1] See References in Text note below.

[2] So in original. Probably should be "paragraph (5),".

[3] So in original. Probably should be "Notwithstanding".

§7506a. Interstate transport commissions

(a) Authority to establish interstate transport regions

Whenever, on the Administrator's own motion or by petition from the Governor of any State, the Administrator has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, the Administrator may establish, by rule, a transport region for such pollutant that includes such States. The Administrator, on the Administrator's own motion or upon petition from the Governor of any State, or upon the recommendation of a transport commission established under subsection (b), may—

(1) add any State or portion of a State to any region established under this subsection whenever the Administrator has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region, or

(2) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the standard in any area in the region.

The Administrator shall approve or disapprove any such petition or recommendation within 18 months of its receipt. The Administrator shall establish appropriate proceedings for public participation regarding such petitions and motions, including notice and comment.

(b) Transport commissions

(1) Establishment

Whenever the Administrator establishes a transport region under subsection (a), the Administrator shall establish a transport commission comprised of (at a minimum) each of the following members:

(A) The Governor of each State in the region or the designee of each such Governor.

(B) The Administrator or the Administrator's designee.

(C) The Regional Administrator (or the Administrator's designee) for each Regional Office

for each Environmental Protection Agency Region affected by the transport region concerned.

(D) An air pollution control official representing each State in the region, appointed by the Governor.

Decisions of, and recommendations and requests to, the Administrator by each transport commission may be made only by a majority vote of all members other than the Administrator and the Regional Administrators (or designees thereof).

(2) Recommendations

The transport commission shall assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend to the Administrator such measures as the Commission determines to be necessary to ensure that the plans for the relevant States meet the requirements of section 7410(a)(2)(D) of this title. Such commission shall not be subject to the provisions of chapter 10 of title 5.

(c) Commission requests

A transport commission established under subsection (b) may request the Administrator to issue a finding under section 7410(k)(5) of this title that the implementation plan for one or more of the States in the transport region is substantially inadequate to meet the requirements of section 7410(a)(2)(D) of this title. The Administrator shall approve, disapprove, or partially approve and partially disapprove such a request within 18 months of its receipt and, to the extent the Administrator approves such request, issue the finding under section 7410(k)(5) of this title at the time of such approval. In acting on such request, the Administrator shall provide an opportunity for public participation and shall address each specific recommendation made by the commission. Approval or disapproval of such a request shall constitute final agency action within the meaning of section 7607(b) of this title.

(July 14, 1955, ch. 360, title I, §176A, as added Pub. L. 101–549, title I, §102(f)(1), Nov. 15, 1990, 104 Stat. 2419; amended Pub. L. 117–286, §4(a)(270), Dec. 27, 2022, 136 Stat. 4335.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (b)(2). Pub. L. 117–286 substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act (5 U.S.C. App.)."

§7507. New motor vehicle emission standards in nonattainment areas

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

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

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

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle".

(July 14, 1955, ch. 360, title I, §177, as added Pub. L. 95–95, title I, §129(b), Aug. 7, 1977, 91 Stat. 750; amended Pub. L. 101–549, title II, §232, Nov. 15, 1990, 104 Stat. 2529.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–549 added sentence at end prohibiting States from limiting or prohibiting sale or manufacture of new vehicles or engines certified in California as having met California standards and from taking any actions where effect of those actions would be to create a "third vehicle".

§7508. Guidance documents

The Administrator shall issue guidance documents under section 7408 of this title for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after August 7, 1977, and shall be revised at least every two years thereafter.

(July 14, 1955, ch. 360, title I, §178, as added Pub. L. 95–95, title I, §129(b), Aug. 7, 1977, 91 Stat. 750.)

§7509. Sanctions and consequences of failure to attain

(a) State failure

For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 7410(k)(5) of this title), if the Administrator—

(1) finds that a State has failed, for an area designated nonattainment under section 7407(d) of this title, to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this chapter applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under section 7410(k) of this title,

(2) disapproves a submission under section 7410(k) of this title, for an area designated nonattainment under section 7407 of this title, based on the submission's failure to meet one or more of the elements required by the provisions of this chapter applicable to such an area,

(3)(A) determines that a State has failed to make any submission as may be required under this chapter, other than one described under paragraph (1) or (2), including an adequate maintenance plan, or has failed to make any submission, as may be required under this chapter, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under section 7410(k)(1)(A) of this title, or

(B) disapproves in whole or in part a submission described under subparagraph (A), or

(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented,

unless such deficiency has been corrected within 18 months after the finding, disapproval, or determination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance, except that if the Administrator finds a lack of good faith, sanctions under both paragraph (1) and paragraph (2) of subsection (b) shall apply until the Administrator determines that the State has come into compliance. If the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter, sanctions under both paragraph (1) and paragraph (2) of subsection (b) shall apply until the Administrator determines that the State has come into compliance. In addition to any other sanction applicable as provided in this section, the Administrator may withhold all or part of the grants for support of air

pollution planning and control programs that the Administrator may award under section 7405 of this title.

(b) Sanctions

The sanctions available to the Administrator as provided in subsection (a) are as follows:

(1) Highway sanctions

(A) The Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants, under title 23 other than projects or grants for safety where the Secretary determines, based on accident or other appropriate data submitted by the State, that the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents. Such prohibition shall become effective upon the selection by the Administrator of this sanction.

(B) In addition to safety, projects or grants that may be approved by the Secretary, notwithstanding the prohibition in subparagraph (A), are the following—

(i) capital programs for public transit;

(ii) construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;

(iii) planning for requirements for employers to reduce employee work-trip-related vehicle emissions;

(iv) highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

(v) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;

(vi) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

(vii) programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and

(viii) such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

In considering such measures, the State should seek to ensure adequate access to downtown, other commercial, and residential areas, and avoid increasing or relocating emissions and congestion rather than reducing them.

(2) Offsets

In applying the emissions offset requirements of section 7503 of this title to new or modified sources or emissions units for which a permit is required under this part, the ratio of emission reductions to increased emissions shall be at least 2 to 1.

(c) Notice of failure to attain

(1) As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.

(2) Upon making the determination under paragraph (1), the Administrator shall publish a notice in the Federal Register containing such determination and identifying each area that the Administrator has determined to have failed to attain. The Administrator may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date.

(d) Consequences for failure to attain

(1) Within 1 year after the Administrator publishes the notice under subsection (c)(2) (relating to notice of failure to attain), each State containing a nonattainment area shall submit a revision to the applicable implementation plan meeting the requirements of paragraph (2) of this subsection.

(2) The revision required under paragraph (1) shall meet the requirements of section 7410 of this title and section 7502 of this title. In addition, the revision shall include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts.

(3) The attainment date applicable to the revision required under paragraph (1) shall be the same as provided in the provisions of section 7502(a)(2) of this title, except that in applying such provisions the phrase "from the date of the notice under section 7509(c)(2) of this title" shall be substituted for the phrase "from the date such area was designated nonattainment under section 7407(d) of this title" and for the phrase "from the date of designation as nonattainment".

(July 14, 1955, ch. 360, title I, §179, as added Pub. L. 101–549, title I, §102(g), Nov. 15, 1990, 104 Stat. 2420.)

§7509a. International border areas

(a) Implementation plans and revisions

Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if—

(1) such plan or revision meets all the requirements applicable to it under the [1] chapter other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and

(2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States.

(b) Attainment of ozone levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7511(a)(2) or (5) of this title or section 7511d of this title.

(c) Attainment of carbon monoxide levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such State, that such State has attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7512(b)(2) or (9) [2] of this title.

(d) Attainment of PM–10 levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM–10 nonattainment area in such State, such State would have attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside the United States, shall not be subject to the provisions of section 7513(b)(2) of this title.

(July 14, 1955, ch. 360, title I, §179B, as added Pub. L. 101–549, title VIII, §818, Nov. 15, 1990, 104 Stat. 2697.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ESTABLISHMENT OF PROGRAM TO MONITOR AND IMPROVE AIR QUALITY IN REGIONS ALONG BORDER BETWEEN UNITED STATES AND MEXICO

Pub. L. 101–549, title VIII, §815, Nov. 15, 1990, 104 Stat. 2693, provided that the Administrator of the Environmental Protection Agency was authorized, in cooperation with the Department of State and the affected border States, to negotiate with representatives of Mexico to authorize a program, not to extend beyond July 1, 1995, to monitor and improve air quality in regions along the border between the United States and Mexico, with requirements for monitoring, remediation, annual reports, and funding and personnel.

[1] So in original. Probably should be "this".

[2] So in original. Section 7512(b) of this title does not contain a par. (9).

SUBPART 2—ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS

§7511. Classifications and attainment dates

(a) Classification and attainment dates for 1989 nonattainment areas

(1) Each area designated nonattainment for ozone pursuant to section 7407(d) of this title shall be classified at the time of such designation, under table 1, by operation of law, as a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for ozone shall be as expeditiously as practicable but not later than the date provided in table 1.

TABLE 1

Area class	Design value*	Primary standard attainment date**
Marginal	0.121 up to 0.138	3 years after November 15, 1990
Moderate	0.138 up to 0.160	6 years after November 15, 1990
Serious	0.160 up to 0.180	9 years after November 15, 1990
Severe	0.180 up to 0.280	15 years after November 15, 1990
Extreme	0.280 and above	20 years after November 15, 1990

*The design value is measured in parts per million (ppm).

**The primary standard attainment date is measured from November 15, 1990.

(2) Notwithstanding table 1, in the case of a severe area with a 1988 ozone design value between 0.190 and 0.280 ppm, the attainment date shall be 17 years (in lieu of 15 years) after November 15, 1990.

(3) At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each ozone nonattainment area, the Administrator shall publish a notice announcing the classification of such ozone nonattainment area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice and comment and judicial review) shall apply to such classification.

(4) If an area classified under paragraph (1) (Table 1) would have been classified in another

category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, by the procedure required under paragraph (3), adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

(5) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) New designations and reclassifications

(1) New designations to nonattainment

Any area that is designated attainment or unclassifiable for ozone under section 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for ozone under section 7407(d)(3) of this title, shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsection (a). Upon its classification, the area shall be subject to the same requirements under section 7410 of this title, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(3), except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date the area is classified under this paragraph.

(2) Reclassification upon failure to attain

(A) Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

(i) the next higher classification for the area, or

(ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

(B) The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

(3) Voluntary reclassification

The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request.

(4) Failure of Severe Areas to attain standard

(A) If any Severe Area fails to achieve the national primary ambient air quality standard for ozone by the applicable attainment date (including any extension thereof), the fee provisions under section 7511d of this title shall apply within the area, the percent reduction requirements of section 7511a(c)(2)(B) and (C) of this title (relating to reasonable further progress demonstration and NO_x control) shall continue to apply to the area, and the State shall demonstrate that such percent reduction has been achieved in each 3-year interval after such failure until the standard is attained. Any failure to make such a demonstration shall be subject to the sanctions provided under this part.

(B) In addition to the requirements of subparagraph (A), if the ozone design value for a Severe Area referred to in subparagraph (A) is above 0.140 ppm for the year of the applicable attainment date, or if the area has failed to achieve its most recent milestone under section 7511a(g) of this title, the new source review requirements applicable under this subpart in Extreme Areas shall apply in the area and the term [1] "major source" and "major stationary source" shall have the same meaning as in Extreme Areas.

(C) In addition to the requirements of subparagraph (A) for those areas referred to in subparagraph (A) and not covered by subparagraph (B), the provisions referred to in subparagraph (B) shall apply after 3 years from the applicable attainment date unless the area has attained the standard by the end of such 3-year period.

(D) If, after November 15, 1990, the Administrator modifies the method of determining compliance with the national primary ambient air quality standard, a design value or other indicator comparable to 0.140 in terms of its relationship to the standard shall be used in lieu of 0.140 for purposes of applying the provisions of subparagraphs (B) and (C).

(c) References to terms

(1) Any reference in this subpart to a "Marginal Area", a "Moderate Area", a "Serious Area", a "Severe Area", or an "Extreme Area" shall be considered a reference to a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area as respectively classified under this section.

(2) Any reference in this subpart to "next higher classification" or comparable terms shall be considered a reference to the classification related to the next higher set of design values in table 1.

(July 14, 1955, ch. 360, title I, §181, as added Pub. L. 101–549, title I, §103, Nov. 15, 1990, 104 Stat. 2423.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTIONS FOR STRIPPER WELLS

Pub. L. 101–549, title VIII, §819, Nov. 15, 1990, 104 Stat. 2698, provided that: "Notwithstanding any other provision of law, the amendments to the Clean Air Act made by section 103 of the Clean Air Act Amendments of 1990 [enacting this section and sections 7511a to 7511f of this title] (relating to additional provisions for ozone nonattainment areas), by section 104 of such amendments [enacting sections 7512 and 7512a of this title] (relating to additional provisions for carbon monoxide nonattainment areas), by section 105 of such amendments [enacting sections 7513 to 7513b of this title and amending section 7476 of this title] (relating to additional provisions for PM–10 nonattainment areas), and by section 106 of such amendments [enacting sections 7514 and 7514a of this title] (relating to additional provisions for areas designated as nonattainment for sulfur oxides, nitrogen dioxide, and lead) shall not apply with respect to the production of and equipment used in the exploration, production, development, storage or processing of—

"(1) oil from a stripper well property, within the meaning of the June 1979 energy regulations (within the meaning of section 4996(b)(7) of the Internal Revenue Code of 1986 [26 U.S.C. 4996(b)(7)], as in effect before the repeal of such section); and

"(2) stripper well natural gas, as defined in section 108(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3318(b)).[,]

except to the extent that provisions of such amendments cover areas designated as Serious pursuant to part D of title I of the Clean Air Act [this part] and having a population of 350,000 or more, or areas designated as Severe or Extreme pursuant to such part D."

[1] *So in original. Probably should be "terms".*

§7511a. Plan submissions and requirements

(a) Marginal Areas

Each State in which all or part of a Marginal Area is located shall, with respect to the Marginal Area (or portion thereof, to the extent specified in this subsection), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection except to the extent the State has made such submissions as of November 15, 1990.

(1) Inventory

Within 2 years after November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2) Corrections to the State implementation plan

Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements—

(A) Reasonably available control technology corrections

For any Marginal Area (or, within the Administrator's discretion, portion thereof) the State shall submit, within 6 months of the date of classification under section 7511(a) of this title, a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 7502(b) of this title (as in effect immediately before November 15, 1990), as interpreted in guidance issued by the Administrator under section 7408 of this title before November 15, 1990.

(B) Savings clause for vehicle inspection and maintenance

(i) For any Marginal Area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after November 15, 1990, a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report Numbered 95–294, 95th Congress, 1st Session, 281–291 (1977) as interpreted in guidance of the Administrator issued pursuant to section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) or the program already included in the plan, whichever is more stringent.

(ii) Within 12 months after November 15, 1990, the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this chapter, taking into consideration the Administrator's investigations and audits of such program. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. No later than 2 years after the Administrator promulgates regulations

under section 7521(m)(3) of this title (relating to emission control diagnostics), the State shall submit a revision to such program to meet any requirements that the Administrator may prescribe under that section.

(C) Permit programs

Within 2 years after November 15, 1990, the State shall submit a revision that includes each of the following:

(i) Provisions to require permits, in accordance with sections 7502(c)(5) and 7503 of this title, for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the area.

(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 7502(b)(6) of this title (as in effect immediately before November 15, 1990), as interpreted in regulations of the Administrator promulgated as of November 15, 1990.

(3) Periodic inventory

(A) General requirement

No later than the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1).

(B) Emissions statements

(i) Within 2 years after November 15, 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after November 15, 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs [1] (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

(4) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least 1.1 to 1.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area. Section 7502(c)(9) of this title (relating to contingency measures) shall not apply to Marginal Areas.

(b) Moderate Areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area, make the submissions described under subsection (a) of this section (relating to Marginal Areas), and shall also submit the revisions to the applicable implementation plan described under this subsection.

(1) Plan provisions for reasonable further progress

(A) General rule

(i) By no later than 3 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions, within 6 years after November 15, 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after 1990. Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this chapter. This subparagraph shall not apply in the case of oxides of nitrogen for those areas for which the Administrator determines (when the Administrator approves the plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment.

(ii) A percentage less than 15 percent may be used for purposes of clause (i) in the case of any State which demonstrates to the satisfaction of the Administrator that—

(I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) in the case of Extreme Areas (with the exception that, in applying such provisions, the terms "major source" and "major stationary source" shall include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

(II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

(III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

(B) Baseline emissions

For purposes of subparagraph (A), the term "baseline emissions" means the total amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

(C) General rule for creditability of reductions

Except as provided under subparagraph (D), emissions reductions are creditable toward the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of 6 years after November 15, 1990, from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under subchapter V.

(D) Limits on creditability of reductions

Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (A):

(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by November 15, 1990, or required to be promulgated under section 7545(h) of this title.

(iii) Measures required under subsection (a)(2)(A) (concerning corrections to implementation plans prescribed under guidance by the Administrator).

(iv) Measures required under subsection (a)(2)(B) to be submitted immediately after

November 15, 1990 (concerning corrections to motor vehicle inspection and maintenance programs).

(2) Reasonably available control technology

The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 7502(c)(1) of this title with respect to each of the following:

(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between November 15, 1990, and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before November 15, 1990.

(C) All other major stationary sources of VOCs that are located in the area.

Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after November 15, 1990, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

(3) Gasoline vapor recovery

(A) General rule

Not later than 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as appropriate as to the effectiveness of such system. This subparagraph shall apply only to facilities which sell more than 10,000 gallons of gasoline per month (50,000 gallons per month in the case of an independent small business marketer of gasoline as defined in section 7625–1 [2] of this title).

(B) Effective date

The date required under subparagraph (A) shall be—

(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after November 15, 1990;

(ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or

(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

(C) Reference to terms

For purposes of this paragraph, any reference to the term "adoption date" shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(4) Motor vehicle inspection and maintenance

For all Moderate Areas, the State shall submit, immediately after November 15, 1990, a revision to the applicable implementation plan that includes provisions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(2)(B) (without regard to whether or not the area was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included a specific schedule for implementation of such a program).

(5) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase [3] emissions of such air pollutant shall be at least 1.15 to 1.

(c) Serious Areas

Except as otherwise specified in paragraph (4), each State in which all or part of a Serious Area is located shall, with respect to the Serious Area (or portion thereof, to the extent specified in this subsection), make the submissions described under subsection (b) (relating to Moderate Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Serious Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

(1) Enhanced monitoring

In order to obtain more comprehensive and representative data on ozone air pollution, not later than 18 months after November 15, 1990, the Administrator shall promulgate rules, after notice and public comment, for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds. The rules shall, among other things, cover the location and maintenance of monitors. Immediately following the promulgation of rules by the Administrator relating to enhanced monitoring, the State shall commence such actions as may be necessary to adopt and implement a program based on such rules, to improve monitoring for ambient concentrations of ozone, oxides of nitrogen and volatile organic compounds and to improve monitoring of emissions of oxides of nitrogen and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of such air pollutants.

(2) Attainment and reasonable further progress demonstrations

Within 4 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan that includes each of the following:

(A) Attainment demonstration

A demonstration that the plan, as revised, will provide for attainment of the ozone national ambient air quality standard by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(B) Reasonable further progress demonstration

A demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) equal to the following amount averaged over each consecutive 3-year period beginning 6 years after November 15, 1990, until the attainment date:

(i) at least 3 percent of baseline emissions each year; or

(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To lessen the 3 percent requirement under clause (ii), a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Any determination to lessen the 3 percent requirement shall be reviewed at each milestone under subsection (g) and revised to reflect such new measures (if any) achieved in practice by sources in the same category in any State, allowing a reasonable time to implement such measures. The emission reductions described in this subparagraph shall be calculated in accordance with subsection (b)(1)(C) and (D) (concerning creditability of

reductions). The reductions creditable for the period beginning 6 years after November 15, 1990, shall include reductions that occurred before such period, computed in accordance with subsection (b)(1), that exceed the 15-percent amount of reductions required under subsection (b)(1)(A).

(C) NO_x control

The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOC's and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1)(C) and (D)), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B). Within 1 year after November 15, 1990, the Administrator shall issue guidance concerning the conditions under which NO_x control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of VOCs may be accepted as an adequate demonstration for purposes of this subsection.

(3) Enhanced vehicle inspection and maintenance program

(A) Requirement for submission

Within 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for an enhanced program to reduce hydrocarbon emissions and NO_x emissions from in-use motor vehicles registered in each urbanized area (in the nonattainment area), as defined by the Bureau of the Census, with a 1980 population of 200,000 or more.

(B) Effective date of State programs; guidance

The State program required under subparagraph (A) shall take effect no later than 2 years from November 15, 1990, and shall comply in all respects with guidance published in the Federal Register (and from time to time revised) by the Administrator for enhanced vehicle inspection and maintenance programs. Such guidance shall include—

(i) a performance standard achievable by a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 7521 of this title; and

(ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

Compliance with the performance standard under clause (i) shall be determined using a method to be established by the Administrator.

(C) State program

The State program required under subparagraph (A) shall include, at a minimum, each of the following elements—

(i) Computerized emission analyzers, including on-road testing devices.

(ii) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 7541(b) of this title unless a warranty remedy has been denied in writing, or for tampering-related repairs.

(iii) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of $450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in subchapter V).

(iv) Enforcement through denial of vehicle registration (except for any program in operation before November 15, 1990, whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that noncomplying vehicles are not operated on public roads).

(v) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program which exceed the requirements of this chapter, will result in emission reductions which equal or exceed the reductions which can be obtained through such annual inspections.

(vi) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

(vii) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

Each State shall biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.

(4) Clean-fuel vehicle programs

(A) Except to the extent that substitute provisions have been approved by the Administrator under subparagraph (B), the State shall submit to the Administrator, within 42 months of November 15, 1990, a revision to the applicable implementation plan for each area described under part C of subchapter II to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of subchapter II, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of subchapter II) economic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area that opts into the clean fuel-vehicle program as provided in part C of subchapter II.

(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of subchapter II, any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of subchapter II, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under this chapter for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of November 15, 1990. The Administrator shall approve or disapprove any such revision within 30 months of November 15, 1990. The Administrator shall publish the revision submitted by a State in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in sections 553 through 557 of title 5 (related to notice and comment). Where the Administrator approves such revision for any area, the State need not submit the revision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the revision as a substitute.

(C) If the Administrator determines, under section 7509 of this title, that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 7509 of this title, the State may not receive credit, in any

demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in part C of subchapter II.

(5) Transportation control

(A) [4] Beginning 6 years after November 15, 1990, and each third year thereafter, the State shall submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State shall within 18 months develop and submit a revision of the applicable implementation plan that includes a transportation control measures program consisting of measures from, but not limited to, section 7408(f) of this title that will reduce emissions to levels that are consistent with emission levels projected in such demonstration. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(e) of this title and with the requirements of section 7504(b) of this title and shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections.

(6) De minimis rule

The new source review provisions under this part shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this chapter unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

(7) Special rule for modifications of sources emitting less than 100 tons

In the case of any major stationary source of volatile organic compounds located in the area (other than a source which emits or has the potential to emit 100 tons or more of volatile organic compounds per year), whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that such increase shall not be considered a modification for such purposes if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, such change shall be considered a modification for such purposes, but in applying section 7503(a)(2) of this title in the case of any such modification, the best available control technology (BACT), as defined in section 7479 of this title, shall be substituted for the lowest achievable emission rate (LAER). The Administrator shall establish and publish policies and procedures for implementing the provisions of this paragraph.

(8) Special rule for modifications of sources emitting 100 tons or more

In the case of any major stationary source of volatile organic compounds located in the area which emits or has the potential to emit 100 tons or more of volatile organic compounds per year, whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that if the owner or operator of the source elects to offset the increase by a greater

reduction in emissions of volatile organic compounds from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, the requirements of section 7503(a)(2) of this title (concerning the lowest achievable emission rate (LAER)) shall not apply.

(9) Contingency provisions

In addition to the contingency provisions required under section 7502(c)(9) of this title, the plan revision shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone.

(10) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.2 to 1.

Any reference to "attainment date" in subsection (b), which is incorporated by reference into this subsection, shall refer to the attainment date for serious areas.

(d) Severe Areas

Each State in which all or part of a Severe Area is located shall, with respect to the Severe Area, make the submissions described under subsection (c) (relating to Serious Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Severe Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.

(1) Vehicle miles traveled

(A) Within 2 years after November 15, 1990, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection [5] (b)(2)(B) and (c)(2)(B) (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

(B) The State may also, in its discretion, submit a revision at any time requiring employers in such area to implement programs to reduce work-related vehicle trips and miles travelled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and may require that employers in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. Any State required to submit a revision under this subparagraph (as in effect before December 23, 1995) containing provisions requiring employers to reduce work-related vehicle trips and miles travelled by employees may, in accordance with State law, remove such provisions from the implementation plan, or withdraw its submission, if the State notifies the Administrator, in writing, that the State has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.

(2) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.3 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(3) Enforcement under section 7511d

By December 31, 2000, the State shall submit a plan revision which includes the provisions required under section 7511d of this title.

Any reference to the term "attainment date" in subsection (b) or (c), which is incorporated by reference into this subsection (d), shall refer to the attainment date for Severe Areas.

(e) Extreme Areas

Each State in which all or part of an Extreme Area is located shall, with respect to the Extreme Area, make the submissions described under subsection (d) (relating to Severe Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. The provisions of clause (ii) of subsection (c)(2)(B) (relating to reductions of less than 3 percent), the provisions of paragaphs [6] (6), (7) and (8) of subsection (c) (relating to de minimus [7] rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) (relating to reductions of less than 15 percent) shall not apply in the case of an Extreme Area. For any Extreme Area, the terms "major source" and "major stationary source" includes [8] (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

(1) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(2) Modifications

Any change (as described in section 7411(a)(4) of this title) at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that for purposes of complying with the offset requirement pursuant to section 7503(a)(1) of this title, any such increase shall not be considered a modification if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of the air pollutant concerned from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. The offset requirements of this part shall not be applicable in Extreme Areas to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit, or this chapter.

(3) Use of clean fuels or advanced control technology

For Extreme Areas, a plan revision shall be submitted within 3 years after November 15, 1990, to require, effective 8 years after November 15, 1990, that each new, modified, and existing electric utility and industrial and commercial boiler which emits more than 25 tons per year of oxides of nitrogen—

(A) burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or

(B) use advanced control technology (such as catalytic control technology or other comparably effective control methods) for reduction of emissions of oxides of nitrogen.

For purposes of this subsection, the term "primary fuel" means the fuel which is used 90 percent or more of the operating time. This paragraph shall not apply during any natural gas supply emergency (as defined in title III of the Natural Gas Policy Act of 1978 [15 U.S.C. 3361 et seq.]).

(4) Traffic control measures during heavy traffic hours

For Extreme Areas, each implementation plan revision under this subsection may contain provisions establishing traffic control measures applicable during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles, notwithstanding any other provision of law.

(5) New technologies

The Administrator may, in accordance with section 7410 of this title, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the Administrator that—

(A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990; and

(B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.

Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 7410 of this title. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) or (c)(2) and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2), and that such failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2).

Any reference to the term "attainment date" in subsection (b), (c), or (d) which is incorporated by reference into this subsection, shall refer to the attainment date for Extreme Areas.

(f) NO_x requirements

(1) The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen. This subsection shall not apply in the case of oxides of nitrogen for those sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned. This subsection shall also not apply in the case of oxides of nitrogen for—

(A) nonattainment areas not within an ozone transport region under section 7511c of this title, if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(B) nonattainment areas within such an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not produce net ozone air quality benefits in such region.

The Administrator shall, in the Administrator's determinations, consider the study required under

section 7511f of this title.

(2)(A) If the Administrator determines that excess reductions in emissions of NO_x would be achieved under paragraph (1), the Administrator may limit the application of paragraph (1) to the extent necessary to avoid achieving such excess reductions.

(B) For purposes of this paragraph, excess reductions in emissions of NO_x are emission reductions for which the Administrator determines that net air quality benefits are greater in the absence of such reductions. Alternatively, for purposes of this paragraph, excess reductions in emissions of NO_x are, for—

(i) nonattainment areas not within an ozone transport region under section 7511c of this title, emission reductions that the Administrator determines would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(ii) nonattainment areas within such ozone transport region, emission reductions that the Administrator determines would not produce net ozone air quality benefits in such region.

(3) At any time after the final report under section 7511f of this title is submitted to Congress, a person may petition the Administrator for a determination under paragraph (1) or (2) with respect to any nonattainment area or any ozone transport region under section 7511c of this title. The Administrator shall grant or deny such petition within 6 months after its filing with the Administrator.

(g) Milestones

(1) Reductions in emissions

6 years after November 15, 1990, and at intervals of every 3 years thereafter, the State shall determine whether each nonattainment area (other than an area classified as Marginal or Moderate) has achieved a reduction in emissions during the preceding intervals equivalent to the total emission reductions required to be achieved by the end of such interval pursuant to subsection (b)(1) and the corresponding requirements of subsections (c)(2)(B) and (C), (d), and (e). Such reduction shall be referred to in this section as an applicable milestone.

(2) Compliance demonstration

For each nonattainment area referred to in paragraph (1), not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the standard has been attained), each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Serious and Severe Areas; State election

If a State fails to submit a demonstration under paragraph (2) for any Serious or Severe Area within the required period or if the Administrator determines that the area has not met any applicable milestone, the State shall elect, within 90 days after such failure or determination—

(A) to have the area reclassified to the next higher classification,

(B) to implement specific additional measures adequate, as determined by the Administrator, to meet the next milestone as provided in the applicable contingency plan, or

(C) to adopt an economic incentive program as described in paragraph (4).

If the State makes an election under subparagraph (B), the Administrator shall, within 90 days after the election, review such plan and shall, if the Administrator finds the contingency plan inadequate, require further measures necessary to meet such milestone. Once the State makes an election, it shall be deemed accepted by the Administrator as meeting the election requirement. If

the State fails to make an election required under this paragraph within the required 90-day period or within 6 months thereafter, the area shall be reclassified to the next higher classification by operation of law at the expiration of such 6-month period. Within 12 months after the date required for the State to make an election, the State shall submit a revision of the applicable implementation plan for the area that meets the requirements of this paragraph. The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(4) Economic incentive program

(A) An economic incentive program under this paragraph shall be consistent with rules published by the Administrator and sufficient, in combination with other elements of the State plan, to achieve the next milestone. The State program may include a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State established emissions fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to ozone formation, or any combination of the foregoing or other similar measures. The program may also include incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 7408(f) of this title.

(B) Within 2 years after November 15, 1990, the Administrator shall publish rules for the programs to be adopted pursuant to subparagraph (A). Such rules shall include model plan provisions which may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources. The guidelines shall require that any revenues generated by the plan provisions adopted pursuant to subparagraph (A) shall be used by the State for any of the following:

(i) Providing incentives for achieving emission reductions.

(ii) Providing assistance for the development of innovative technologies for the control of ozone air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(iii) Funding the administrative costs of State programs under this chapter. Not more than 50 percent of such revenues may be used for purposes of this clause.

(5) Extreme Areas

If a State fails to submit a demonstration under paragraph (2) for any Extreme Area within the required period, or if the Administrator determines that the area has not met any applicable milestone, the State shall, within 9 months after such failure or determination, submit a plan revision to implement an economic incentive program which meets the requirements of paragraph (4). The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(h) Rural transport areas

(1) Notwithstanding any other provision of section 7511 of this title or this section, a State containing an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census), which area is treated by the Administrator, in the Administrator's discretion, as a rural transport area within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it makes the submissions required under subsection (a) of this section (relating to marginal areas).

(2) The Administrator may treat an ozone nonattainment area as a rural transport area if the Administrator finds that sources of VOC (and, where the Administrator determines relevant, NO_x) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.

(i) Reclassified areas

Each State containing an ozone nonattainment area reclassified under section 7511(b)(2) of this title shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

(j) Multi-State ozone nonattainment areas

(1) Coordination among States

Each State in which there is located a portion of a single ozone nonattainment area which covers more than one State (hereinafter in this section referred to as a "multi-State ozone nonattainment area") shall—

(A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and

(B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.

The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State ozone nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment

If any State in which there is located a portion of a multi-State ozone nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for ozone in that portion within the required period, the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under this section (relating to plan submissions and requirements for ozone nonattainment areas). If the Administrator makes such finding, the provisions of section 7509 of this title (relating to sanctions) shall not apply, by reason of the failure to make such demonstration, in the portion of the multi-State ozone nonattainment area within the State submitting such petition.

(July 14, 1955, ch. 360, title I, §182, as added Pub. L. 101–549, title I, §103, Nov. 15, 1990, 104 Stat. 2426; amended Pub. L. 104–70, §1, Dec. 23, 1995, 109 Stat. 773.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (e)(3), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350. Title III of the Act is classified generally to subchapter III (§3361 et seq.) of chapter 60 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1995—Subsec. (d)(1)(B). Pub. L. 104–70 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Within 2 years after November 15, 1990, the State shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and shall, at a minimum, require that each employer of 100 or more persons in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high

occupancy modes. The revision shall provide that each employer subject to a vehicle occupancy requirement shall submit a compliance plan within 2 years after the date the revision is submitted which shall convincingly demonstrate compliance with the requirements of this paragraph not later than 4 years after such date."

STATUTORY NOTES AND RELATED SUBSIDIARIES

MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS

Pub. L. 104–59, title III, §348, Nov. 28, 1995, 109 Stat. 617, provided that:

"(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator') shall not require adoption or implementation by a State of a test-only I/M240 enhanced vehicle inspection and maintenance program as a means of compliance with section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a), but the Administrator may approve such a program if a State chooses to adopt the program as a means of compliance with such section.

"(b) LIMITATION ON PLAN DISAPPROVAL.—The Administrator shall not disapprove or apply an automatic discount to a State implementation plan revision under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a) on the basis of a policy, regulation, or guidance providing for a discount of emissions credits because the inspection and maintenance program in such plan revision is decentralized or a test-and-repair program.

"(c) EMISSIONS REDUCTION CREDITS.—

"(1) STATE PLAN REVISION; APPROVAL.—Within 120 days of the date of the enactment of this subsection [Nov. 28, 1995], a State may submit an implementation plan revision proposing an interim inspection and maintenance program under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a). The Administrator shall approve the program based on the full amount of credits proposed by the State for each element of the program if the proposed credits reflect good faith estimates by the State and the revision is otherwise in compliance with such Act. If, within such 120-day period, the State submits to the Administrator proposed revisions to the implementation plan, has all of the statutory authority necessary to implement the revisions, and has proposed a regulation to make the revisions, the Administrator may approve the revisions without regard to whether or not such regulation has been issued as a final regulation by the State.

"(2) EXPIRATION OF INTERIM APPROVAL.—The interim approval shall expire on the earlier of (A) the last day of the 18-month period beginning on the date of the interim approval, or (B) the date of final approval. The interim approval may not be extended.

"(3) FINAL APPROVAL.—The Administrator shall grant final approval of the revision based on the credits proposed by the State during or after the period of interim approval if data collected on the operation of the State program demonstrates that the credits are appropriate and the revision is otherwise in compliance with the Clean Air Act [42 U.S.C. 7401 et seq.].

"(4) BASIS OF APPROVAL; NO AUTOMATIC DISCOUNT.—Any determination with respect to interim or full approval shall be based on the elements of the program and shall not apply any automatic discount because the program is decentralized or a test-and-repair program."

[1] So in original. Probably should be "subparagraph".

[2] So in original. Probably should be section "7625".

[3] So in original. Probably should be "increased".

[4] So in original. No subpar. (B) has been enacted.

[5] So in original. Probably should be "subsections".

[6] So in original. Probably should be "paragraphs".

[7] So in original. Probably should be "de minimis".

[8] So in original. Probably should be "include".

§7511b. Federal ozone measures

(a) Control techniques guidelines for VOC sources

Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines, in accordance with section 7408 of this title, for 11 categories of stationary sources of VOC emissions for which such guidelines have not been issued as of November 15, 1990, not including the categories referred to in paragraphs (3) and (4) of subsection (b) of this section. The Administrator may issue such additional control techniques guidelines as the Administrator deems necessary.

(b) Existing and new CTGS

(1) Within 36 months after November 15, 1990, and periodically thereafter, the Administrator shall review and, if necessary, update control technique guidance issued under section 7408 of this title before November 15, 1990.

(2) In issuing the guidelines the Administrator shall give priority to those categories which the Administrator considers to make the most significant contribution to the formation of ozone air pollution in ozone nonattainment areas, including hazardous waste treatment, storage, and disposal facilities which are permitted under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.]. Thereafter the Administrator shall periodically review and, if necessary, revise such guidelines.

(3) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds into the ambient air from aerospace coatings and solvents. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds into the ambient air from the application of such coatings and solvents to such level as the Administrator determines may be achieved through the adoption of best available control measures. Such control technology guidance shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control technology guidance under this subsection, the Administrator shall consult with the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration with regard to the establishment of specifications for such coatings. In evaluating VOC reduction strategies, the guidance shall take into account the applicable requirements of section 7412 of this title and the need to protect stratospheric ozone.

(4) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds and PM–10 into the ambient air from paints, coatings, and solvents used in shipbuilding operations and ship repair. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds and PM–10 into the ambient air from the removal or application of such paints, coatings, and solvents to such level as the Administrator determines may be achieved through the adoption of the best available control measures. Such control techniques guidelines shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control techniques guidelines under this subsection, the Administrator shall consult with the appropriate Federal agencies.

(c) Alternative control techniques

Within 3 years after November 15, 1990, the Administrator shall issue technical documents which identify alternative controls for all categories of stationary sources of volatile organic compounds and oxides of nitrogen which emit, or have the potential to emit 25 tons per year or more of such air pollutant. The Administrator shall revise and update such documents as the Administrator determines necessary.

(d) Guidance for evaluating cost-effectiveness

Within 1 year after November 15, 1990, the Administrator shall provide guidance to the States to be used in evaluating the relative cost-effectiveness of various options for the control of emissions from existing stationary sources of air pollutants which contribute to nonattainment of the national ambient air quality standards for ozone.

(e) Control of emissions from certain sources

(1) Definitions

For purposes of this subsection—

(A) Best available controls

The term "best available controls" means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

(B) Consumer or commercial product

The term "consumer or commercial product" means any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds. The term does not include fuels or fuel additives regulated under section 7545 of this title, or motor vehicles, non-road vehicles, and non-road engines as defined under section 7550 of this title.

(C) Regulated entities

The term "regulated entities" means—

(i) manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or

(ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

(2) Study and report

(A) Study

The Administrator shall conduct a study of the emissions of volatile organic compounds into the ambient air from consumer and commercial products (or any combination thereof) in order to—

(i) determine their potential to contribute to ozone levels which violate the national ambient air quality standard for ozone; and

(ii) establish criteria for regulating consumer and commercial products or classes or categories thereof which shall be subject to control under this subsection.

The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990.

(B) Consideration of certain factors

In establishing the criteria under subparagraph (A)(ii), the Administrator shall take into consideration each of the following:

(i) The uses, benefits, and commercial demand of consumer and commercial products.

(ii) The health or safety functions (if any) served by such consumer and commercial products.

(iii) Those consumer and commercial products which emit highly reactive volatile organic compounds into the ambient air.

(iv) Those consumer and commercial products which are subject to the most cost-effective controls.

(v) The availability of alternatives (if any) to such consumer and commercial products which are of comparable costs, considering health, safety, and environmental impacts.

(3) Regulations to require emission reductions

(A) In general

Upon submission of the final report under paragraph (2), the Administrator shall list those categories of consumer or commercial products that the Administrator determines, based on the study, account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer or commercial products in areas that violate the NAAQS for ozone. Credit toward the 80 percent emissions calculation shall be given for emission reductions from consumer or commercial products made after November 15, 1990. At such time, the Administrator shall divide the list into 4 groups establishing priorities for regulation based on the criteria established in paragraph (2). Every 2 years after promulgating such list, the Administrator shall regulate one group of categories until all 4 groups are regulated. The regulations shall require best available controls as defined in this section. Such regulations may exempt health use products for which the Administrator determines there is no suitable substitute. In order to carry out this section, the Administrator may, by regulation, control or prohibit any activity, including the manufacture or introduction into commerce, offering for sale, or sale of any consumer or commercial product which results in emission of volatile organic compounds into the ambient air.

(B) Regulated entities

Regulations under this subsection may be imposed only with respect to regulated entities.

(C) Use of CTGS

For any consumer or commercial product the Administrator may issue control techniques guidelines under this chapter in lieu of regulations required under subparagraph (A) if the Administrator determines that such guidance will be substantially as effective as regulations in reducing emissions of volatile organic compounds which contribute to ozone levels in areas which violate the national ambient air quality standard for ozone.

(4) Systems of regulation

The regulations under this subsection may include any system or systems of regulation as the Administrator may deem appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of the product.

(5) Special fund

Any amounts collected by the Administrator under such regulations shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available until expended, subject to annual appropriation Acts, solely to carry out the activities of the Administrator for which such fees, charges, or collections are established or made.

(6) Enforcement

Any regulation established under this subsection shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such regulation shall be treated as a violation of a requirement of section 7411(e) of this title.

(7) State administration

Each State may develop and submit to the Administrator a procedure under State law for implementing and enforcing regulations promulgated under this subsection. If the Administrator

finds the State procedure is adequate, the Administrator shall approve such procedure. Nothing in this paragraph shall prohibit the Administrator from enforcing any applicable regulations under this subsection.

(8) Size, etc.

No regulations regarding the size, shape, or labeling of a product may be promulgated, unless the Administrator determines such regulations to be useful in meeting any national ambient air quality standard.

(9) State consultation

Any State which proposes regulations other than those adopted under this subsection shall consult with the Administrator regarding whether any other State or local subdivision has promulgated or is promulgating regulations on any products covered under this part. The Administrator shall establish a clearinghouse of information, studies, and regulations proposed and promulgated regarding products covered under this subsection and disseminate such information collected as requested by State or local subdivisions.

(f) Tank vessel standards

(1) Schedule for standards

(A) Within 2 years after November 15, 1990, the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating, shall promulgate standards applicable to the emission of VOCs and any other air pollutant from loading and unloading of tank vessels (as that term is defined in section 2101 of title 46) which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. Such standards shall require the application of reasonably available control technology, considering costs, any nonair-quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques. To the extent practicable such standards shall apply to loading and unloading facilities and not to tank vessels.

(B) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds (after consultation with the Secretary of the department [1] in which the Coast Guard is operating) necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period, except that the effective date shall not be more than 2 years after promulgation of such regulations.

(2) Regulations on equipment safety

Within 6 months after November 15, 1990, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of title 46 and section 1225 [2] of title 33. The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.

(3) Agency authority

(A) The Administrator shall ensure compliance with the tank vessel emission standards prescribed under paragraph (1)(A). The Secretary of the Department in which the Coast Guard is operating shall also ensure compliance with the tank vessel standards prescribed under paragraph (1)(A).

(B) The Secretary of the Department in which the Coast Guard is operating shall ensure compliance with the regulations issued under paragraph (2).

(4) State or local standards

After the Administrator promulgates standards under this section, no State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions from tank

vessels subject to regulation under paragraph (1) unless such standard is no less stringent than the standards promulgated under paragraph (1).

(5) Enforcement

Any standard established under paragraph (1)(A) shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such standard shall be treated as a violation of a requirement of section 7411(e) of this title.

(g) Ozone design value study

The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of November 15, 1990, for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The Administrator shall obtain input from States, local subdivisions thereof, and others. The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990. The results of the study shall be subject to peer and public review before submitting it to Congress.

(h) Vehicles entering ozone nonattainment areas

(1) Authority regarding ozone inspection and maintenance testing

(A) In general

No noncommercial motor vehicle registered in a foreign country and operated by a United States citizen or by an alien who is a permanent resident of the United States, or who holds a visa for the purposes of employment or educational study in the United States, may enter a covered ozone nonattainment area from a foreign country bordering the United States and contiguous to the nonattainment area more than twice in a single calendar-month period, if State law has requirements for the inspection and maintenance of such vehicles under the applicable implementation plan in the nonattainment area.

(B) Applicability

Subparagraph (A) shall not apply if the operator presents documentation at the United States border entry point establishing that the vehicle has complied with such inspection and maintenance requirements as are in effect and are applicable to motor vehicles of the same type and model year.

(2) Sanctions for violations

The President may impose and collect from the operator of any motor vehicle who violates, or attempts to violate, paragraph (1) a civil penalty of not more than $200 for the second violation or attempted violation and $400 for the third and each subsequent violation or attempted violation.

(3) State election

The prohibition set forth in paragraph (1) shall not apply in any State that elects to be exempt from the prohibition. Such an election shall take effect upon the President's receipt of written notice from the Governor of the State notifying the President of such election.

(4) Alternative approach

The prohibition set forth in paragraph (1) shall not apply in a State, and the President may implement an alternative approach, if—

(A) the Governor of the State submits to the President a written description of an alternative approach to facilitate the compliance, by some or all foreign-registered motor vehicles, with the motor vehicle inspection and maintenance requirements that are—

(i) related to emissions of air pollutants;

(ii) in effect under the applicable implementation plan in the covered ozone nonattainment area; and

(iii) applicable to motor vehicles of the same types and model years as the foreign-registered motor vehicles; and

(B) the President approves the alternative approach as facilitating compliance with the motor vehicle inspection and maintenance requirements referred to in subparagraph (A).

(5) Definition of covered ozone nonattainment area

In this section, the term "covered ozone nonattainment area" means a Serious Area, as classified under section 7511 of this title as of October 27, 1998.

(July 14, 1955, ch. 360, title I, §183, as added Pub. L. 101–549, title I, §103, Nov. 15, 1990, 104 Stat. 2443; amended Pub. L. 105–286, §2, Oct. 27, 1998, 112 Stat. 2773.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 1225 of title 33, referred to in subsec. (f)(2), was repealed by Pub. L. 115–282, title IV, §402(e), Dec. 4, 2018, 132 Stat. 4264. See Transitional and Savings Provisions note preceding section 101 of Title 46, Shipping, and section 70011 of Title 46.

AMENDMENTS

1998—Subsec. (h). Pub. L. 105–286 added subsec. (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT; PUBLICATION OF PROHIBITION

Pub. L. 105–286, §3, Oct. 27, 1998, 112 Stat. 2774, provided that:

"(a) IN GENERAL.—The amendment made by section 2 [amending this section] takes effect 180 days after the date of the enactment of this Act [Oct. 27, 1998]. Nothing in that amendment shall require action that is inconsistent with the obligations of the United States under any international agreement.

"(b) INFORMATION.—As soon as practicable after the date of the enactment of this Act, the appropriate agency of the United States shall distribute information to publicize the prohibition set forth in the amendment made by section 2."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[1] So in original. Probably should be capitalized.

[2] See References in Text note below.

§7511c. Control of interstate ozone air pollution

(a) Ozone transport regions

A single transport region for ozone (within the meaning of section 7506a(a) of this title), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, is hereby established by operation of law. The provisions of section 7506a(a)(1) and (2) of this title shall apply with respect to the transport region established under this section and any other transport region established for

ozone, except to the extent inconsistent with the provisions of this section. The Administrator shall convene the commission required (under section 7506a(b) of this title) as a result of the establishment of such region within 6 months of November 15, 1990.

(b) Plan provisions for States in ozone transport regions

(1) In accordance with section 7410 of this title, not later than 2 years after November 15, 1990 (or 9 months after the subsequent inclusion of a State in a transport region established for ozone), each State included within a transport region established for ozone shall submit a State implementation plan or revision thereof to the Administrator which requires the following—

(A) that each area in such State that is in an ozone transport region, and that is a metropolitan statistical area or part thereof with a population of 100,000 or more comply with the provisions of section 7511a(c)(2)(A) of this title (pertaining to enhanced vehicle inspection and maintenance programs); and

(B) implementation of reasonably available control technology with respect to all sources of volatile organic compounds in the State covered by a control techniques guideline issued before or after November 15, 1990.

(2) Within 3 years after November 15, 1990, the Administrator shall complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 7511a(b)(3) of this title, and such measures or such vehicle refueling controls shall be implemented in accordance with the provisions of this section. Notwithstanding other deadlines in this section, the applicable implementation plan shall be revised to reflect such measures within 1 year of completion of the study. For purposes of this section any stationary source that emits or has the potential to emit at least 50 tons per year of volatile organic compounds shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.

(c) Additional control measures

(1) Recommendations

Upon petition of any State within a transport region established for ozone, and based on a majority vote of the Governors on the Commission [1] (or their designees), the Commission [1] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart. The commission shall transmit such recommendations to the Administrator.

(2) Notice and review

Whenever the Administrator receives recommendations prepared by a commission pursuant to paragraph (1) (the date of receipt of which shall hereinafter in this section be referred to as the "receipt date"), the Administrator shall—

(A) immediately publish in the Federal Register a notice stating that the recommendations are available and provide an opportunity for public hearing within 90 days beginning on the receipt date; and

(B) commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in such region into attainment by the dates provided by this subpart and are otherwise consistent with this chapter.

(3) Consultation

In undertaking the review required under paragraph (2)(B), the Administrator shall consult with members of the commission of the affected States and shall take into account the data, views, and comments received pursuant to paragraph (2)(A).

(4) Approval and disapproval

Within 9 months after the receipt date, the Administrator shall (A) determine whether to

approve, disapprove, or partially disapprove and partially approve the recommendations; (B) notify the commission in writing of such approval, disapproval, or partial disapproval; and (C) publish such determination in the Federal Register. If the Administrator disapproves or partially disapproves the recommendations, the Administrator shall specify—

(i) why any disapproved additional control measures are not necessary to bring any area in such region into attainment by the dates provided by this subpart or are otherwise not consistent with the [2] chapter; and

(ii) recommendations concerning equal or more effective actions that could be taken by the commission to conform the disapproved portion of the recommendations to the requirements of this section.

(5) Finding

Upon approval or partial approval of recommendations submitted by a commission, the Administrator shall issue to each State which is included in the transport region and to which a requirement of the approved plan applies, a finding under section 7410(k)(5) of this title that the implementation plan for such State is inadequate to meet the requirements of section 7410(a)(2)(D) of this title. Such finding shall require each such State to revise its implementation plan to include the approved additional control measures within one year after the finding is issued.

(d) Best available air quality monitoring and modeling

For purposes of this section, not later than 6 months after November 15, 1990, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.

(July 14, 1955, ch. 360, title I, §184, as added Pub. L. 101–549, title I, §103, Nov. 15, 1990, 104 Stat. 2448.)

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be "this".

§7511d. Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain

(a) General rule

Each implementation plan revision required under section 7511a(d) and (e) of this title (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c), pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b), for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

(b) Computation of fee

(1) Fee amount

The fee shall equal $5,000, adjusted in accordance with paragraph (3), per ton of VOC emitted by the source during the calendar year in excess of 80 percent of the baseline amount, computed under paragraph (2).

(2) Baseline amount

For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the Administrator may provide, as the lower of the amount of actual VOC emissions ("actuals") or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan ("allowables")) during the attainment year. Notwithstanding the preceding sentence, the Administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of average actuals or average allowables, determined over a period of more than one calendar year. Such guidance may provide that such average calculation for a specific source may be used if that source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

(3) Annual adjustment

The fee amount under paragraph (1) shall be adjusted annually, beginning in the year beginning after 1990, in accordance with section 7661a(b)(3)(B)(v) of this title (relating to inflation adjustment).

(c) Exception

Notwithstanding any provision of this section, no source shall be required to pay any fee under subsection (a) with respect to emissions during any year that is treated as an Extension Year under section 7511(a)(5) of this title.

(d) Fee collection by Administrator

If the Administrator has found that the fee provisions of the implementation plan do not meet the requirements of this section, or if the Administrator makes a finding that the State is not administering and enforcing the fee required under this section, the Administrator shall, in addition to any other action authorized under this subchapter, collect, in accordance with procedures promulgated by the Administrator, the unpaid fees required under subsection (a). If the Administrator makes such a finding under section 7509(a)(4) of this title, the Administrator may collect fees for periods before the determination, plus interest computed in accordance with section 6621(a)(2) of title 26 (relating to computation of interest on underpayment of Federal taxes), to the extent the Administrator finds such fees have not been paid to the State. The provisions of clauses (ii) through (iii) of section 7661a(b)(3)(C) of this title (relating to penalties and use of the funds, respectively) shall apply with respect to fees collected under this subsection.

(e) Exemptions for certain small areas

For areas with a total population under 200,000 which fail to attain the standard by the applicable attainment date, no sanction under this section or under any other provision of this chapter shall apply if the area can demonstrate, consistent with guidance issued by the Administrator, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas. The prohibition applies only in cases in which the area has met all requirements and implemented all measures applicable to the area under this chapter.

(July 14, 1955, ch. 360, title I, §185, as added Pub. L. 101–549, title I, §103, Nov. 15, 1990, 104 Stat. 2450.)

§7511e. Transitional areas

If an area designated as an ozone nonattainment area as of November 15, 1990, has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989, the Administrator shall suspend the application of the requirements of this subpart to such area until December 31, 1991. By June 30, 1992, the Administrator shall determine by order, based on the area's design value as of the attainment date, whether the area attained such standard by December 31, 1991. If the Administrator determines that the area attained the standard, the Administrator shall require, as part of the order, the State to submit a maintenance plan for the area within 12 months of such determination. If the Administrator

determines that the area failed to attain the standard, the Administrator shall, by June 30, 1992, designate the area as nonattainment under section 7407(d)(4) of this title.

(July 14, 1955, ch. 360, title I, §185A, as added Pub. L. 101–549, title I, §103, Nov. 15, 1990, 104 Stat. 2451.)

§7511f. NO_x and VOC study

The Administrator, in conjunction with the National Academy of Sciences, shall conduct a study on the role of ozone precursors in tropospheric ozone formation and control. The study shall examine the roles of NO_x and VOC emission reductions, the extent to which NO_x reductions may contribute (or be counterproductive) to achievement of attainment in different nonattainment areas, the sensitivity of ozone to the control of NO_x, the availability and extent of controls for NO_x, the role of biogenic VOC emissions, and the basic information required for air quality models. The study shall be completed and a proposed report made public for 30 days comment within 1 year of November 15, 1990, and a final report shall be submitted to Congress within 15 months after November 15, 1990. The Administrator shall utilize all available information and studies, as well as develop additional information, in conducting the study required by this section.

(July 14, 1955, ch. 360, title I, §185B, as added Pub. L. 101–549, title I, §103, Nov. 15, 1990, 104 Stat. 2452.)

SUBPART 3—ADDITIONAL PROVISIONS FOR CARBON MONOXIDE NONATTAINMENT AREAS

§7512. Classification and attainment dates

(a) Classification by operation of law and attainment dates for nonattainment areas

(1) Each area designated nonattainment for carbon monoxide pursuant to section 7407(d) of this title shall be classified at the time of such designation under table 1, by operation of law, as a Moderate Area or a Serious Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for carbon monoxide shall be as expeditiously as practicable but not later than the date provided in table 1:

TABLE 3 [1]

Area classification	Design value	Primary standard attainment date
Moderate	9.1–16.4 ppm	December 31, 1995
Serious	16.5 and above	December 31, 2000

(2) At the time of publication of the notice required under section 7407 of this title (designating carbon monoxide nonattainment areas), the Administrator shall publish a notice announcing the classification of each such carbon monoxide nonattainment area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(3) If an area classified under paragraph (1), table 1, would have been classified in another

category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after November 15, 1990, by the procedure required under paragraph (2), adjust the classification of the area. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for carbon monoxide in the area, the level of pollution transport between the area and the other affected areas, and the mix of sources and air pollutants in the area. The Administrator may make the same adjustment for purposes of paragraphs (2), (3), (6), and (7) of section 7512a(a) of this title.

(4) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter in this subpart referred to as the "Extension Year") the date specified in table 1 of subsection (a) if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than one exceedance of the national ambient air quality standard level for carbon monoxide has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) New designations and reclassifications

(1) New designations to nonattainment

Any area that is designated attainment or unclassifiable for carbon monoxide under section 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for carbon monoxide under section 7407(d)(3) of this title, shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsections (a)(1) and (a)(4). Upon its classification, the area shall be subject to the same requirements under section 7410 of this title, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(2), except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date the area is classified.

(2) Reclassification of Moderate Areas upon failure to attain

(A) General rule

Within 6 months following the applicable attainment date for a carbon monoxide nonattainment area, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area has attained the standard by that date. Any Moderate Area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a)(1) as a Serious Area.

(B) Publication of notice

The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined, under subparagraph (A), as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

(c) References to terms

Any reference in this subpart to a "Moderate Area" or a "Serious Area" shall be considered a reference to a Moderate Area or a Serious Area, respectively, as classified under this section.

(July 14, 1955, ch. 360, title I, §186, as added Pub. L. 101–549, title I, §104, Nov. 15, 1990, 104 Stat. 2452.)

[1] So in original. Probably should be "TABLE 1".

§7512a. Plan submissions and requirements

(a) Moderate Areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area (or portion thereof, to the extent specified in guidance of the Administrator issued before November 15, 1990), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection, within such periods as are prescribed under this subsection, except to the extent the State has made such submissions as of November 15, 1990:

(1) Inventory

No later than 2 years from November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2)(A) Vehicle miles traveled

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall contain a forecast of vehicle miles traveled in the nonattainment area concerned for each year before the year in which the plan projects the national ambient air quality standard for carbon monoxide to be attained in the area. The forecast shall be based on guidance which shall be published by the Administrator, in consultation with the Secretary of Transportation, within 6 months after November 15, 1990. The plan revision shall provide for annual updates of the forecasts to be submitted to the Administrator together with annual reports regarding the extent to which such forecasts proved to be accurate. Such annual reports shall contain estimates of actual vehicle miles traveled in each year for which a forecast was required.

(B) Special rule for Denver

Within 2 years after November 15, 1990, in the case of Denver, the State shall submit a revision that includes the transportation control measures as required in section 7511a(d)(1)(A) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. If the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Contingency provisions

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall provide for the implementation of specific measures to be undertaken if any estimate of vehicle miles traveled in the area which is submitted in an annual report under paragraph (2) exceeds the number predicted in the most recent prior forecast or if the area fails to attain the national primary ambient air quality standard for carbon monoxide by the primary standard attainment date. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator if the prior forecast has been exceeded by an updated forecast or if the national standard is not attained by such deadline.

(4) Savings clause for vehicle inspection and maintenance provisions of the State implementation plan

Immediately after November 15, 1990, for any Moderate Area (or, within the Administrator's discretion, portion thereof), the plan for which is of the type described in section 7511a(a)(2)(B) of this title any provisions necessary to ensure that the applicable implementation plan includes the vehicle inspection and maintenance program described in section 7511a(a)(2)(B) of this title.

(5) Periodic inventory

No later than September 30, 1995, and no later than the end of each 3 year period thereafter,

until the area is redesignated to attainment, a revised inventory meeting the requirements of subsection (a)(1).

(6) Enhanced vehicle inspection and maintenance

No later than 2 years after November 15, 1990, in the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, a revision that includes provisions for an enhanced vehicle inspection and maintenance program as required in section 7511a(c)(3) of this title (concerning serious ozone nonattainment areas), except that such program shall be for the purpose of reducing carbon monoxide rather than hydrocarbon emissions.

(7) Attainment demonstration and specific annual emission reductions

In the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, no later than 2 years after November 15, 1990, a revision to provide, and a demonstration that the plan as revised will provide, for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. In the case of Moderate Areas with a design value of 12.7 ppm or lower at the time of classification, the requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the carbon monoxide standard by the applicable attainment date.

(b) Serious Areas

(1) In general

Each State in which all or part of a Serious Area is located shall, with respect to the Serious Area, make the submissions (other than those required under subsection (a)(1)(B) [1]) applicable under subsection (a) to Moderate Areas with a design value of 12.7 ppm or greater at the time of classification, and shall also submit the revision and other items described under this subsection.

(2) Vehicle miles traveled

Within 2 years after November 15, 1990, the State shall submit a revision that includes the transportation control measures as required in section 7511a(d)(1) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. In the case of any such area (other than an area in New York State) which is a covered area (as defined in section 7586(a)(2)(B) of this title) for purposes of the Clean Fuel Fleet program under part C of subchapter II, if the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Oxygenated gasoline

(A) Within 2 years after November 15, 1990, the State shall submit a revision to require that gasoline sold, supplied, offered for sale or supply, dispensed, transported or introduced into commerce in the larger of—

(i) the Consolidated Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) (CMSA) in which the area is located, or

(ii) if the area is not located in a CMSA, the Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide (as determined by the Administrator), with fuels containing such level of oxygen as is necessary, in combination with other measures, to provide for

attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area. The revision shall provide that such requirement shall take effect no later than October 1, 1993, and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(B) Notwithstanding subparagraph (A), the revision described in this paragraph shall not be required for an area if the State demonstrates to the satisfaction of the Administrator that the revision is not necessary to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area.

(c) Areas with significant stationary source emissions of CO

(1) Serious Areas

In the case of Serious Areas in which stationary sources contribute significantly to carbon monoxide levels (as determined under rules issued by the Administrator), the State shall submit a plan revision within 2 years after November 15, 1990, which provides that the term "major stationary source" includes (in addition to the sources described in section 7602 of this title) any stationary source which emits, or has the potential to emit, 50 tons per year or more of carbon monoxide.

(2) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirements that pertain to transportation controls, inspection and maintenance, or oxygenated fuels where the Administrator determines by rule that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in the area.

(3) Guidelines

Within 6 months after November 15, 1990, the Administrator shall issue guidelines for and rules determining whether stationary sources contribute significantly to carbon monoxide levels in an area.

(d) CO milestone

(1) Milestone demonstration

By March 31, 1996, each State in which all or part of a Serious Area is located shall submit to the Administrator a demonstration that the area has achieved a reduction in emissions of CO equivalent to the total of the specific annual emission reductions required by December 31, 1995. Such reductions shall be referred to in this subsection as the milestone.

(2) Adequacy of demonstration

A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Failure to meet emission reduction milestone

If a State fails to submit a demonstration under paragraph (1) within the required period, or if the Administrator notifies the State that the State has not met the milestone, the State shall, within 9 months after such a failure or notification, submit a plan revision to implement an economic incentive and transportation control program as described in section 7511a(g)(4) of this title. Such revision shall be sufficient to achieve the specific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date.

(e) Multi-State CO nonattainment areas

(1) Coordination among States

Each State in which there is located a portion of a single nonattainment area for carbon monoxide which covers more than one State ("multi-State nonattainment area") shall take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment

If any State in which there is located a portion of a multi-State nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for carbon monoxide in that portion within the period required under this part the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under this section (relating to plan submissions for carbon monoxide nonattainment areas). If the Administrator makes such finding, in the portion of the nonattainment area within the State submitting such petition, no sanction shall be imposed under section 7509 of this title or under any other provision of this chapter, by reason of the failure to make such demonstration.

(f) Reclassified areas

Each State containing a carbon monoxide nonattainment area reclassified under section 7512(b)(2) of this title shall meet the requirements of subsection (b) of this section, as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than the attainment date) where such deadlines are shown to be infeasible.

(g) Failure of Serious Area to attain standard

If the Administrator determines under section 7512(b)(2) of this title that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that a program of incentives and requirements as described in section 7511a(g)(4) of this title shall be applicable in the area, and such program, in combination with other elements of the revised plan, shall be adequate to reduce the total tonnage of emissions of carbon monoxide in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the national primary ambient air quality standard for carbon monoxide.

(July 14, 1955, ch. 360, title I, §187, as added Pub. L. 101–549, title I, §104, Nov. 15, 1990, 104 Stat. 2454.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS

For provisions prohibiting Administrator of Environmental Protection Agency from requiring adoption or implementation by State of test-only I/M240 enhanced vehicle inspection and maintenance program as means of compliance with this section, with further provisions relating to plan disapproval and emissions reduction credits, see section 348 of Pub. L. 104–59, set out as a note under section 7511a of this title.

[1] *So in original. Subsec. (a)(1) of this section does not contain a subpar. (B).*

SUBPART 4—ADDITIONAL PROVISIONS FOR PARTICULATE MATTER NONATTAINMENT AREAS

§7513. Classifications and attainment dates

(a) Initial classifications

Every area designated nonattainment for PM–10 pursuant to section 7407(d) of this title shall be classified at the time of such designation, by operation of law, as a moderate PM–10 nonattainment area (also referred to in this subpart as a "Moderate Area") at the time of such designation. At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each PM–10 nonattainment area, the Administrator shall publish a notice announcing the classification of such area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(b) Reclassification as Serious

(1) Reclassification before attainment date

The Administrator may reclassify as a Serious PM–10 nonattainment area (identified in this subpart also as a "Serious Area") any area that the Administrator determines cannot practicably attain the national ambient air quality standard for PM–10 by the attainment date (as prescribed in subsection (c)) for Moderate Areas. The Administrator shall reclassify appropriate areas as Serious by the following dates:

(A) For areas designated nonattainment for PM–10 under section 7407(d)(4) of this title, the Administrator shall propose to reclassify appropriate areas by June 30, 1991, and take final action by December 31, 1991.

(B) For areas subsequently designated nonattainment, the Administrator shall reclassify appropriate areas within 18 months after the required date for the State's submission of a SIP for the Moderate Area.

(2) Reclassification upon failure to attain

Within 6 months following the applicable attainment date for a PM–10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date—

(A) the area shall be reclassified by operation of law as a Serious Area; and

(B) the Administrator shall publish a notice in the Federal Register no later than 6 months following the attainment date, identifying the area as having failed to attain and identifying the reclassification described under subparagraph (A).

(c) Attainment dates

Except as provided under subsection (d), the attainment dates for PM–10 nonattainment areas shall be as follows:

(1) Moderate Areas

For a Moderate Area, the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment, except that, for areas designated nonattainment for PM–10 under section 7407(d)(4) of this title, the attainment date shall not extend beyond December 31, 1994.

(2) Serious Areas

For a Serious Area, the attainment date shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment, except that, for areas designated nonattainment for PM–10 under section 7407(d)(4) of this title, the date shall not extend beyond December 31, 2001.

(d) Extension of attainment date for Moderate Areas

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in paragraph [1] (c)(1) if—

(1) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and

(2) no more than one exceedance of the 24-hour national ambient air quality standard level for PM–10 has occurred in the area in the year preceding the Extension Year, and the annual mean concentration of PM–10 in the area for such year is less than or equal to the standard level.

No more than 2 one-year extensions may be issued under the subsection for a single nonattainment area.

(e) Extension of attainment date for Serious Areas

Upon application by any State, the Administrator may extend the attainment date for a Serious Area beyond the date specified under subsection (c), if attainment by the date established under subsection (c) would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. At the time of such application, the State must submit a revision to the implementation plan that includes a demonstration of attainment by the most expeditious alternative date practicable. In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures. The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than 5 years.

(f) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirement applicable to any Serious Area under this subpart where the Administrator determines that anthropogenic sources of PM–10 do not contribute significantly to the violation of the PM–10 standard in the area. The Administrator may also waive a specific date for attainment of the standard where the Administrator determines that nonanthropogenic sources of PM–10 contribute significantly to the violation of the PM–10 standard in the area.

(July 14, 1955, ch. 360, title I, §188, as added Pub. L. 101–549, title I, §105(a), Nov. 15, 1990, 104 Stat. 2458.)

[1] So in original. Probably should be "subsection".

§7513a. Plan provisions and schedules for plan submissions

(a) Moderate Areas

(1) Plan provisions

Each State in which all or part of a Moderate Area is located shall submit, according to the applicable schedule under paragraph (2), an implementation plan that includes each of the following:

(A) For the purpose of meeting the requirements of section 7502(c)(5) of this title, a permit program providing that permits meeting the requirements of section 7503 of this title are required for the construction and operation of new and modified major stationary sources of PM–10.

(B) Either (i) a demonstration (including air quality modeling) that the plan will provide for

attainment by the applicable attainment date; or (ii) a demonstration that attainment by such date is impracticable.

(C) Provisions to assure that reasonably available control measures for the control of PM–10 shall be implemented no later than December 10, 1993, or 4 years after designation in the case of an area classified as moderate after November 15, 1990.

(2) Schedule for plan submissions

A State shall submit the plan required under subparagraph (1) no later than the following:

(A) Within 1 year of November 15, 1990, for areas designated nonattainment under section 7407(d)(4) of this title, except that the provision required under subparagraph (1)(A) shall be submitted no later than June 30, 1992.

(B) 18 months after the designation as nonattainment, for those areas designated nonattainment after the designations prescribed under section 7407(d)(4) of this title.

(b) Serious Areas

(1) Plan provisions

In addition to the provisions submitted to meet the requirements of paragraph [1] (a)(1) (relating to Moderate Areas), each State in which all or part of a Serious Area is located shall submit an implementation plan for such area that includes each of the following:

(A) A demonstration (including air quality modeling)—

(i) that the plan provides for attainment of the PM–10 national ambient air quality standard by the applicable attainment date, or

(ii) for any area for which the State is seeking, pursuant to section 7513(e) of this title, an extension of the attainment date beyond the date set forth in section 7513(c) of this title, that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable.

(B) Provisions to assure that the best available control measures for the control of PM–10 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.

(2) Schedule for plan submissions

A State shall submit the demonstration required for an area under paragraph (1)(A) no later than 4 years after reclassification of the area to Serious, except that for areas reclassified under section 7513(b)(2) of this title, the State shall submit the attainment demonstration within 18 months after reclassification to Serious. A State shall submit the provisions described under paragraph (1)(B) no later than 18 months after reclassification of the area as a Serious Area.

(3) Major sources

For any Serious Area, the terms "major source" and "major stationary source" include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM–10.

(c) Milestones

(1) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

(2) Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The

Administrator shall determine whether or not a State's demonstration under this subsection is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) If a State fails to submit a demonstration under paragraph (2) with respect to a milestone within the required period or if the Administrator determines that the area has not met any applicable milestone, the Administrator shall require the State, within 9 months after such failure or determination to submit a plan revision that assures that the State will achieve the next milestone (or attain the national ambient air quality standard for PM–10, if there is no next milestone) by the applicable date.

(d) Failure to attain

In the case of a Serious PM–10 nonattainment area in which the PM–10 standard is not attained by the applicable attainment date, the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

(e) PM–10 precursors

The control requirements applicable under plans in effect under this part for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. The Administrator shall issue guidelines regarding the application of the preceding sentence.

(July 14, 1955, ch. 360, title I, §189, as added Pub. L. 101–549, title I, §105(a), Nov. 15, 1990, 104 Stat. 2460.)

[1] *So in original. Probably should be "subsection".*

§7513b. Issuance of RACM and BACM guidance

The Administrator shall issue, in the same manner and according to the same procedure as guidance is issued under section 7408(c) of this title, technical guidance on reasonably available control measures and best available control measures for urban fugitive dust, and emissions from residential wood combustion (including curtailments and exemptions from such curtailments) and prescribed silvicultural and agricultural burning, no later than 18 months following November 15, 1990. The Administrator shall also examine other categories of sources contributing to nonattainment of the PM–10 standard, and determine whether additional guidance on reasonably available control measures and best available control measures is needed, and issue any such guidance no later than 3 years after November 15, 1990. In issuing guidelines and making determinations under this section, the Administrator (in consultation with the State) shall take into account emission reductions achieved, or expected to be achieved, under subchapter IV–A and other provisions of this chapter.

(July 14, 1955, ch. 360, title I, §190, as added Pub. L. 101–549, title I, §105(a), Nov. 15, 1990, 104 Stat. 2462.)

SUBPART 5—ADDITIONAL PROVISIONS FOR AREAS DESIGNATED NONATTAINMENT FOR SULFUR OXIDES, NITROGEN DIOXIDE, OR LEAD

§7514. Plan submission deadlines

(a) Submission

Any State containing an area designated or redesignated under section 7407(d) of this title as nonattainment with respect to the national primary ambient air quality standards for sulfur oxides, nitrogen dioxide, or lead subsequent to November 15, 1990, shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this part.

(b) States lacking fully approved State implementation plans

Any State containing an area designated nonattainment with respect to national primary ambient air quality standards for sulfur oxides or nitrogen dioxide under section 7407(d)(1)(C)(i) of this title, but lacking a fully approved implementation plan complying with the requirements of this chapter (including this part) as in effect immediately before November 15, 1990, shall submit to the Administrator, within 18 months of November 15, 1990, an implementation plan meeting the requirements of subpart 1 (except as otherwise prescribed by section 7514a of this title).

(July 14, 1955, ch. 360, title I, §191, as added Pub. L. 101–549, title I, §106, Nov. 15, 1990, 104 Stat. 2463.)

§7514a. Attainment dates

(a) Plans under section 7514(a)

Implementation plans required under section 7514(a) of this title shall provide for attainment of the relevant primary standard as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.

(b) Plans under section 7514(b)

Implementation plans required under section 7514(b) of this title shall provide for attainment of the relevant primary national ambient air quality standard within 5 years after November 15, 1990.

(c) Inadequate plans

Implementation plans for nonattainment areas for sulfur oxides or nitrogen dioxide with plans that were approved by the Administrator before November 15, 1990, but, subsequent to such approval, were found by the Administrator to be substantially inadequate, shall provide for attainment of the relevant primary standard within 5 years from the date of such finding.

(July 14, 1955, ch. 360, title I, §192, as added Pub. L. 101–549, title I, §106, Nov. 15, 1990, 104 Stat. 2463.)

SUBPART 6—SAVINGS PROVISIONS

§7515. General savings clause

Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this chapter, as in effect before November 15, 1990, shall remain in effect according to its terms, except to the extent otherwise provided under this chapter, inconsistent with any provision of this chapter, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15,

1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

(July 14, 1955, ch. 360, title I, §193, as added Pub. L. 101–549, title I, §108(l), Nov. 15, 1990, 104 Stat. 2469.)

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

§7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b)—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) IN GENERAL.—(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) REVISED STANDARDS FOR HEAVY DUTY TRUCKS.—(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) LEAD TIME AND STABILITY.—Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) REBUILDING PRACTICES.—The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) MOTORCYCLES.—For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1) [1] of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the

Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) ONBOARD VAPOR RECOVERY.—Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ("onboard") systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5),[1] regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of oxides of

nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

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

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

(C) The Administrator may promulgate regulations under subsection (a)(1) revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this subchapter may provide for a phase-in of the standard. It is the intent of Congress that the numerical emission standards specified in subsections (a)(3)(B)(ii), (g), (h), and (i) shall not be modified by the Administrator after November 15, 1990, for any model year before the model year 2004.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to November 15, 1990), shall be promulgated by regulation within 180 days after November 15, 1990.

(3) For purposes of this part—

(A)(i) The term "model year" with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b), the Administrator may prescribe regulations defining "model year" otherwise than as provided in clause (i).

(B) Repealed. Pub. L. 101–549, title II, §230(1), Nov. 15, 1990, 104 Stat. 2529.

(C) The term "heavy duty vehicle" means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(3) [2] Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

(A) that such waiver would not endanger public health,

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

(C) that the technology or system has a potential for long-term air quality benefit and has the

potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] upon the expiration of the waiver.

No waiver under this subparagraph [3] granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) Useful life of vehicles

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 7541 of this title. Such regulations shall provide that except where a different useful life period is specified in this subchapter useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs, except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 7541 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;

(2) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.

(e) New power sources or propulsion systems

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 7525(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants

emitted by such vehicle or engine which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare but for which standards have not been prescribed under subsection (a).

(f) [4] High altitude regulations

(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in subsection (b). This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

(3) Section 7607(d) of this title shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to—

(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.

(g) Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles; standards for model years after 1993

(1) NMHC, CO, and NO_x

Effective with respect to the model year 1994 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles (LDVs) shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below:

TABLE G—EMISSION STANDARDS FOR NMHC, CO, AND NO_X FROM LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	Column A (5 yrs/50,000 mi)			Column B (10 yrs/100,000 mi)		
	NMHC	CO	NO_x	NMHC	CO	NO_x
LDTs (0–3,750 lbs. LVW) and light-duty vehicles	0.25	3.4	0.4*	0.31	4.2	0.6*
LDTs (3,751–5,750 lbs. LVW)	0.32	4.4	0.7**	0.40	5.5	0.97

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.

*In the case of diesel-fueled LDTs (0–3,750 lvw) and light-duty vehicles, before the model year 2004, in lieu of the 0.4 and 0.6 standards for NO_x, the applicable standards for NO_x shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent) whichever first occurs.

**This standard does not apply to diesel-fueled LDTs (3,751–5,750 lbs. LVW).

IMPLEMENTATION SCHEDULE FOR TABLE G STANDARDS

Model year	Percentage*
1994	40
1995	80
after 1995	100

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(2) PM Standard

Effective with respect to model year 1994 and thereafter in the case of light-duty vehicles, and effective with respect to the model year 1995 and thereafter in the case of light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR), the regulations under subsection (a) applicable to emissions of particulate matter (PM) from such vehicles and trucks shall contain standards which provide that such emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall not exceed the levels specified in the table below. The percentage shall be as specified in the Implementation Schedule below.

PM STANDARD FOR LDTS OF UP TO 6,000 LBS. GVWR

Useful life period	Standard
5/50,000	0.08 gpm
10/100,000	0.10 gpm

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

IMPLEMENTATION SCHEDULE FOR PM STANDARDS

Model year	Light-duty vehicles	LDTs
1994	40%*	
1995	80%*	40%*
1996	100%*	80%*
after 1996	100%*	100%*

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(h) Light-duty trucks of more than 6,000 lbs. GVWR; standards for model years after 1995

Effective with respect to the model year 1996 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), oxides of nitrogen (NO_x), and particulate matter (PM) from light-duty trucks (LDTs) of more than 6,000 lbs. gross vehicle weight rating (GVWR) shall contain standards which provide that emissions from a

specified percentage of each manufacturer's sales volume of such trucks shall comply with the levels specified in table H. The specified percentage shall be 50 percent in model year 1996 and 100 percent thereafter.

TABLE H—EMISSION STANDARDS FOR NMHC AND CO FROM GASOLINE AND DIESEL FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR

LDT Test weight	Column A (5 yrs/50,000 mi)			Column B (11 yrs/120,000 mi)			
	NMHC	CO	NO_x	NMHC	CO	NO_x	PM
3,751–5,750 lbs. TW	0.32	4.4	0.7*	0.46	6.4	0.98	0.10
Over 5,750 lbs. TW	0.39	5.0	1.1*	0.56	7.3	1.53	0.12

Standards are expressed in grams per mile (GPM).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent) whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 11 years or 120,000 miles (or the equivalent), whichever first occurs.

*Not applicable to diesel-fueled LDTs.

(i) Phase II study for certain light-duty vehicles and light-duty trucks

(1) The Administrator, with the participation of the Office of Technology Assessment, shall study whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this subchapter. The study shall consider whether to establish with respect to model years commencing after January 1, 2003, the standards and useful life period for gasoline and diesel-fueled light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less specified in the following table:

TABLE 3—PENDING EMISSION STANDARDS FOR GASOLINE AND DIESEL FUELED LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS 3,750 LBS. LVW OR LESS

Pollutant	Emission level*
NMHC	0.125 GPM
NO_x	0.2 GPM
CO	1.7 GPM

*Emission levels are expressed in grams per mile (GPM). For vehicles and engines subject to this subsection for purposes of subsection (d) and any reference thereto, the useful life of such vehicles and engines shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

Such study shall also consider other standards and useful life periods which are more stringent or less stringent than those set forth in table 3 (but more stringent than those referred to in subsections (g) and (h)).

(2)(A) As part of the study under paragraph (1), the Administrator shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards, taking into consideration the waiver provisions of section 7543(b) of this title. As part of such study, the Administrator shall also examine—

(i) the availability of technology (including the costs thereof), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for meeting more stringent emission standards than those provided in subsections (g) and (h) for model years commencing not earlier than after January 1, 2003, and not later than model year 2006, including the lead time and safety and energy impacts of meeting more stringent emission standards; and

(ii) the need for, and cost effectiveness of, obtaining further reductions in emissions from such

light-duty vehicles and light-duty trucks, taking into consideration alternative means of attaining or maintaining the national primary ambient air quality standards pursuant to State implementation plans and other requirements of this chapter, including their feasibility and cost effectiveness.

(B) The Administrator shall submit a report to Congress no later than June 1, 1997, containing the results of the study under this subsection, including the results of the examination conducted under subparagraph (A). Before submittal of such report the Administrator shall provide a reasonable opportunity for public comment and shall include a summary of such comments in the report to Congress.

(3)(A) Based on the study under paragraph (1) the Administrator shall determine, by rule, within 3 calendar years after the report is submitted to Congress, but not later than December 31, 1999, whether—

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii).

The rulemaking under this paragraph shall commence within 3 months after submission of the report to Congress under paragraph (2)(B).

(B) If the Administrator determines under subparagraph (A) that—

(i) there is no need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will not be available as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); or

(iii) obtaining further reductions in emissions from such vehicles will not be needed or cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall not promulgate more stringent standards than those in effect pursuant to subsections (g) and (h). Nothing in this paragraph shall prohibit the Administrator from exercising the Administrator's authority under subsection (a) to promulgate more stringent standards for light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less at any other time thereafter in accordance with subsection (a).

(C) If the Administrator determines under subparagraph (A) that—

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall either promulgate the standards (and useful life periods) set forth in Table 3 in paragraph (1) or promulgate alternative standards (and useful life periods) which are more stringent than those referred to in subsections (g) and (h). Any such standards (or useful life periods)

promulgated by the Administrator shall take effect with respect to any such vehicles or engines no earlier than the model year 2003 but not later than model year 2006, as determined by the Administrator in the rule.

(D) Nothing in this paragraph shall be construed by the Administrator or by a court as a presumption that any standards (or useful life period) set forth in Table 3 shall be promulgated in the rulemaking required under this paragraph. The action required of the Administrator in accordance with this paragraph shall be treated as a nondiscretionary duty for purposes of section 7604(a)(2) of this title (relating to citizen suits).

(E) Unless the Administrator determines not to promulgate more stringent standards as provided in subparagraph (B) or to postpone the effective date of standards referred to in Table 3 in paragraph (1) or to establish alternative standards as provided in subparagraph (C), effective with respect to model years commencing after January 1, 2003, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), oxides of nitrogen (NO_x), and carbon monoxide (CO) from motor vehicles and motor vehicle engines in the classes specified in Table 3 in paragraph (1) above shall contain standards which provide that emissions may not exceed the pending emission levels specified in Table 3 in paragraph (1).

(j) Cold CO standard

(1) Phase I

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) of this section applicable to emissions of carbon monoxide from 1994 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit. The regulations shall contain standards which provide that emissions of carbon monoxide from a manufacturer's vehicles when operated at 20 degrees Fahrenheit may not exceed, in the case of light-duty vehicles, 10.0 grams per mile, and in the case of light-duty trucks, a level comparable in stringency to the standard applicable to light-duty vehicles. The standards shall take effect after model year 1993 according to a phase-in schedule which requires a percentage of each manufacturer's sales volume of light-duty vehicles and light-duty trucks to comply with applicable standards after model year 1993. The percentage shall be as specified in the following table:

PHASE-IN SCHEDULE FOR COLD START STANDARDS

Model Year	Percentage
1994	40
1995	80
1996 and after	100

(2) Phase II

(A) Not later than June 1, 1997, the Administrator shall complete a study assessing the need for further reductions in emissions of carbon monoxide and the maximum reductions in such emissions achievable from model year 2001 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit.

(B)(i) If as of June 1, 1997, 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from model year 2002 and later model year light-duty vehicles and light-duty trucks shall contain standards which provide that emissions of carbon monoxide from such vehicles and trucks when operated at 20 degrees Fahrenheit may not exceed 3.4 grams per mile (gpm) in the case of light-duty vehicles and 4.4 grams per mile (gpm) in the case of light-duty trucks up to 6,000 GVWR and a level comparable in stringency in the case of light-duty trucks 6,000 GVWR and above.

(ii) In determining for purposes of this subparagraph whether 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the Administrator shall exclude the areas of Steubenville, Ohio, and Oshkosh, Wisconsin.

(3) Useful-life for phase I and phase II standards

In the case of the standards referred to in paragraphs (1) and (2), for purposes of certification under section 7525 of this title and in-use compliance under section 7541 of this title, the applicable useful life period shall be 5 years or 50,000 miles, whichever first occurs, except that the Administrator may extend such useful life period (for purposes of section 7525 of this title, or section 7541 of this title, or both) if he determines that it is feasible for vehicles and engines subject to such standards to meet such standards for a longer useful life. If the Administrator extends such useful life period, the Administrator may make an appropriate adjustment of applicable standards for such extended useful life. No such extended useful life shall extend beyond the useful life period provided in regulations under subsection (d).

(4) Heavy-duty vehicles and engines

The Administrator may also promulgate regulations under subsection (a)(1) applicable to emissions of carbon monoxide from heavy-duty vehicles and engines when operated at cold temperatures.

(k) Control of evaporative emissions

The Administrator shall promulgate (and from time to time revise) regulations applicable to evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles—

(1) during operation; and

(2) over 2 or more days of nonuse;

under ozone-prone summertime conditions (as determined by regulations of the Administrator). The regulations shall take effect as expeditiously as possible and shall require the greatest degree of emission reduction achievable by means reasonably expected to be available for production during any model year to which the regulations apply, giving appropriate consideration to fuel volatility, and to cost, energy, and safety factors associated with the application of the appropriate technology. The Administrator shall commence a rulemaking under this subsection within 12 months after November 15, 1990. If final regulations are not promulgated under this subsection within 18 months after November 15, 1990, the Administrator shall submit a statement to the Congress containing an explanation of the reasons for the delay and a date certain for promulgation of such final regulations in accordance with this chapter. Such date certain shall not be later than 15 months after the expiration of such 18 month deadline.

(l) Mobile source-related air toxics

(1) Study

Not later than 18 months after November 15, 1990, the Administrator shall complete a study of the need for, and feasibility of, controlling emissions of toxic air pollutants which are unregulated under this chapter and associated with motor vehicles and motor vehicle fuels, and the need for, and feasibility of, controlling such emissions and the means and measures for such controls. The study shall focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1,3 butadiene. The proposed report shall be available for public review and comment and shall include a summary of all comments.

(2) Standards

Within 54 months after November 15, 1990, the Administrator shall, based on the study under paragraph (1), promulgate (and from time to time revise) regulations under subsection (a)(1) or section 7545(c)(1) of this title containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. The regulations shall contain standards for such fuels or vehicles, or both, which the Administrator determines reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under subsection (a), the availability and costs

of the technology, and noise, energy, and safety factors, and lead time. Such regulations shall not be inconsistent with standards under subsection (a). The regulations shall, at a minimum, apply to emissions of benzene and formaldehyde.

(m) Emissions control diagnostics

(1) Regulations

Within 18 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of—

(A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

(B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,

(C) storing and retrieving fault codes specified by the Administrator, and

(D) providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

(2) Effective date

The regulations required under paragraph (1) of this subsection shall take effect in model year 1994, except that the Administrator may waive the application of such regulations for model year 1994 or 1995 (or both) with respect to any class or category of motor vehicles if the Administrator determines that it would be infeasible to apply the regulations to that class or category in such model year or years, consistent with corresponding regulations or policies adopted by the California Air Resources Board for such systems.

(3) State inspection

The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within 2 years after promulgation of such regulations to provide for inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1) of this subsection) and for the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems. Such regulations shall not be inconsistent with the provisions for warranties promulgated under section 7541(a) and (b) of this title.

(4) Specific requirements

In promulgating regulations under this subsection, the Administrator shall require—

(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require any access code or any device which is only available from a vehicle manufacturer; and

(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

(5) Information availability

The Administrator, by regulation, shall require (subject to the provisions of section 7542(c) of this title regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed

under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under section 7542(c) of this title if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to section 7542(c) of this title, in carrying out the Administrator's responsibilities under this section.

(f) [5] Model years after 1990

For model years prior to model year 1994, the regulations under subsection (a) applicable to buses other than those subject to standards under section 7554 of this title shall contain a standard which provides that emissions of particulate matter (PM) from such buses may not exceed the standards set forth in the following table:

PM STANDARD FOR BUSES

Model year	Standard*
1991	0.25
1992	0.25
1993 and thereafter	0.10

*Standards are expressed in grams per brake horsepower hour (g/bhp/hr).

(July 14, 1955, ch. 360, title II, §202, as added Pub. L. 89–272, title I, §101(8), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 499; Pub. L. 91–604, §6(a), Dec. 31, 1970, 84 Stat. 1690; Pub. L. 93–319, §5, June 22, 1974, 88 Stat. 258; Pub. L. 95–95, title II, §§201, 202(b), 213(b), 214(a), 215–217, 224(a), (b), (g), title IV, §401(d), Aug. 7, 1977, 91 Stat. 751–753, 758–761, 765, 767, 769, 791; Pub. L. 95–190, §14(a)(60)–(65), (b)(5), Nov. 16, 1977, 91 Stat. 1403, 1405; Pub. L. 101–549, title II, §§201–207, 227(b), 230(1)–(5), Nov. 15, 1990, 104 Stat. 2472–2481, 2507, 2529.)

EDITORIAL NOTES

REFERENCES IN TEXT

The enactment of the Clean Air Act Amendments of 1990, referred to in subsec. (a)(3)(B), probably means the enactment of Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, which was approved Nov. 15, 1990. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

Section 7525(f)(1) of this title, referred to in subsec. (a)(3)(E), was redesignated section 7525(f) of this title by Pub. L. 101–549, title II, §230(8), Nov. 15, 1990, 104 Stat. 2529.

Paragraph (5) of subsec. (b), referred to in subsec. (b)(1)(A), related to waivers for model years 1981 and 1982, and was repealed by Pub. L. 101–549, title II, §230(3), Nov. 15, 1990, 104 Stat. 2529. See 1990 Amendment note below.

The Energy Policy and Conservation Act, referred to in subsec. (b)(3)(C), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1857f–1 of this title.

AMENDMENTS

1990—Subsec. (a)(3)(A). Pub. L. 101–549, §201(1), added subpar. (A) and struck out former subpar. (A) which related to promulgation of regulations applicable to reduction of emissions from heavy-duty vehicles or engines manufactured during and after model year 1979 in the case of carbon monoxide, hydrocarbons, and oxides of nitrogen, and from vehicles manufactured during and after model year 1981 in the case of particulate matter.

Subsec. (a)(3)(B). Pub. L. 101–549, §201(1), added subpar. (B) and struck out former subpar. (B) which read as follows: "During the period of June 1 through December 31, 1978, in the case of hydrocarbons and

carbon monoxide, or during the period of June 1 through December 31, 1980, in the case of oxides of nitrogen, and during each period of June 1 through December 31 of each third year thereafter, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standard shall apply only for the period of three model years beginning four model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production of such period and shall prescribe a revised emission standard in accordance with such determination. Such revised standard shall require a reduction of emissions from any standard which applies in the previous model year."

Subsec. (a)(3)(C). Pub. L. 101–549, §201(1), added subpar. (C) and struck out former subpar. (C) which read as follows: "Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if he finds—

"(i) that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

"(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c), issued a report substantially contrary to the findings of the Administrator under clause (i)."

Subsec. (a)(3)(D). Pub. L. 101–549, §201(1), added subpar. (D) and struck out former subpar. (D) which read as follows: "A report shall be made to the Congress with respect to any standard revised under subparagraph (B) which shall contain—

"(i) a summary of the health effects found, or believed to be associated with, the pollutant covered by such standard,

"(ii) an analysis of the cost-effectiveness of other strategies for attaining and maintaining national ambient air quality standards and carrying out regulations under part C of subchapter I (relating to significant deterioration) in relation to the cost-effectiveness for such purposes of standards which, but for such revision, would apply.

"(iii) a summary of the research and development efforts and progress being made by each manufacturer for purposes of meeting the standards promulgated as provided in subparagraph (A)(ii) or, if applicable, subparagraph (E), and

"(iv) specific findings as to the relative costs of compliance, and relative fuel economy, which may be expected to result from the application for any model year of such revised standard and the application for such model year of the standard, which, but for such revision, would apply."

Subsec. (a)(3)(E), (F). Pub. L. 101–549, §201, redesignated subpar. (F) as (E), inserted heading, and struck out former subpar. (E) which read as follows:

"(i) The Administrator shall conduct a continuing pollutant-specific study concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare. The results of such study shall be published in the Federal Register and reported to the Congress not later than June 1, 1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen, and before June 1 of each third year thereafter.

"(ii) On the basis of such study and such other information as is available to him (including the studies under section 7548 of this title), the Administrator may, after notice and opportunity for a public hearing, promulgate regulations under paragraph (1) of this subsection changing any standard prescribed in subparagraph (A)(ii) (or revised under subparagraph (B) or previously changed under this subparagraph). No such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated."

Subsec. (a)(4)(A), (B). Pub. L. 101–549, §227(b), substituted "requirements prescribed under this subchapter" for "standards prescribed under this subsection".

Subsec. (a)(6). Pub. L. 101–549, §202, amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The Administrator shall determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor recovery of uncontrolled emissions emanating from the fueling of motor vehicles. The Administrator shall compare the costs and effectiveness of such technology to that of implementing and maintaining vapor recovery systems (taking into consideration such factors as fuel economy, economic costs of such technology, administrative burdens, and equitable distribution of costs). If the Administrator finds that it is feasible and desirable to employ such technology, he shall, after consultation with the Secretary of Transportation with respect to

motor vehicle safety, prescribe, by regulation, standards requiring the use of onboard hydrocarbon technology which shall not become effective until the introduction to the model year for which it would be feasible to implement such standards, taking into consideration compliance costs and the restraints of an adequate lead time for design and production."

Subsec. (b)(1)(C). Pub. L. 101–549, §203(c), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "Effective with respect to vehicles and engines manufactured after model year 1978 (or in the case of heavy-duty vehicles or engines, such later model year as the Administrator determines is the earliest feasible model year), the test procedure promulgated under paragraph (2) for measurement of evaporative emissions of hydrocarbons shall require that such emissions be measured from the vehicle or engine as a whole. Regulations to carry out this subparagraph shall be promulgated not later than two hundred and seventy days after August 7, 1977."

Subsec. (b)(2). Pub. L. 101–549, §203(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to December 31, 1970), shall be prescribed by regulation within 180 days after such date."

Subsec. (b)(3). Pub. L. 101–549, §230(4), redesignated par. (6) relating to waiver of standards for oxides of nitrogen as par. (3), struck out subpar. (A) designation before "Upon the petition", redesignated former cls. (i) to (iii) as subpars. (A) to (C), respectively, and struck out former subpar. (B) which authorized the Administrator to waive the standard under subsec. (b)(1)(B) of this section for emissions of oxides of nitrogen from light-duty vehicles and engines beginning in model year 1981 after providing notice and opportunity for a public hearing, and set forth conditions under which a waiver could be granted.

Subsec. (b)(3)(B). Pub. L. 101–549, §230(1), in the par. (3) defining terms for purposes of this part struck out subpar. (B) which defined "light duty vehicles and engines".

Subsec. (b)(4). Pub. L. 101–549, §230(2), struck out par. (4) which read as follows: "On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this chapter. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 7607(a) of this title (relating to subpenas) shall apply."

Subsec. (b)(5). Pub. L. 101–549, §230(3), struck out par. (5) which related to waivers for model years 1981 and 1982 of the effective date of the emissions standard required under par. (1)(A) for carbon monoxide applicable to light-duty vehicles and engines manufactured in those model years.

Subsec. (b)(6). Pub. L. 101–549, §230(4), redesignated par. (6) as (3).

Subsec. (b)(7). Pub. L. 101–549, §230(5), struck out par. (7) which read as follows: "The Congress hereby declares and establishes as a research objective, the development of propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen. The Administrator shall, by regulations promulgated within one hundred and eighty days after August 7, 1977, require each manufacturer whose sales represent at least 0.5 per centum of light duty motor vehicle sales in the United States, to build and, on a regular basis, demonstrate the operation of light duty motor vehicles that meet this research objective, in addition to any other applicable standards or requirements for other pollutants under this chapter. Such demonstration vehicles shall be submitted to the Administrator no later than model year 1979 and in each model year thereafter. Such demonstration shall, in accordance with applicable regulations, to the greatest extent possible, (A) be designed to encourage the development of new powerplant and emission control technologies that are fuel efficient, (B) assure that the demonstration vehicles are or could reasonably be expected to be within the productive capability of the manufacturers, and (C) assure the utilization of optimum engine, fuel, and emission control systems."

Subsec. (d). Pub. L. 101–549, §203(b)(1), substituted "provide that except where a different useful life period is specified in this subchapter" for "provide that".

Subsec. (d)(1). Pub. L. 101–549, §203(b)(2), (3), inserted "and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR" after "engines" and substituted for semicolon at end ", except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life

period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 7541 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;".

Subsec. (f). Pub. L. 101–549, §207(b), added (after subsec. (m) at end) subsec. (f) relating to regulations applicable to buses for model years after 1990.

Subsecs. (g) to (i). Pub. L. 101–549, §203(a), added subsecs. (g) to (i).

Subsecs. (j) to (m). Pub. L. 101–549, §§204–207(a), added subsecs. (j) to (m).

1977—Subsec. (a)(1). Pub. L. 95–190, §14(a)(60), restructured subsec. (a) by providing for designation of par. (1) to precede "The Administrator" in place of "Except as".

Pub. L. 95–95, §401(d)(1), substituted "Except as otherwise provided in subsection (b) the Administrator" for "The Administrator", "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare" for "causes or contributes to, or is likely to cause or contribute to, air pollution which endangers the public health or welfare", and "useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices" for "useful life (as determined under subsection (d)) whether such vehicles and engines are designed as complete systems or incorporated devices".

Subsec. (a)(2). Pub. L. 95–95, §214(a), substituted "prescribed under paragraph (1) of this subsection" for "prescribed under this subsection".

Subsec. (a)(3). Pub. L. 95–95, §224(a), added par. (3).

Subsec. (a)(3)(B). Pub. L. 95–190, §14(a)(61), (62), substituted provisions setting forth applicable periods of from June 1 through Dec. 31, 1978, June 1 through Dec. 31, 1980, and during each period of June 1 through Dec. 31 of each third year thereafter, for provisions setting forth applicable periods of from June 1 through Dec. 31, 1979, and during each period of June 1 through Dec. 31 of each third year after 1979, and substituted "from any" for "of from any".

Subsec. (a)(3)(E). Pub. L. 95–190, §14(a)(63), substituted "1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen" for "1979,".

Subsec. (a)(4). Pub. L. 95–95, §214(a), added par. (4).

Subsec. (a)(5). Pub. L. 95–95, §215, added par. (5).

Subsec. (a)(6). Pub. L. 95–95, §216, added par. (6).

Subsec. (b)(1)(A). Pub. L. 95–95, §201(a), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 and 1976, substituted "model year 1980" for "model year 1977" in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970, and inserted provisions that, unless waived as provided in par. (5), the standards for vehicles and engines manufactured during or after the model year 1981 represent a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970.

Subsec. (b)(1)(B). Pub. L. 95–190, §14(a)(64), (65), substituted "calendar year 1976" for "model year 1976" and in cl. (i) substituted "other" for "United States".

Pub. L. 95–95, §201(b), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 through 1977, substituted provisions that the standards for model years 1981 and after allow emissions of no more than 1.0 gram per vehicle mile for provisions that the standards for model year 1978 and after require a reduction of at least 90 per centum from the average of emissions actually measured from light-duty vehicles manufactured during model year 1971 which were not subject to any Federal or State emission standards for oxides of nitrogen, and inserted provisions directing the Administrator to prescribe separate standards for model years 1981 and 1982 for manufacturers whose production, by corporate identity, for model year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the manufacturer's capability to meet emission standards depends upon United States technology and if the manufacturer cannot develop one.

Subsec. (b)(1)(C). Pub. L. 95–95, §217, added subpar. (C).

Subsec. (b)(3)(C). Pub. L. 95–95, §224(b), added subpar. (C).

Subsec. (b)(5). Pub. L. 95–95, §201(c), substituted provisions setting up a procedure under which a manufacturer may apply for a waiver for model years 1981 and 1982 of the effective date of the emission standards for carbon monoxide required by par. (1)(A) for provisions which had set up a procedure under which a manufacturer, after Jan. 1, 1975, could apply for a one-year suspension of the effective date of any emission standard required by par. (1)(A) for model year 1977.

Subsec. (b)(6). Pub. L. 95–95, §201(c), added par. (6).

Subsec. (b)(7). Pub. L. 95–95, §202(b), added par. (7).

Subsec. (d)(2). Pub. L. 95–95, §224(g), as amended by Pub. L. 95–190, §14(b)(5), to correct typographical error in directory language, inserted "(other than motorcycles or motorcycle engines)" after "motor vehicle or motor vehicle engine".

Subsec. (d)(3). Pub. L. 95–95, §224(g), added par. (3).

Subsec. (e). Pub. L. 95–95, §401(d)(2), substituted "which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger" for "which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers".

Subsec. (f). Pub. L. 95–95, §213(b), added subsec. (f).

1974—Subsec. (b)(1)(A). Pub. L. 93–319, §5(a), substituted "model year 1977" for "model year 1975" in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970 and inserted provisions covering regulations for model years 1975 and 1976.

Subsec. (b)(1)(B). Pub. L. 93–319, §5(b), substituted "model year 1978" for "model year 1976" in provisions requiring a reduction of at least 90 per centum from the average of emissions actually measured from vehicles manufactured during model year 1971 and inserted provisions covering regulations for model years 1975, 1976, and 1977.

Subsec. (b)(5). Pub. L. 93–319, §5(c), (d), substituted in subpar. (A), "At any time after January 1, 1975" for "At any time after January 1, 1972", "with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977" for "with respect to such manufacturer", "sixty days" for "60 days", "paragraph (1)(A) of this subsection" for "paragraph (1)(A)", and "vehicles and engines manufactured during model year 1977" for "vehicles and engines manufactured during model year 1975", redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which had allowed manufacturers, at any time after Jan. 1, 1973, to file with the Administrator an application requesting a 1-year suspension of the effective date of any emission standard required by subsec. (b)(1)(B) with respect to such manufacturer.

1970—Subsec. (a). Pub. L. 91–604 redesignated existing provisions as par. (1), substituted Administrator for Secretary as the issuing authority for standards, inserted references to the useful life of engines, and substituted the emission of any air pollutant for the emission of any kind of substance as the subject to be regulated, and added par. (2).

Subsec. (b). Pub. L. 91–604 added subsec. (b). Former subsec. (b) redesignated as par. (2) of subsec. (a).

Subsecs. (c) to (e). Pub. L. 91–604 added subsecs. (c) to (e).

1967—Pub. L. 90–148 reenacted section without change.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY ON OXIDES OF NITROGEN FROM LIGHT-DUTY VEHICLES

Pub. L. 95–95, title II, §202(a), Aug. 7, 1977, 91 Stat. 753, provided that the Administrator of the Environmental Protection Agency conduct a study of the public health implications of attaining an emission standard on oxides of nitrogen from light-duty vehicles of 0.4 gram per vehicle mile, the cost and technological capability of attaining such standard, and the need for such a standard to protect public health or welfare and that the Administrator submit a report of such study to the Congress, together with recommendations not later than July 1, 1980.

STUDY OF CARBON MONOXIDE INTRUSION INTO SUSTAINED-USE VEHICLES

Pub. L. 95–95, title II, §226, Aug. 7, 1977, 91 Stat. 769, provided that the Administrator, in conjunction

with the Secretary of Transportation, study the problem of carbon monoxide intrusion into the passenger area of sustained-use motor vehicles and that within one year the Administrator report to the Congress respecting the results of such study.

CONTINUING COMPREHENSIVE STUDIES AND INVESTIGATIONS BY NATIONAL ACADEMY OF SCIENCES

Pub. L. 95–95, title IV, §403(f), Aug. 7, 1977, 91 Stat. 793, provided that: "The Administrator of the Environmental Protection Agency shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct continuing comprehensive studies and investigations of the effects on public health and welfare of emissions subject to section 202(a) of the Clean Air Act [subsec. (a) of this section] (including sulfur compounds) and the technological feasibility of meeting emission standards required to be prescribed by the Administrator by section 202(b) of such Act [subsec. (b) of this section]. The Administrator shall report to the Congress within six months of the date of enactment of this section [Aug. 7, 1977] and each year thereafter regarding the status of the contractual arrangements and conditions necessary to implement this paragraph."

[For termination, effective May 15, 2000, of provisions relating to annual report to Congress in section 403(f) of Pub. L. 95–95, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 2nd item on page 165 of House Document No. 103–7.]

STUDY ON EMISSION OF SULFUR-BEARING COMPOUNDS FROM MOTOR VEHICLES AND MOTOR VEHICLE AND AIRCRAFT ENGINES

Pub. L. 95–95, title IV, §403(g), Aug. 7, 1977, 91 Stat. 793, provided that the Administrator of the Environmental Protection Agency conduct a study and report to the Congress by the date one year after Aug. 7, 1977, on the emission of sulfur-bearing compounds from motor vehicles and motor vehicle engines and aircraft engines.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13432. COOPERATION AMONG AGENCIES IN PROTECTING THE ENVIRONMENT WITH RESPECT TO GREENHOUSE GAS EMISSIONS FROM MOTOR VEHICLES, NONROAD VEHICLES, AND NONROAD ENGINES

Ex. Ord. No. 13432, May 14, 2007, 72 F.R. 27717, as amended by Ex. Ord. No. 13693, §16(e), Mar. 19, 2015, 80 F.R. 15881, provided:

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

SECTION 1. *Policy*. It is the policy of the United States to ensure the coordinated and effective exercise of the authorities of the President and the heads of the Department of Transportation, the Department of Energy, and the Environmental Protection Agency to protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth.

SEC. 2. *Definitions*. As used in this order:

(a) "agencies" refers to the Department of Transportation, the Department of Energy, and the Environmental Protection Agency, and all units thereof, and "agency" refers to any of them;

(b) "alternative fuels" has the meaning specified for that term in section 301(2) of the Energy Policy Act of 1992 (42 U.S.C. 13211(2));

(c) "authorities" include the Clean Air Act (42 U.S.C. 7401–7671q), the Energy Policy Act of 1992 (Public Law 102–486), the Energy Policy Act of 2005 (Public Law 109–58), the Energy Policy and Conservation Act (Public Law 94–163), and any other current or future laws or regulations that may authorize or require any of the agencies to take regulatory action that directly or indirectly affects emissions of greenhouse gases from motor vehicles;

(d) "greenhouse gases" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen triflouride [sic], and sulfur hexafluoride;

(e) "motor vehicle" has the meaning specified for that term in section 216(2) of the Clean Air Act (42 U.S.C. 7550(2));

(f) "nonroad engine" has the meaning specified for that term in section 216(10) of the Clean Air Act (42 U.S.C. 7550(10));

(g) "nonroad vehicle" has the meaning specified for that term in section 216(11) of the Clean Air Act (42

U.S.C. 7550(11));

(h) "regulation" has the meaning specified for that term in section 3(d) of Executive Order 12866 of September 30, 1993, as amended (Executive Order 12866); and

(i) "regulatory action" has the meaning specified for that term in section 3(e) of Executive Order 12866.

SEC. 3. *Coordination Among the Agencies*. In carrying out the policy set forth in section 1 of this order, the head of an agency undertaking a regulatory action that can reasonably be expected to directly regulate emissions, or to substantially and predictably affect emissions, of greenhouse gases from motor vehicles, nonroad vehicles, nonroad engines, or the use of motor vehicle fuels, including alternative fuels, shall:

(a) undertake such a regulatory action, to the maximum extent permitted by law and determined by the head of the agency to be practicable, jointly with the other agencies;

(b) in undertaking such a regulatory action, consider, in accordance with applicable law, information and recommendations provided by the other agencies;

(c) in undertaking such a regulatory action, exercise authority vested by law in the head of such agency effectively, in a manner consistent with the effective exercise by the heads of the other agencies of the authority vested in them by law; and

(d) obtain, to the extent permitted by law, concurrence or other views from the heads of the other agencies during the development and preparation of the regulatory action and prior to any key decision points during that development and preparation process, and in no event later than 30 days prior to publication of such action.

SEC. 4. *Duties of the Heads of Agencies*. (a) To implement this order, the head of each agency shall:

(1) designate appropriate personnel within the agency to (i) direct the agency's implementation of this order, (ii) ensure that the agency keeps the other agencies and the Office of Management and Budget informed of the agency regulatory actions to which section 3 refers, and (iii) coordinate such actions with the agencies;

(2) in coordination as appropriate with the Committee on Climate Change Science and Technology, continue to conduct and share research designed to advance technologies to further the policy set forth in section 1 of this order;

(3) facilitate the sharing of personnel and the sharing of information among the agencies to further the policy set forth in section 1 of this order;

(4) coordinate with the other agencies to avoid duplication of requests to the public for information from the public in the course of undertaking such regulatory action, consistent with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*.); and

(5) consult with the Secretary of Agriculture whenever a regulatory action will have a significant effect on agriculture related to the production or use of ethanol, biodiesel, or other renewable fuels, including actions undertaken in whole or in part based on authority or requirements in title XV of the Energy Policy Act of 2005, or the amendments made by such title, or when otherwise appropriate or required by law.

(b) To implement this order, the heads of the agencies acting jointly may allocate as appropriate among the agencies administrative responsibilities relating to regulatory actions to which section 3 refers, such as publication of notices in the Federal Register and receipt of comments in response to notices.

SEC. 5. *Duties of the Director of the Office of Management and Budget and the Chairman of the Council on Environmental Quality*. (a) The Director of the Office of Management and Budget, with such assistance from the Chairman of the Council on Environmental Quality as the Director may require, shall monitor the implementation of this order by the heads of the agencies and shall report thereon to the President from time to time, and not less often than semiannually, with any recommendations of the Director for strengthening the implementation of this order.

(b) To implement this order and further the policy set forth in section 1, the Director of the Office of Management and Budget may require the heads of the agencies to submit reports to, and coordinate with, such Office on matters related to this order.

SEC. 6. *General Provisions*. (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) This order shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

EXECUTIVE ORDER NO. 14037

Ex. Ord. No. 14037, Aug. 5, 2021, 86 F.R. 43583, which related to vehicle emission standards for 2027 and later, was revoked by Ex. Ord. No. 14148, §2(kk), Jan. 20, 2025, 90 F.R. 8239, and Ex. Ord. No. 14154,

§4(a)(viii), Jan. 20, 2025, 90 F.R. 8355.

[1] *See References in Text note below.*

[2] *So in original. Probably should be "(4)".*

[3] *So in original. Probably should be "paragraph".*

[4] *Another subsec. (f) is set out after subsec. (m).*

[5] *So in original. Probably should be "(n)".*

§7522. Prohibited acts

(a) Enumerated prohibitions

The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part or part C in the case of clean-fuel vehicles (except as provided in subsection (b));

(2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 7542 of this title;

(B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 7525(c) of this title or section 7542 of this title;

(C) for any person to fail or refuse to perform tests, or have tests performed as required under section 7542 of this title;

(D) for any manufacturer to fail to make information available as provided by regulation under section 7521(m)(5) of this title;

(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 7521 of this title or part C—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with (i) the requirements of section 7541(a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 7541(c)(3) of this title, or (ii) the corresponding requirements of part C in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of part C [1]

(B) to fail or refuse to comply with the requirements of section 7541(c) or (e) of this title, or

the corresponding requirements of part C in the case of clean fuel vehicles [1]

(C) except as provided in subsection (c)(3) of section 7541 of this title and the corresponding requirements of part C in the case of clean fuel vehicles, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this chapter is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, or

(D) to fail or refuse to comply with the terms and conditions of the warranty under section 7541(a) or (b) of this title or the corresponding requirements of part C in the case of clean fuel vehicles with respect to any vehicle; or

(5) for any person to violate section 7553 of this title, 7554 of this title, or part C of this subchapter or any regulations under section 7553 of this title, 7554 of this title, or part C.

No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited act under such paragraph (3) if such action is in accordance with section 7549 of this title. Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term "manufacturer parts" means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine. No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element referred to in paragraph (3). No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 7521 of this title when operating on such fuel, and if in the case of a clean alternative fuel vehicle (as defined by rule by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

(b) Exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export

(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine, from subsection (a), upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such

manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a), except that if the country which is to receive such vehicle or engine has emission standards which differ from the standards prescribed under section 7521 of this title, then such vehicle or engine shall comply with the standards of such country which is to receive such vehicle or engine.

(July 14, 1955, ch. 360, title II, §203, as added Pub. L. 89–272, title I, §101(8), Oct. 20, 1965, 79 Stat. 993; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 499; Pub. L. 91–604, §§7(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1693, 1705, 1713; Pub. L. 95–95, title II, §§206, 211(a), 218(a), (d), 219(a), (b), Aug. 7, 1977, 91 Stat. 755, 757, 761, 762; Pub. L. 95–190, §14(a)(66)–(68), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title II, §§228(a), (b), (e), 230(6), Nov. 15, 1990, 104 Stat. 2507, 2511, 2529.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–2 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, §228(b)(2), inserted two sentences at end which set forth conditions under which actions with respect to devices or elements of design, referred to in par. (3), would not be deemed prohibited acts.

Subsec. (a)(1). Pub. L. 101–549, §228(e)(1), inserted "or part C in the case of clean-fuel vehicles" before "(except".

Subsec. (a)(2). Pub. L. 101–549, §228(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 7542 of this title or for any person to fail or refuse to permit entry, testing, or inspection authorized under section 7525(c) of this title;".

Subsec. (a)(3). Pub. L. 101–549, §228(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

"(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

"(B) for any person engaged in the business of repairing, servicing, selling, leasing, or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles, knowingly to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter following its sale and delivery to the ultimate purchaser; or".

Subsec. (a)(4). Pub. L. 101–549, §228(e)(2), inserted "or part C" after "section 7521 of this title".

Subsec. (a)(4)(A). Pub. L. 101–549, §228(e)(3), inserted cl. (i) designation and added cl. (ii).

Subsec. (a)(4)(B). Pub. L. 101–549, §228(e)(4), inserted at end "or the corresponding requirements of part C in the case of clean fuel vehicles".

Subsec. (a)(4)(C). Pub. L. 101–549, §228(e)(5), inserted "and the corresponding requirements of part C in the case of clean fuel vehicles" after "section 7541 of this title".

Subsec. (a)(4)(D). Pub. L. 101–549, §228(e)(6), inserted "or the corresponding requirements of part C in the case of clean fuel vehicles" before "with respect to any vehicle".

Subsec. (a)(5). Pub. L. 101–549, §228(e)(7), added par. (5).

Subsec. (c). Pub. L. 101–549, §230(6), struck out subsec. (c) which related to exemptions to permit modifications of emission control devices or systems.

1977—Subsec. (a). Pub. L. 95–190, §14(a)(68), in closing text inserted a period after "section 7549 of this title".

Pub. L. 95–95, §§206, 211(a), 218(a), 219(a), (b), inserted "or for any person to fail or refuse to permit

entry, testing, or inspection authorized under section 7525(c) of this title" in par. (2), designated existing provisions of par. (3) as subpar. (A) and added subpar. (B), added subpars. (C) and (D) in par. (4), and, following par. (4), inserted provisions that no action with respect to any element of design referred to in par. (3) (including adjustment or alteration of such element) be treated as a prohibited act under par. (3) if the action is in accordance with section 7549 of this title and that nothing in par. (3) be construed to require the use of manufacturer parts in maintaining or repairing motor vehicles or motor vehicle engines.

Subsec. (a)(3)(B). Pub. L. 95–190, §14(a)(66), substituted "purchaser;" for "purchaser,".

Subsec. (a)(4)(C). Pub. L. 95–190, §14(a)(67), inserted "or" after "such person,".

Subsec. (b)(3). Pub. L. 95–95, §218(d), substituted "section 7521 of this title" for "subsection (a)" and "country which is to receive such vehicle or engine" for "country of export".

1970—Subsec. (a)(1). Pub. L. 91–604, §7(a)(1), struck out reference to the manufacture of new motor vehicles or new motor vehicle engines for sale, inserted provision for issuance by the Administrator of regulations regarding exceptions in the case of importation of new motor vehicles or new motor vehicle engines, and substituted "importation" into the United States of such units for "importation for sale or resale" into the United States of such units.

Subsec. (a)(2). Pub. L. 91–604, §7(a)(2), substituted "section 208" for "section 207", both of which, for purposes of codification, are translated as "section 7542 of this title".

Subsec. (a)(3). Pub. L. 91–604, §§7(a)(3), 11(a)(2)(A), substituted "part" for "subchapter" and inserted provisions prohibiting the knowing removal or inoperation by manufacturers or dealers of devices or elements of design after sale and delivery to the ultimate purchaser.

Subsec. (a)(4). Pub. L. 91–604, §7(a)(4), added par. (4).

Subsec. (b)(1). Pub. L. 91–604, §§7(a)(5), 15(c)(2), struck out reference to the exemption of a class of new motor vehicles or new motor vehicle engines, struck out the protection of the public health and welfare from the enumeration of purposes for which exemptions may be made, and substituted "Administrator" for "Secretary".

Subsec. (b)(2). Pub. L. 91–604, §§7(a)(6), 11(a)(2)(A), 15(c)(2), substituted "Administrator" for "Secretary of Health, Education, and Welfare", "importation or imported by any person" for "importation by a manufacturer", and "part" for "subchapter".

Subsec. (b)(3). Pub. L. 91–604, §7(a)(7)(A), inserted provision that, if the country of export has emission standards which differ from the standards prescribed under subsec. (a), such vehicle or engine must comply with the standards of such country of export.

Subsec. (c). Pub. L. 91–604, §7(a)(7)(B), added subsec. (c).

1967—Subsec. (a). Pub. L. 90–148 substituted "conformity with regulations prescribed under this subchapter" for "conformity with regulations prescribed under section 7521 of this title" in par. (1).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] *So in original. Probably should be followed by a comma.*

§7523. Actions to restrain violations

(a) Jurisdiction

The district courts of the United States shall have jurisdiction to restrain violations of section 7522(a) of this title.

(b) Actions brought by or in name of United States; subpenas

Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district.

(July 14, 1955, ch. 360, title II, §204, as added Pub. L. 89–272, title I, §101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 500; Pub. L. 91–604, §7(b), Dec. 31, 1970, 84 Stat. 1694; Pub. L. 95–95, title II, §218(b), Aug. 7, 1977, 91 Stat. 761.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–3 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–95 struck out "paragraph (1), (2), (3), or (4)" after "restrain violations of".
1970—Subsec. (a). Pub. L. 91–604 inserted reference to par. (4) of section 7522(a) of this title.
1967—Pub. L. 90–148 reenacted section without change.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 amendment note under section 7401 of this title.

§7524. Civil penalties

(a) Violations

Any person who violates sections [1] 7522(a)(1), 7522(a)(4), or 7522(a)(5) of this title or any manufacturer or dealer who violates section 7522(a)(3)(A) of this title shall be subject to a civil penalty of not more than $25,000. Any person other than a manufacturer or dealer who violates section 7522(a)(3)(A) of this title or any person who violates section 7522(a)(3)(B) of this title shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any such violation with respect to section 7522(a)(3)(B) of this title shall constitute a separate offense with respect to each part or component. Any person who violates section 7522(a)(2) of this title shall be subject to a civil penalty of not more than $25,000 per day of violation.

(b) Civil actions

The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title. Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has the Administrator's principal place of business, and the court shall have jurisdiction to assess a civil

penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) Administrative assessment of certain penalties

(1) Administrative penalty authority

In lieu of commencing a civil action under subsection (b), the Administrator may assess any civil penalty prescribed in subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Assessment of a civil penalty under this subsection shall be by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) Determining amount

In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) Effect of Administrator's action

(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this chapter; except that any violation,

(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or

(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection,

shall not be the subject of civil penalty action under subsection (b).

(B) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this chapter.

(4) Finality of order

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

(5) Judicial review

Any person against whom a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. Such person shall simultaneously send a copy of the filing

by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued within 30 days. The court shall not set aside or remand any order issued in accordance with the requirements of this subsection unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court shall not impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) Collection

If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(July 14, 1955, ch. 360, title I, §205, as added Pub. L. 89–272, title I, §101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 500; Pub. L. 91–604, §7(c), Dec. 31, 1970, 84 Stat. 1694; Pub. L. 95–95, title II, §219(c), Aug. 7, 1977, 91 Stat. 762; Pub. L. 101–549, title II, §228(c), Nov. 15, 1990, 104 Stat. 2508.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–4 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally. Prior to amendment, section read as follows: "Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title shall be subject to a civil penalty of not more than $10,000. Any person who violates paragraph (3)(B) of such section 7522(a) shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine."

1977—Pub. L. 95–95 substituted "Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title, or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title" for "Any person who violates paragraph (1), (2), (3), or (4) of section 7522(a) of this title" in provisions covering the civil penalty of $10,000, and inserted provisions for a civil penalty of not more than $2,500 for violations of par. (3)(B) of section 7522(a) of this title.

1970—Pub. L. 91–604 increased the upper limit of the allowable fine from "$1,000" to "$10,000".

1967—Pub. L. 90–148 reenacted section without change.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

[1] *So in original. Probably should be "section".*

§7525. Motor vehicle and motor vehicle engine compliance testing and certification

(a) Testing and issuance of certificate of conformity

(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 7521 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe. In the case of any original equipment manufacturer (as defined by the Administrator in regulations promulgated before November 15, 1990) of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed 300, the Administrator shall not require, for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during such model year for more than 5,000 miles or 160 hours, respectively, unless the Administrator, by regulation, prescribes otherwise. The Administrator shall apply any adjustment factors that the Administrator deems appropriate to assure that each vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.

(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 7521(b) of this title. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

(3)(A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms to applicable requirements of section 7521(a)(4) of this title.

(B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out subparagraph (A) of this paragraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if such pollutant was not emitted, or was emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.

(4)(A) Not later than 12 months after November 15, 1990, the Administrator shall revise the regulations promulgated under this subsection to add test procedures capable of determining whether model year 1994 and later model year light-duty vehicles and light-duty trucks, when properly maintained and used, will pass the inspection methods and procedures established under section 7541(b) of this title for that model year, under conditions reasonably likely to be encountered in the conduct of inspection and maintenance programs, but which those programs cannot reasonably

influence or control. The conditions shall include fuel characteristics, ambient temperature, and short (30 minutes or less) waiting periods before tests are conducted. The Administrator shall not grant a certificate of conformity under this subsection for any 1994 or later model year vehicle or engine that the Administrator concludes cannot pass the test procedures established under this paragraph.

(B) From time to time, the Administrator may revise the regulations promulgated under subparagraph (A), as the Administrator deems appropriate.

(5)(A) A motor vehicle engine (including all engine emission controls) may be installed in an exempted specially produced motor vehicle if the motor vehicle engine is from a motor vehicle that is covered by a certificate of conformity issued by the Administrator for the model year in which the exempted specially produced motor vehicle is produced, or the motor vehicle engine is covered by an Executive order subject to regulations promulgated by the California Air Resources Board for the model year in which the exempted specially produced motor vehicle is produced, and—

(i) the manufacturer of the engine supplies written instructions to the Administrator and the manufacturer of the exempted specially produced motor vehicle explaining how to install the engine and maintain functionality of the engine's emission control system and the on-board diagnostic system (commonly known as "OBD"), except with respect to evaporative emissions;

(ii) the manufacturer of the exempted specially produced motor vehicle installs the engine in accordance with such instructions and certifies such installation in accordance with subparagraph (E);

(iii) the installation instructions include emission control warranty information from the engine manufacturer in compliance with section 7541 of this title, including where warranty repairs can be made, emission control labels to be affixed to the vehicle, and the certificate of conformity number for the applicable vehicle in which the engine was originally intended or the applicable Executive order number for the engine; and

(iv) the manufacturer of the exempted specially produced motor vehicle does not produce more than 325 such vehicles in the calendar year in which the vehicle is produced.

(B) A motor vehicle containing an engine compliant with the requirements of subparagraph (A) shall be treated as meeting the requirements of section 7521 of this title applicable to new vehicles produced or imported in the model year in which the exempted specially produced motor vehicle is produced or imported.

(C) Engine installations that are not performed in accordance with installation instructions provided by the manufacturer and alterations to the engine not in accordance with the installation instructions shall—

(i) be treated as prohibited acts by the installer under section 7522 of this title and any applicable regulations; and

(ii) subject to civil penalties under section 7524(a) of this title, civil actions under section 7524(b) of this title, and administrative assessment of penalties under section 7524(c) of this title.

(D) The manufacturer of an exempted specially produced motor vehicle that has an engine compliant with the requirements of subparagraph (A) shall provide to the purchaser of such vehicle all information received by the manufacturer from the engine manufacturer, including information regarding emissions warranties from the engine manufacturer and all emissions-related recalls by the engine manufacturer.

(E) To qualify to install an engine under this paragraph, and sell, offer for sale, introduce into commerce, deliver for introduction into commerce or import an exempted specially produced motor vehicle, a manufacturer of exempted specially produced motor vehicles shall register with the Administrator at such time and in such manner as the Administrator determines appropriate. The manufacturer shall submit an annual report to the Administrator that includes—

(i) a description of the exempted specially produced motor vehicles and engines installed in such vehicles;

(ii) the certificate of conformity number issued to the motor vehicle in which the engine was originally intended or the applicable Executive order number for the engine; and

(iii) a certification that it produced all exempted specially produced motor vehicles according to the written instructions from the engine manufacturer, and otherwise that the engine conforms in all material respects to the description in the application for the applicable certificate of conformity or Executive order.

(F) Exempted specially produced motor vehicles compliant with this paragraph shall be exempted from—

(i) motor vehicle certification testing under this section; and

(ii) vehicle emission control inspection and maintenance programs required under section 7410 of this title.

(G)(i) Except as provided in subparagraphs (A) through (F), a person engaged in the manufacturing or assembling of exempted specially produced motor vehicles shall be considered a manufacturer for purposes of this chapter.

(ii) Nothing in this paragraph shall be construed to exempt any person from the prohibitions in section 7522(a)(3) of this title or the requirements in sections 7542, 7525(c), or 7521(m)(5) of this title.

(H) In this paragraph:

(i) The term "exempted specially produced motor vehicle" means a light-duty vehicle or light-duty truck produced by a low-volume manufacturer and that—

(I) is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the exempted specially produced motor vehicle; and

(II) is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.

(ii) The term "low-volume manufacturer" means a motor vehicle manufacturer, other than a person who is registered as an importer under section 30141 of title 49, whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles.

(b) Testing procedures; hearing; judicial review; additional evidence

(1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2)(A)(i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations and requirements. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations and requirements, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations and

requirements, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations and requirements, and he shall so notify the manufacturer.

(B)(i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28.

(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter.

(c) Inspection

For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect, at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

(d) Rules and regulations

The Administrator shall by regulation establish methods and procedures for making tests under this section.

(e) Publication of test results

The Administrator shall make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) as promptly as possible after December 31, 1970, and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 7521 of this title.

(f) High altitude regulations

All light duty [1] vehicles and engines manufactured during or after model year 1984 and all light-duty trucks manufactured during or after model year 1995 shall comply with the requirements of section 7521 of this title regardless of the altitude at which they are sold.

(g) Nonconformance penalty

(1) In the case of any class or category of heavy-duty vehicles or engines to which a standard promulgated under section 7521(a) of this title applies, except as provided in paragraph (2), a certificate of conformity shall be issued under subsection (a) and shall not be suspended or revoked under subsection (b) for such vehicles or engines manufactured by a manufacturer notwithstanding the failure of such vehicles or engines to meet such standard if such manufacturer pays a nonconformance penalty as provided under regulations promulgated by the Administrator after notice and opportunity for public hearing. In the case of motorcycles to which such a standard applies, such a certificate may be issued notwithstanding such failure if the manufacturer pays such a penalty.

(2) No certificate of conformity may be issued under paragraph (1) with respect to any class or category of vehicle or engine if the degree by which the manufacturer fails to meet any standard promulgated under section 7521(a) of this title with respect to such class or category exceeds the percentage determined under regulations promulgated by the Administrator to be practicable. Such regulations shall require such testing of vehicles or engines being produced as may be necessary to determine the percentage of the classes or categories of vehicles or engines which are not in compliance with the regulations with respect to which a certificate of conformity was issued and shall be promulgated not later than one year after August 7, 1977.

(3) The regulations promulgated under paragraph (1) shall, not later than one year after August 7, 1977, provide for nonconformance penalties in amounts determined under a formula established by the Administrator. Such penalties under such formula—

(A) may vary from pollutant-to-pollutant;

(B) may vary by class or category or vehicle or engine;

(C) shall take into account the extent to which actual emissions of any air pollutant exceed allowable emissions under the standards promulgated under section 7521 of this title;

(D) shall be increased periodically in order to create incentives for the development of production vehicles or engines which achieve the required degree of emission reduction; and

(E) shall remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction (including any such disadvantage arising from the application of paragraph (4)).

(4) In any case in which a certificate of conformity has been issued under this subsection, any warranty required under section 7541(b)(2) of this title and any action under section 7541(c) of this title shall be required to be effective only for the emission levels which the Administrator determines that such certificate was issued and not for the emission levels required under the applicable standard.

(5) The authorities of section 7542(a) of this title shall apply, subject to the conditions of section 7542(b) [2] of this title, for purposes of this subsection.

(h) Review and revision of regulations

Within 18 months after November 15, 1990, the Administrator shall review and revise as necessary the regulations under subsection [3] (a) and (b) of this section regarding the testing of motor vehicles and motor vehicle engines to insure that vehicles are tested under circumstances which reflect the actual current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude.

(July 14, 1955, ch. 360, title II, §206, as added Pub. L. 91–604, §8(a), Dec. 31, 1970, 84 Stat. 1694; amended Pub. L. 95–95, title II, §§213(a), 214(b), (c), 220, 224(e), Aug. 7, 1977, 91 Stat. 758–760, 762, 768; Pub. L. 95–190, §14(a)(69), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title II, §§208, 230(7), (8), Nov. 15, 1990, 104 Stat. 2483, 2529; Pub. L. 114–94, div. B, title XXIV, §24405(b), Dec. 4, 2015, 129 Stat. 1723.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7542 of this title, referred to in subsec. (g)(5), was amended generally by Pub. L. 101–549, title II, §211, Nov. 15, 1990, 104 Stat. 2487, and provisions formerly contained in section 7542(b) of this title are contained in section 7542(c).

CODIFICATION

Section was formerly classified to section 1857f–5 of this title.

PRIOR PROVISIONS

A prior section 206 of act July 14, 1955, related to testing of motor vehicles and motor vehicle engines and was classified to section 1857f–5 of this title, prior to repeal by Pub. L. 91–604.

AMENDMENTS

2015—Subsec. (a)(5). Pub. L. 114–94 added par. (5).

1990—Subsec. (a)(1). Pub. L. 101–549, §208(b), inserted new third sentence and struck out former third sentence which read as follows: "In the case of any manufacturer of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed three hundred, the regulations prescribed by the Administrator concerning testing by the manufacturer for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine shall not require operation of any vehicle or engine manufactured during such model year for more than five thousand miles or one hundred and sixty hours, respectively, but the Administrator shall apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title."

Subsec. (a)(4). Pub. L. 101–549, §208(a), added par. (4).

Subsec. (e). Pub. L. 101–549, §230(7), struck out "announce in the Federal Register and" after "The Administrator shall".

Subsec. (f). Pub. L. 101–549, §230(8), struck out par. (1) designation before "All light duty vehicles", inserted reference to all light-duty trucks manufactured during or after model year 1995, and struck out par. (2) which required the Administrator to report to Congress by Oct. 1, 1978, on the economic impact and technological feasibility of the requirements of former par. (1).

Subsec. (h). Pub. L. 101–549, §208(c), added subsec. (h).

1977—Subsec. (a)(1). Pub. L. 95–95, §220, inserted provisions covering testing by small manufacturers.

Subsec. (a)(3). Pub. L. 95–95, §214(b), added par. (3).

Subsec. (b)(2)(A)(i). Pub. L. 95–95, §214(c)(1), (2), substituted "certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend" for "certificate of conformity was issued, he may suspend" and "such regulations and requirements" for "such regulations".

Subsec. (b)(2)(A)(ii). Pub. L. 95–95, §214(c)(2), substituted "such regulations and requirements" for "such regulations".

Subsec. (f). Pub. L. 95–95, §213(a), added subsec. (f).

Subsec. (g). Pub. L. 95–95, §224(e), added subsec. (g).

Subsec. (g)(3)(D). Pub. L. 95–190 inserted "shall" before "be".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

EFFECTIVE DATE

Pub. L. 91–604, §8(b), Dec. 31, 1970, 84 Stat. 1698, provided that: "The amendments made by this section [enacting this section and section 7541 of this title] shall not apply to vehicles or engines imported into the United States before the sixtieth day after the date of enactment of this Act [Dec. 31, 1970]."

REGULATIONS

Pub. L. 114–94, div. B, title XXIV, §24405(c), Dec. 4, 2015, 129 Stat. 1725, provided that: "Not later than 12 months after the date of enactment of this Act [Dec. 4, 2015], the Secretary of Transportation and the

Administrator of the Environmental Protection Agency shall issue such regulations as may be necessary to implement the amendments made by subsections (a) [amending section 30114 of Title 49, Transportation] and (b) [amending this section], respectively."

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. Probably should be "light-duty".

[2] See References in Text note below.

[3] So in original. Probably should be "subsections".

§7541. Compliance by vehicles and engines in actual use

(a) Warranty; certification; payment of replacement costs of parts, devices, or components designed for emission control

(1) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 7521 of this title, and (B) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 7521(d) of this title). In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i).

(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 7521 of this title. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b). The Administrator shall promulgate such regulations no later than two years following August 7, 1977.

(3) The cost of any part, device, or component of any light-duty vehicle that is designed for emission control and which in the instructions issued pursuant to subsection (c)(3) of this section is scheduled for replacement during the useful life of the vehicle in order to maintain compliance with regulations under section 7521 of this title, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 percent of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and such replacement shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term "designed for emission control" as used in the preceding sentence means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).

(b) Testing methods and procedures

If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its [1] the warranty period (as determined under subsection (i)), each vehicle and engine to which regulations under section 7521 of this title apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 7525(a)(1) of this title, then—

(1) he shall establish such methods and procedures by regulation, and

(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 7521 of this title applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3),

(B) it fails to conform at any time during its [1] the warranty period (as determined under subsection (i)) to the regulations prescribed under section 7521 of this title, and

(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer. No such warranty shall be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a)(2).

(c) Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use; label or tag

Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 7521 of this title, when in actual use throughout their useful life (as determined under section 7521(d) of this title), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

(3)(A) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine written instructions for the proper maintenance and use of the vehicle or engine by the ultimate purchaser and such instructions shall correspond to regulations which the Administrator shall promulgate. The manufacturer shall provide in boldface type on the first page of the written

maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual using any automotive part which has been certified as provided in subsection (a)(2).

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

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

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

(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 7521 of this title. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(4) INTERMEDIATE IN-USE STANDARDS.—

(A) MODEL YEARS 1994 AND 1995.—For light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are subject to standards under table G of section 7521(g)(1) of this title in model years 1994 and 1995 (40 percent of the manufacturer's sales volume in model year 1994 and 80 percent in model year 1995), the standards applicable to NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in table A below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

TABLE A—INTERMEDIATE IN-USE STANDARDS LDTS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	NMHC	CO	NO_x
Light-duty vehicles	0.32	3.4	0.4*
LDT's (0–3,750 LVW)	0.32	5.2	0.4*
LDT's (3,751–5,750 LVW)	0.41	6.7	0.7*

*Not applicable to diesel-fueled vehicles.

(B) MODEL YEARS 1996 AND THEREAFTER.—(i) In the model years 1996 and 1997, light-duty trucks (LDTs) up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are not subject to final in-use standards under paragraph (5) (60 percent of the manufacturer's sales volume in model year 1996 and 20 percent in model year 1997) shall be subject to the standards set forth in table A of subparagraph (A) for NMHC, CO, and NO_x for purposes of this subsection in lieu of those set forth in paragraph (5).

(ii) For LDTs of more than 6,000 lbs. GVWR—

(I) in model year 1996 which are subject to the standards set forth in Table H of section 7521(h) of this title (50%);

(II) in model year 1997 (100%); and

(III) in model year 1998 which are not subject to final in-use standards under paragraph (5) (50%);

the standards for NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in Table B below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

TABLE B—INTERMEDIATE IN-USE STANDARDS LDTS MORE THAN 6,000 LBS. GVWR

Vehicle type	NMHC	CO	NO_x
LDTs (3,751–5,750 lbs. TW)	0.40	5.5	0.88*
LDTs (over 5,750 lbs. TW)	0.49	6.2	1.38*

*Not applicable to diesel-fueled vehicles.

(C) USEFUL LIFE.—In the case of the in-use standards applicable under this paragraph, for purposes of applying this subsection, the applicable useful life shall be 5 years or 50,000 miles or the equivalent (whichever first occurs).

(5) FINAL IN-USE STANDARDS.—(A) After the model year 1995, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light duty [2] vehicles, the standards for NMHC, CO, and NO_x shall be as provided in Table G in section 7521(g) of this title, except that in applying the standards set forth in Table G for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 100,000 miles, except that no testing shall be done beyond 7 years or 75,000 miles, or the equivalent whichever first occurs.

LDTS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLE SCHEDULE FOR IMPLEMENTATION OF FINAL IN-USE STANDARDS

Model year	Percent
1996	40
1997	80
1998	100

(B) After the model year 1997, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of more than 6,000 lbs. gross vehicle weight rating (GVWR), the standards for NMHC, CO, and NO_x shall be as provided in Table H in section 7521(h) of this title, except that in applying the standards set forth in Table H for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 11 years or 120,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that no testing shall be done beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

LDTS OF MORE THAN 6,000 LBS. GVWR IMPLEMENTATION SCHEDULE FOR IMPLEMENTATION OF FINAL IN-USE STANDARDS

Model year	Percent
1998	50
1999	100

(6) DIESEL VEHICLES; IN-USE USEFUL LIFE AND TESTING.—(A) In the case of diesel-fueled light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles, the useful life for purposes of determining in-use compliance with the standards under section 7521(g) of this title for NO_x shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(B) In the case of diesel-fueled light-duty trucks of 6,000 lbs. GVWR or more, the useful life for purposes of determining in-use compliance with the standards under section 7521(h) of this title for NO_x shall be a period of 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles, except that testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

(d) Dealer costs borne by manufacturer

Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(e) Cost statement

If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 7611 of this title.

(f) Inspection after sale to ultimate purchaser

Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c)(1), after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program.

(g) Replacement and maintenance costs borne by owner

For the purposes of this section, the owner of any motor vehicle or motor vehicle engine warranted under this section is responsible in the proper maintenance of such vehicle or engine to replace and to maintain, at his expense at any service establishment or facility of his choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control (but not designed for emission control under the terms of the last sentence of subsection (a)(3))),[3] unless such part, item, or device is covered by any warranty not mandated by this chapter.

(h) Dealer certification

(1) If at any time during the period for which the warranty applies under subsection (b), a motor vehicle fails to conform to the applicable regulations under section 7521 of this title as determined under subsection (b) of this section such nonconformity shall be remedied by the manufacturer at the cost of the manufacturer pursuant to such warranty as provided in subsection (b)(2)(without regard to subparagraph (C) thereof).

(2) Nothing in section 7543(a) of this title shall be construed to prohibit a State from testing, or requiring testing of, a motor vehicle after the date of sale of such vehicle to the ultimate purchaser (except that no new motor vehicle manufacturer or dealer may be required to conduct testing under this paragraph).

(i) Warranty period

(1) In general

For purposes of subsection (a)(1) and subsection (b) of this section, the warranty period, effective with respect to new light-duty trucks and new light-duty vehicles and engines, manufactured in the model year 1995 and thereafter, shall be the first 2 years or 24,000 miles of use (whichever first occurs), except as provided in paragraph (2). For purposes of subsection (a)(1) and subsection (b), for other vehicles and engines the warranty period shall be the period established by the Administrator by regulation (promulgated prior to November 15, 1990) for such purposes unless the Administrator subsequently modifies such regulation.

(2) Specified major emission control components

In the case of a specified major emission control component, the warranty period for new light-duty trucks and new light-duty vehicles and engines manufactured in the model year 1995 and thereafter for purposes of subsection (a)(1) and subsection (b) shall be 8 years or 80,000 miles of use (whichever first occurs). As used in this paragraph, the term "specified major emission control component" means only a catalytic converter, an electronic emissions control unit, and an onboard emissions diagnostic device, except that the Administrator may designate any other pollution control device or component as a specified major emission control component if—

(A) the device or component was not in general use on vehicles and engines manufactured prior to the model year 1990; and

(B) the Administrator determines that the retail cost (exclusive of installation costs) of such device or component exceeds $200 (in 1989 dollars), adjusted for inflation or deflation as calculated by the Administrator at the time of such determination.

For purposes of this paragraph, the term "onboard emissions diagnostic device" means any device installed for the purpose of storing or processing emissions related diagnostic information, but not including any parts or other systems which it monitors except specified major emissions control components. Nothing in this chapter shall be construed to provide that any part (other than a part referred to in the preceding sentence) shall be required to be warranted under this chapter for the period of 8 years or 80,000 miles referred to in this paragraph.

(3) Instructions

Subparagraph (A) of subsection (b)(2) shall apply only where the Administrator has made a determination that the instructions concerned conform to the requirements of subsection (c)(3).

(July 14, 1955, ch. 360, title II, §207, as added Pub. L. 91–604, §8(a), Dec. 31, 1970, 84 Stat. 1696; amended Pub. L. 95–95, title II, §§205, 208–210, 212, Aug. 7, 1977, 91 Stat. 754–756, 758; Pub. L. 95–190, §14(a)(70)–(72), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title II, §§209, 210, 230(9), Nov. 15, 1990, 104 Stat. 2484, 2485, 2529; Pub. L. 113–109, §1, June 9, 2014, 128 Stat. 1170.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–5a of this title.

PRIOR PROVISIONS

A prior section 207 of act July 14, 1955, was renumbered section 208 by Pub. L. 91–604 and is classified to section 7542 of this title.

AMENDMENTS

2014—Subsec. (h). Pub. L. 113–109 redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: "Upon the sale of each new light-duty motor vehicle by a dealer, the dealer shall furnish to the purchaser a certificate that such motor vehicle conforms to the applicable regulations under section 7521 of this title, including notice of the purchaser's rights under paragraph (2)."

1990—Subsec. (a)(1). Pub. L. 101–549, §209(4), inserted at end "In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i)."

Subsec. (b). Pub. L. 101–549, §209(1), (2), substituted "the warranty period (as determined under

subsection (i))" for "useful life (as determined under section 7521(d) of this title)" in introductory provisions and par. (2)(B), and struck out closing provisions which read as follows: "For purposes of the warranty under this subsection, for the period after twenty-four months or twenty-four thousand miles (whichever first occurs) the term 'emission control device or system' means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions. Such term shall not include those vehicle components which were in general use prior to model year 1968."

Subsec. (c)(4) to (6). Pub. L. 101–549, §210, added pars. (4) to (6).

Subsec. (g). Pub. L. 101–549, §230(9), substituted "the last sentence of subsection (a)(3))" for "the last three sentences of subsection (a)(1)".

Subsec. (i). Pub. L. 101–549, §209(3), added subsec. (i).

1977—Subsec. (a). Pub. L. 95–190, §14(a)(70), designated provisions contained in cl. (3) of subsec. (a), formerly set out as containing cls. (1), (2), and (3), to be par. (3) of subsec. (a) after the amendment by Pub. L. 95–95, §209(b), which designated provisions of former subsec. (a) as par. (1) and former cls. (1) and (2) as (A) and (B) of par. (1) and added a new par. (2).

Pub. L. 95–95, §205, added cl. (3).

Subsec. (b). Pub. L. 95–95, §209(a), (c), inserted provisions to par. (2) that no warranty be held invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if the part was certified as provided in subsec. (a)(2) of this section, and, following par. (2), inserted provisions defining "emission control device or system".

Subsec. (c)(3). Pub. L. 95–95, §208, designated existing provisions as subpars. (A) and (C), added requirement for the bold face printing of a required notice on the first page of the written maintenance instructions in subpar. (A), and added subpar. (B).

Subsec. (f). Pub. L. 95–190, §14(a)(71), redesignated subsec. (f) as added by Pub. L. 95–95, §212, as (h).

Subsec. (g). Pub. L. 95–95, §210, added subsec. (g).

Subsec. (h). Pub. L. 95–190, §14(a)(71), redesignated subsec. (f) as added by Pub. L. 95–95, §212, as (h).

Subsec. (h)(2). Pub. L. 95–190, §14(a)(72), substituted "determined under" for "determined and".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–549, title II, §209, Nov. 15, 1990, 104 Stat. 2484, provided that the amendments made by that section are effective with respect to new motor vehicles and engines manufactured in model year 1995 and thereafter.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

EFFECTIVE DATE

Section not applicable to vehicles or engines imported into United States before sixtieth day after Dec. 31, 1970, see section 8(b) of Pub. L. 91–604, set out as a note under section 7525 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. The word "its" probably should not appear.

[2] So in original. Probably should be "light-duty".

[3] So in original. The final closing parenthesis probably should not appear.

§7542. Information collection

(a) Manufacturer's responsibility

Every manufacturer of new motor vehicles or new motor vehicle engines, and every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of this part or part C, shall establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part and part C (including fees for testing), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part and part C and regulations thereunder, or to otherwise carry out the provision of this part and part C, and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.

(b) Enforcement authority

For the purposes of enforcement of this section, officers or employees duly designated by the Administrator upon presenting appropriate credentials are authorized—

(1) to enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engages to perform any activity required by subsection (a), for the purposes of inspecting or observing any activity conducted pursuant to subsection (a), and

(2) to inspect records, files, papers, processes, controls, and facilities used in performing any activity required by subsection (a), by such manufacturer or by any person whom the manufacturer engages to perform any such activity.

(c) Availability to public; trade secrets

Any records, reports, or information obtained under this part or part C shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or a particular portion thereof (other than emission data), to which the Administrator has access under this section, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the Administrator shall consider the record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18. Any authorized representative of the Administrator shall be considered an employee of the United States for purposes of section 1905 of title 18. Nothing in this section shall prohibit the Administrator or authorized representative of the Administrator from disclosing records, reports or information to other officers, employees or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under the Administrator's control from the duly authorized committees of the Congress.

(July 14, 1955, ch. 360, title II, §208, formerly §207, as added Pub. L. 89–272, title I, §101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 501; renumbered and amended Pub. L. 91–604, §§8(a), 10(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1700, 1705, 1713; Pub. L. 101–549, title II, §211, Nov. 15, 1990, 104 Stat. 2487.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–6 of this title.

PRIOR PROVISIONS

A prior section 208 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 501, was renumbered section 209 by Pub. L. 91–604 and is classified to section 7543 of this title.

Another prior section 208 of act July 14, 1955, as added Oct. 20, 1965, Pub. L. 89–272, title I, §101(8), 79 Stat. 994, was renumbered section 212 by Pub. L. 90–148, renumbered section 213 by Pub. L. 91–604,

renumbered 214 by Pub. L. 93–319, and renumbered section 216 by Pub. L. 95–95, and is classified to section 7550 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), manufacturer's responsibility; and in subsec. (b), availability to public except for trade secrets.

1970—Subsec. (a). Pub. L. 91–604, §§11(a)(2)(A), 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing and "part" for "subchapter".

Subsec. (b). Pub. L. 91–604, §§10(a), 15(c)(2), substituted provisions authorizing the Administrator to make available to the public any records, reports, of information obtained under subsec. (a) of this section, except those shown to the Administrator to be entitled to protection as trade secrets, for provisions that all information reported or otherwise obtained by the Secretary or his representative pursuant to subsec. (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, be considered confidential for the purpose of such section 1905, and substituted "Administrator" for "Secretary".

1967—Pub. L. 90–148 reenacted section without change.

§7543. State standards

(a) Prohibition

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) Waiver

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

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

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

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

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

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

(c) Certification of vehicle parts or engine parts

Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 7541(a)(2) of this title, no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).

(d) Control, regulation, or restrictions on registered or licensed motor vehicles

Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) Nonroad engines or vehicles

(1) Prohibition on certain State standards

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

Subsection (b) shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—

(i) the determination of California is arbitrary and capricious,

(ii) California does not need such California standards to meet compelling and extraordinary conditions, or

(iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) Any State other than California which has plan provisions approved under part D of subchapter I may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if—

(i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and

(ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.

(July 14, 1955, ch. 360, title II, §209, formerly §208, as added Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 501; renumbered and amended Pub. L. 91–604, §§8(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1705, 1713; Pub. L. 95–95, title II, §§207, 221, Aug. 7, 1977, 91 Stat. 755, 762; Pub. L. 101–549, title II, §222(b), Nov. 15, 1990, 104 Stat. 2502.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–6a of this title.

PRIOR PROVISIONS

A prior section 209 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 502, was

renumbered section 210 by Pub. L. 91–604 and is classified to section 7544 of this title.

Another prior section 209 of act July 14, 1955, ch. 360, title II, as added Oct. 20, 1965, Pub. L. 89–272, title I, §101(8), 79 Stat. 995, related to appropriations for the fiscal years ending June 30, 1966, 1967, 1968, and 1969, and was classified to section 1857f–8 of this title, prior to repeal by Pub. L. 89–675, §2(b), Oct. 15, 1966, 80 Stat. 954.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–549 added subsec. (e).

1977—Subsec. (b). Pub. L. 95–95, §207, designated existing provisions as par. (1), substituted "March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards" for "March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling the extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title", added subpars. (A), (B), and (C), and added pars. (2) and (3).

Subsecs. (c), (d). Pub. L. 95–95, §221, added subsec. (c) and redesignated former subsec. (c) as (d).

1970—Subsec. (a). Pub. L. 91–604, §11(a)(2)(A), substituted "part" for "subchapter".

Subsec. (b). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (c). Pub. L. 91–604, §11(a)(2)(A), substituted "part" for "subchapter".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7544. State grants

The Administrator is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

(2) no such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of title 23; and

(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative.

Grants may be made under this section by way of reimbursement in any case in which amounts have been expended by the State before the date on which any such grant was made.

(July 14, 1955, ch. 360, title II, §210, formerly §209, as added Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 502; renumbered and amended Pub. L. 91–604, §§8(a), 10(b), Dec. 31, 1970, 84 Stat. 1694, 1700; Pub. L. 95–95, title II, §204, Aug. 7, 1977, 91 Stat. 754.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–6b of this title.

PRIOR PROVISIONS

A prior section 210 of act July 14, 1955, was renumbered section 211 by Pub. L. 91–604 and is classified to section 7545 of this title.

AMENDMENTS

1977—Pub. L. 95–95 inserted provision allowing grants to be made by way of reimbursement in any case in which amounts have been expended by States before the date on which the grants were made.

1970—Pub. L. 91–604, §10(b), substituted provisions authorizing the Administrator to make grants to appropriate State agencies for the development and maintenance of effective vehicle emission devices and systems inspection and emission testing and control programs, for provisions authorizing the Secretary to make grants to appropriate State air pollution control agencies for the development of meaningful uniform motor vehicle emission device inspection and emission testing programs.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

§7545. Regulation of fuels

(a) Authority of Administrator to regulate

The Administrator may by regulation designate any fuel or fuel additive (including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles) and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

(b) Registration requirement

(1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

(2) For the purpose of registration of fuels and fuel additives, the Administrator shall, on a regular basis, require the manufacturer of any fuel or fuel additive—

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle, vehicle engine, nonroad engine or nonroad vehicle, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols

established by the Administrator. The result of such tests shall not be considered confidential.

(3) Upon compliance with the provision of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

(4) STUDY ON CERTAIN FUEL ADDITIVES AND BLENDSTOCKS.—

(A) IN GENERAL.—Not later than 2 years after August 8, 2005, the Administrator shall—

(i) conduct a study on the effects on public health (including the effects on children, pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of increased use of, and the feasibility of using as substitutes for methyl tertiary butyl ether in gasoline—

(I) ethyl tertiary butyl ether;
(II) tertiary amyl methyl ether;
(III) di-isopropyl ether;
(IV) tertiary butyl alcohol;
(V) other ethers and heavy alcohols, as determined by then [1] Administrator;
(VI) ethanol;
(VII) iso-octane; and
(VIII) alkylates; and

(ii) conduct a study on the effects on public health (including the effects on children, pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of the adjustment for ethanol-blended reformulated gasoline to the volatile organic compounds performance requirements that are applicable under paragraphs (1) and (3) of subsection (k); and

(iii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing the results of the studies under clauses (i) and (ii).

(B) CONTRACTS FOR STUDY.—In carrying out this paragraph, the Administrator may enter into one or more contracts with nongovernmental entities such as—

(i) the national energy laboratories; and
(ii) institutions of higher education (as defined in section 1001 of title 20).

(c) Offending fuels and fuel additives; control; prohibition

(1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle if, in the judgment of the Administrator, any fuel or fuel additive or any emission product of such fuel or fuel additive causes, or contributes, to air pollution or water pollution (including any degradation in the quality of groundwater) that may reasonably be anticipated to endanger the public health or welfare, or (B) [2] if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2)(A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 7521 of this title.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or

systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3)(A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) In obtaining information under subparagraph (A), section 7607(a) of this title (relating to subpenas) shall be applicable.

(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such characteristic or component of a fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 7543(a) of this title has at any time been waived under section 7543(b) of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C)(i) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 7410 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

(ii) The Administrator may temporarily waive a control or prohibition respecting the use of a fuel or fuel additive required or regulated by the Administrator pursuant to subsection (c), (h), (i), (k), or (m) of this section or prescribed in an applicable implementation plan under section 7410 of this title approved by the Administrator under clause (i) of this subparagraph if, after consultation with, and concurrence by, the Secretary of Energy, the Administrator determines that—

(I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

(II) such extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the

part of the suppliers of the fuel or fuel additive to such State or region; and

(III) it is in the public interest to grant the waiver (for example, when a waiver is necessary to meet projected temporary shortfalls in the supply of the fuel or fuel additive in a State or region of the Nation which cannot otherwise be compensated for).

(iii) If the Administrator makes the determinations required under clause (ii), such a temporary extreme and unusual fuel and fuel additive supply circumstances waiver shall be permitted only if—

(I) the waiver applies to the smallest geographic area necessary to address the extreme and unusual fuel and fuel additive supply circumstances;

(II) the waiver is effective for a period of 20 calendar days or, if the Administrator determines that a shorter waiver period is adequate, for the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel and fuel additive supply circumstances and to mitigate impact on air quality;

(III) the waiver permits a transitional period, the exact duration of which shall be determined by the Administrator (but which shall be for the shortest practicable period), after the termination of the temporary waiver to permit wholesalers and retailers to blend down their wholesale and retail inventory;

(IV) the waiver applies to all persons in the motor fuel distribution system; and

(V) the Administrator has given public notice to all parties in the motor fuel distribution system, and local and State regulators, in the State or region to be covered by the waiver.

The term "motor fuel distribution system" as used in this clause shall be defined by the Administrator through rulemaking.

(iv) Within 180 days of August 8, 2005, the Administrator shall promulgate regulations to implement clauses (ii) and (iii).

(v) [3] Nothing in this subparagraph shall—

(I) limit or otherwise affect the application of any other waiver authority of the Administrator pursuant to this section or pursuant to a regulation promulgated pursuant to this section; and

(II) subject any State or person to an enforcement action, penalties, or liability solely arising from actions taken pursuant to the issuance of a waiver under this subparagraph.

(v)(I) [3] The Administrator shall have no authority, when considering a State implementation plan or a State implementation plan revision, to approve under this paragraph any fuel included in such plan or revision if the effect of such approval increases the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans.

(II) The Administrator, in consultation with the Secretary of Energy, shall determine the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans and shall publish a list of such fuels, including the States and Petroleum Administration for Defense District in which they are used, in the Federal Register for public review and comment no later than 90 days after August 8, 2005.

(III) The Administrator shall remove a fuel from the list published under subclause (II) if a fuel ceases to be included in a State implementation plan or if a fuel in a State implementation plan is identical to a Federal fuel formulation implemented by the Administrator, but the Administrator shall not reduce the total number of fuels authorized under the list published under subclause (II).

(IV) Subclause (I) shall not limit the Administrator's authority to approve a control or prohibition respecting any new fuel under this paragraph in a State implementation plan or revision to a State implementation plan if such new fuel—

(aa) completely replaces a fuel on the list published under subclause (II); or

(bb) does not increase the total number of fuels on the list published under subclause (II) as of September 1, 2004.

In the event that the total number of fuels on the list published under subclause (II) at the time of the Administrator's consideration of a control or prohibition respecting a new fuel is lower than the

total number of fuels on such list as of September 1, 2004, the Administrator may approve a control or prohibition respecting a new fuel under this subclause if the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register after notice and comment a finding that, in the Administrator's judgment, such control or prohibition respecting a new fuel will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.

(V) The Administrator shall have no authority under this paragraph, when considering any particular State's implementation plan or a revision to that State's implementation plan, to approve any fuel unless that fuel was, as of the date of such consideration, approved in at least one State implementation plan in the applicable Petroleum Administration for Defense District. However, the Administrator may approve as part of a State implementation plan or State implementation plan revision a fuel with a summertime Reid Vapor Pressure of 7.0 psi. In no event shall such approval by the Administrator cause an increase in the total number of fuels on the list published under subclause (II).

(VI) Nothing in this clause shall be construed to have any effect regarding any available authority of States to require the use of any fuel additive registered in accordance with subsection (b), including any fuel additive registered in accordance with subsection (b) after August 8, 2005.

(d) Penalties and injunctions

(1) Civil penalties

Any person who violates subsection (a), (f), (g), (k), (l), (m), (n), or (o) of this section or the regulations prescribed under subsection (c), (h), (i), (k), (l), (m), (n), or (o) of this section or who fails to furnish any information or conduct any tests required by the Administrator under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation. Any violation with respect to a regulation prescribed under subsection (c), (k), (l), (m), or (o) of this section which establishes a regulatory standard based upon a multiday averaging period shall constitute a separate day of violation for each and every day in the averaging period. Civil penalties shall be assessed in accordance with subsections (b) and (c) of section 7524 of this title.

(2) Injunctive authority

The district courts of the United States shall have jurisdiction to restrain violations of subsections (a), (f), (g), (k), (l), (m), (n), and (o) of this section and of the regulations prescribed under subsections (c), (h), (i), (k), (l), (m), (n), and (o) of this section, to award other appropriate relief, and to compel the furnishing of information and the conduct of tests required by the Administrator under subsection (b) of this section. Actions to restrain such violations and compel such actions shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(e) Testing of fuels and fuel additives

(1) Not later than one year after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations which implement the authority under subsection (b)(2)(A) and (B) with respect to each fuel or fuel additive which is registered on the date of promulgation of such regulations and with respect to each fuel or fuel additive for which an application for registration is filed thereafter.

(2) Regulations under subsection (b) to carry out this subsection shall require that the requisite information be provided to the Administrator by each such manufacturer—

(A) prior to registration, in the case of any fuel or fuel additive which is not registered on the date of promulgation of such regulations; or

(B) not later than three years after the date of promulgation of such regulations, in the case of any fuel or fuel additive which is registered on such date.

(3) In promulgating such regulations, the Administrator may—

(A) exempt any small business (as defined in such regulations) from or defer or modify the requirements of, such regulations with respect to any such small business;

(B) provide for cost-sharing with respect to the testing of any fuel or fuel additive which is manufactured or processed by two or more persons or otherwise provide for shared responsibility to meet the requirements of this section without duplication; or

(C) exempt any person from such regulations with respect to a particular fuel or fuel additive upon a finding that any additional testing of such fuel or fuel additive would be duplicative of adequate existing testing.

(f) New fuels and fuel additives

(1)(A) Effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for general use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 7525 of this title.

(B) Effective upon November 15, 1990, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 7525 of this title.

(2) Effective November 30, 1977, it shall be unlawful for any manufacturer of any fuel to introduce into commerce any gasoline which contains a concentration of manganese in excess of .0625 grams per gallon of fuel, except as otherwise provided pursuant to a waiver under paragraph (4).

(3) Any manufacturer of any fuel or fuel additive which prior to March 31, 1977, and after January 1, 1974, first introduced into commerce or increased the concentration in use of a fuel or fuel additive that would otherwise have been prohibited under paragraph (1)(A) if introduced on or after March 31, 1977 shall, not later than September 15, 1978, cease to distribute such fuel or fuel additive in commerce. During the period beginning 180 days after August 7, 1977, and before September 15, 1978, the Administrator shall prohibit, or restrict the concentration of any fuel additive which he determines will cause or contribute to the failure of an emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified under section 7525 of this title.

(4) The Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or (3) of this subsection or the limitation specified in paragraph (2) of this subsection, if he determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or fuel additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards with respect to which it has been certified pursuant to sections 7525 and 7547(a) of this title. The Administrator shall take final action to grant or deny an application submitted under this paragraph, after public notice and comment, within 270 days of the receipt of such an application.

(5) No action of the Administrator under this section may be stayed by any court pending judicial review of such action.

(g) Misfueling

(1) No person shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle which is labeled "unleaded gasoline only," which is equipped with a gasoline tank

filler inlet designed for the introduction of unleaded gasoline, which is a 1990 or later model year motor vehicle, or which such person knows or should know is a vehicle designed solely for the use of unleaded gasoline.

(2) Beginning October 1, 1993, no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40 or such equivalent alternative aromatic level as prescribed by the Administrator under subsection (i)(2).

(h) Reid Vapor Pressure requirements

(1) Prohibition

Not later than 6 months after November 15, 1990, the Administrator shall promulgate regulations making it unlawful for any person during the high ozone season (as defined by the Administrator) to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi). Such regulations shall also establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.

(2) Attainment areas

The regulations under this subsection shall not make it unlawful for any person to sell, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure of 9.0 pounds per square inch (psi) or lower in any area designated under section 7407 of this title as an attainment area. Notwithstanding the preceding sentence, the Administrator may impose a Reid vapor pressure requirement lower than 9.0 pounds per square inch (psi) in any area, formerly an ozone nonattainment area, which has been redesignated as an attainment area.

(3) Effective date; enforcement

The regulations under this subsection shall provide that the requirements of this subsection shall take effect not later than the high ozone season for 1992, and shall include such provisions as the Administrator determines are necessary to implement and enforce the requirements of this subsection.

(4) Ethanol waiver

For fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one pound per square inch (psi) greater than the applicable Reid vapor pressure limitations established under paragraph (1); *Provided, however*, That a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer shall be deemed to be in full compliance with the provisions of this subsection and the regulations promulgated thereunder if it can demonstrate (by showing receipt of a certification or other evidence acceptable to the Administrator) that—

(A) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection;

(B) the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4); and

(C) no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of the blend.

(5) Exclusion from ethanol waiver

(A) Promulgation of regulations

Upon notification, accompanied by supporting documentation, from the Governor of a State that the Reid vapor pressure limitation established by paragraph (4) will increase emissions that contribute to air pollution in any area in the State, the Administrator shall, by regulation, apply,

in lieu of the Reid vapor pressure limitation established by paragraph (4), the Reid vapor pressure limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in the area during the high ozone season.

(B) Deadline for promulgation

The Administrator shall promulgate regulations under subparagraph (A) not later than 90 days after the date of receipt of a notification from a Governor under that subparagraph.

(C) Effective date

(i) In general

With respect to an area in a State for which the Governor submits a notification under subparagraph (A), the regulations under that subparagraph shall take effect on the later of—

(I) the first day of the first high ozone season for the area that begins after the date of receipt of the notification; or

(II) 1 year after the date of receipt of the notification.

(ii) Extension of effective date based on determination of insufficient supply

(I) In general

If, after receipt of a notification with respect to an area from a Governor of a State under subparagraph (A), the Administrator determines, on the Administrator's own motion or on petition of any person and after consultation with the Secretary of Energy, that the promulgation of regulations described in subparagraph (A) would result in an insufficient supply of gasoline in the State, the Administrator, by regulation—

(aa) shall extend the effective date of the regulations under clause (i) with respect to the area for not more than 1 year; and

(bb) may renew the extension under item (aa) for two additional periods, each of which shall not exceed 1 year.

(II) Deadline for action on petitions

The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

(6) Areas covered

The provisions of this subsection shall apply only to the 48 contiguous States and the District of Columbia.

(i) Sulfur content requirements for diesel fuel

(1) Effective October 1, 1993, no person shall manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40.

(2) Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations to implement and enforce the requirements of paragraph (1). The Administrator may require manufacturers and importers of diesel fuel not intended for use in motor vehicles to dye such fuel in a particular manner in order to segregate it from motor vehicle diesel fuel. The Administrator may establish an equivalent alternative aromatic level to the cetane index specification in paragraph (1).

(3) The sulfur content of fuel required to be used in the certification of 1991 through 1993 model year heavy-duty diesel vehicles and engines shall be 0.10 percent (by weight). The sulfur content and cetane index minimum of fuel required to be used in the certification of 1994 and later model year heavy-duty diesel vehicles and engines shall comply with the regulations promulgated under paragraph (2).

(4) The States of Alaska and Hawaii may be exempted from the requirements of this subsection in the same manner as provided in section 7625 [4] of this title. The Administrator shall take final action

on any petition filed under section 7625 [4] of this title or this paragraph for an exemption from the requirements of this subsection, within 12 months from the date of the petition.

(j) Lead substitute gasoline additives

(1) After November 15, 1990, any person proposing to register any gasoline additive under subsection (a) or to use any previously registered additive as a lead substitute may also elect to register the additive as a lead substitute gasoline additive for reducing valve seat wear by providing the Administrator with such relevant information regarding product identity and composition as the Administrator deems necessary for carrying out the responsibilities of paragraph (2) of this subsection (in addition to other information which may be required under subsection (b)).

(2) In addition to the other testing which may be required under subsection (b), in the case of the lead substitute gasoline additives referred to in paragraph (1), the Administrator shall develop and publish a test procedure to determine the additives' effectiveness in reducing valve seat wear and the additives' tendencies to produce engine deposits and other adverse side effects. The test procedures shall be developed in cooperation with the Secretary of Agriculture and with the input of additive manufacturers, engine and engine components manufacturers, and other interested persons. The Administrator shall enter into arrangements with an independent laboratory to conduct tests of each additive using the test procedures developed and published pursuant to this paragraph. The Administrator shall publish the results of the tests by company and additive name in the Federal Register along with, for comparison purposes, the results of applying the same test procedures to gasoline containing 0.1 gram of lead per gallon in lieu of the lead substitute gasoline additive. The Administrator shall not rank or otherwise rate the lead substitute additives. Test procedures shall be established within 1 year after November 15, 1990. Additives shall be tested within 18 months of November 15, 1990, or 6 months after the lead substitute additives are identified to the Administrator, whichever is later.

(3) The Administrator may impose a user fee to recover the costs of testing of any fuel additive referred to in this subsection. The fee shall be paid by the person proposing to register the fuel additive concerned. Such fee shall not exceed $20,000 for a single fuel additive.

(4) There are authorized to be appropriated to the Administrator not more than $1,000,000 for the second full fiscal year after November 15, 1990, to establish test procedures and conduct engine tests as provided in this subsection. Not more than $500,000 per year is authorized to be appropriated for each of the 5 subsequent fiscal years.

(5) Any fees collected under this subsection shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.

(k) Reformulated gasoline for conventional vehicles

(1) EPA regulations

(A) In general

Not later than November 15, 1991, the Administrator shall promulgate regulations under this section establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas. Such regulations shall require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

(B) Maintenance of toxic air pollutant emissions reductions from reformulated gasoline

(i) Definition of PADD

In this subparagraph the term "PADD" means a Petroleum Administration for Defense District.

(ii) Regulations concerning emissions of toxic air pollutants

Not later than 270 days after August 8, 2005, the Administrator shall establish by regulation, for each refinery or importer (other than a refiner or importer in a State that has received a waiver under section 7543(b) of this title with respect to gasoline produced for use in that State), standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refiner or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refiner or importer during calendar years 2001 and 2002 (as determined on the basis of data collected by the Administrator with respect to the refiner or importer).

(iii) Standards applicable to specific refineries or importers

(I) Applicability of standards

For any calendar year, the standards applicable to a refiner or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refiner or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refiner or importer during calendar years 2001 and 2002.

(II) Applicability of other standards

For any calendar year, the quantity of gasoline produced or distributed by a refiner or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for emissions of toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

(iv) Credit program

The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

(v) Regional protection of toxics reduction baselines

(I) In general

Not later than 60 days after August 8, 2005, and not later than April 1 of each calendar year that begins after August 8, 2005, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 2001 and 2002; and

(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

(II) Effect of failure to maintain aggregate toxics reductions

If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 2001 and 2002, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refiner or importer shall meet the standards applicable under clause (iii)(I) beginning not later than April 1 of the calendar year following publication of the report under subclause (I) and in each calendar year thereafter.

(vi) Not later than July 1, 2007, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on August 8, 2005), and as authorized under section 7521(l) [5] of this title. If the Administrator promulgates by such date, final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels that achieve and maintain greater overall reductions in emissions of air toxics from reformulated gasoline than the reductions that would be achieved under subsection (k)(1)(B) as amended by this clause, then subsections (k)(1)(B)(i) through (k)(1)(B)(v) shall be null and void and regulations promulgated thereunder shall be rescinded and have no further effect.

(2) General requirements

The regulations referred to in paragraph (1) shall require that reformulated gasoline comply with paragraph (3) and with each of the following requirements (subject to paragraph (7)):

(A) NO_x emissions

The emissions of oxides of nitrogen (NO_x) from baseline vehicles when using the reformulated gasoline shall be no greater than the level of such emissions from such vehicles when using baseline gasoline. If the Administrator determines that compliance with the limitation on emissions of oxides of nitrogen under the preceding sentence is technically infeasible, considering the other requirements applicable under this subsection to such gasoline, the Administrator may, as appropriate to ensure compliance with this subparagraph, adjust (or waive entirely), any other requirements of this paragraph or any requirements applicable under paragraph (3)(A).

(B) Benzene content

The benzene content of the gasoline shall not exceed 1.0 percent by volume.

(C) Heavy metals

The gasoline shall have no heavy metals, including lead or manganese. The Administrator may waive the prohibition contained in this subparagraph for a heavy metal (other than lead) if the Administrator determines that addition of the heavy metal to the gasoline will not increase, on an aggregate mass or cancer-risk basis, toxic air pollutant emissions from motor vehicles.

(3) More stringent of formula or performance standards

The regulations referred to in paragraph (1) shall require compliance with the more stringent of either the requirements set forth in subparagraph (A) or the requirements of subparagraph (B) of this paragraph. For purposes of determining the more stringent provision, clause (i) and clause (ii) of subparagraph (B) shall be considered independently.

(A) Formula

(i) Benzene

The benzene content of the reformulated gasoline shall not exceed 1.0 percent by volume.

(ii) Aromatics

The aromatic hydrocarbon content of the reformulated gasoline shall not exceed 25 percent by volume.

(iii) Lead

The reformulated gasoline shall have no lead content.

(iv) Detergents

The reformulated gasoline shall contain additives to prevent the accumulation of deposits in engines or vehicle fuel supply systems.

(B) Performance standard

(i) VOC emissions

During the high ozone season (as defined by the Administrator), the aggregate emissions of ozone forming volatile organic compounds from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of ozone forming volatile organic compounds from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in VOC emissions. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

(ii) Toxics

During the entire year, the aggregate emissions of toxic air pollutants from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of toxic air pollutants from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in toxic air pollutants. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

Any reduction greater than a specific percentage reduction required under this subparagraph shall be treated as satisfying such percentage reduction requirement.

(4) Certification procedures

(A) Regulations

The regulations under this subsection shall include procedures under which the Administrator shall certify reformulated gasoline as complying with the requirements established pursuant to this subsection. Under such regulations, the Administrator shall establish procedures for any person to petition the Administrator to certify a fuel formulation, or slate of fuel formulations. Such procedures shall further require that the Administrator shall approve or deny such petition within 180 days of receipt. If the Administrator fails to act within such 180-day period, the fuel shall be deemed certified until the Administrator completes action on the petition.

(B) Certification; equivalency

The Administrator shall certify a fuel formulation or slate of fuel formulations as complying with this subsection if such fuel or fuels—

(i) comply with the requirements of paragraph (2), and

(ii) achieve equivalent or greater reductions in emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants than are achieved by a reformulated gasoline meeting the applicable requirements of paragraph (3).

(C) EPA determination of emissions level

Within 1 year after November 15, 1990, the Administrator shall determine the level of emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants emitted by baseline vehicles when operating on baseline gasoline. For purposes of this subsection, within 1 year after November 15, 1990, the Administrator shall, by rule, determine appropriate measures of, and methodology for, ascertaining the emissions of air pollutants (including calculations, equipment, and testing tolerances).

(5) Prohibition

Effective beginning January 1, 1995, each of the following shall be a violation of this subsection:

(A) The sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area.

(B) The sale or dispensing by any refiner, blender, importer, or marketer of conventional gasoline for resale in any covered area, without (i) segregating such gasoline from reformulated gasoline, and (ii) clearly marking such conventional gasoline as "conventional gasoline, not for sale to ultimate consumer in a covered area".

Any refiner, blender, importer or marketer who purchases property [6] segregated and marked conventional gasoline, and thereafter labels, represents, or wholesales such gasoline as reformulated gasoline shall also be in violation of this subsection. The Administrator may impose sampling, testing, and recordkeeping requirements upon any refiner, blender, importer, or marketer to prevent violations of this section.

(6) Opt-in areas

(A) Classified areas

(i) In general

Upon the application of the Governor of a State, the Administrator shall apply the prohibition set forth in paragraph (5) in any area in the State classified under subpart 2 of part D of subchapter I as a Marginal, Moderate, Serious, or Severe Area (without regard to whether or not the 1980 population of the area exceeds 250,000). In any such case, the Administrator shall establish an effective date for such prohibition as he deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later. The Administrator shall publish such application in the Federal Register upon receipt.

(ii) Effect of insufficient domestic capacity to produce reformulated gasoline

If the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient domestic capacity to produce gasoline certified under this subsection, the Administrator shall, by rule, extend the effective date of such prohibition in Marginal, Moderate, Serious, or Severe Areas referred to in clause (i) for one additional year, and may, by rule, renew such extension for 2 additional one-year periods. The Administrator shall act on any petition submitted under this subparagraph within 6 months after receipt of the petition. The Administrator shall issue such extensions for areas with a lower ozone classification before issuing any such extension for areas with a higher classification.

(B) Ozone transport region

(i) Application of prohibition

(I) In general

On application of the Governor of a State in the ozone transport region established by section 7511c(a) of this title, the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibition specified in paragraph (5) to any area in the State (other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of subchapter I) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

(II) Publication of application

As soon as practicable after the date of receipt of an application under subclause (I), the Administrator shall publish the application in the Federal Register.

(ii) Period of applicability

Under clause (i), the prohibition specified in paragraph (5) shall apply in a State—

(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

(iii) Extension of commencement date based on insufficient capacity

(I) In general

If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

(II) Deadline for action on petitions

The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

(7) Credits

(A) The regulations promulgated under this subsection shall provide for the granting of an appropriate amount of credits to a person who refines, blends, or imports and certifies a gasoline or slate of gasoline that—

(i) has an aromatic hydrocarbon content (by volume) that is less than the maximum aromatic hydrocarbon content required to comply with paragraph (3); or

(ii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).

(B) The regulations described in subparagraph (A) shall also provide that a person who is granted credits may use such credits, or transfer all or a portion of such credits to another person for use within the same nonattainment area, for the purpose of complying with this subsection.

(C) The regulations promulgated under subparagraphs (A) and (B) shall ensure the enforcement of the requirements for the issuance, application, and transfer of the credits. Such regulations shall prohibit the granting or transfer of such credits for use with respect to any gasoline in a nonattainment area, to the extent the use of such credits would result in any of the following:

(i) An average gasoline aromatic hydrocarbon content (by volume) for the nonattainment (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average fuel aromatic hydrocarbon content (by volume) that would occur in the absence of using any such credits.

(ii) An average benzene content (by volume) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average benzene content (by volume) that would occur in the absence of using any such credits.

(8) Anti-dumping rules

(A) In general

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations applicable to each refiner, blender, or importer of gasoline ensuring that gasoline sold or introduced into commerce by such refiner, blender, or importer (other than reformulated gasoline subject to the requirements of paragraph (1)) does not result in average per gallon emissions (measured on a mass basis) of (i) volatile organic compounds, (ii) oxides of nitrogen, (iii) carbon monoxide, and (iv) toxic air pollutants in excess of such emissions of such

pollutants attributable to gasoline sold or introduced into commerce in calendar year 1990 by that refiner, blender, or importer. Such regulations shall take effect beginning January 1, 1995.

(B) Adjustments

In evaluating compliance with the requirements of subparagraph (A), the Administrator shall make appropriate adjustments to insure that no credit is provided for improvement in motor vehicle emissions control in motor vehicles sold after the calendar year 1990.

(C) Compliance determined for each pollutant independently

In determining whether there is an increase in emissions in violation of the prohibition contained in subparagraph (A) the Administrator shall consider an increase in each air pollutant referred to in clauses (i) through (iv) as a separate violation of such prohibition, except that the Administrator shall promulgate regulations to provide that any increase in emissions of oxides of nitrogen resulting from adding oxygenates to gasoline may be offset by an equivalent or greater reduction (on a mass basis) in emissions of volatile organic compounds, carbon monoxide, or toxic air pollutants, or any combination of the foregoing.

(D) Compliance period

The Administrator shall promulgate an appropriate compliance period or appropriate compliance periods to be used for assessing compliance with the prohibition contained in subparagraph (A).

(E) Baseline for determining compliance

If the Administrator determines that no adequate and reliable data exists regarding the composition of gasoline sold or introduced into commerce by a refiner, blender, or importer in calendar year 1990, for such refiner, blender, or importer, baseline gasoline shall be substituted for such 1990 gasoline in determining compliance with subparagraph (A).

(9) Emissions from entire vehicle

In applying the requirements of this subsection, the Administrator shall take into account emissions from the entire motor vehicle, including evaporative, running, refueling, and exhaust emissions.

(10) Definitions

For purposes of this subsection—

(A) Baseline vehicles

The term "baseline vehicles" mean representative model year 1990 vehicles.

(B) Baseline gasoline

(i) Summertime

The term "baseline gasoline" means in the case of gasoline sold during the high ozone period (as defined by the Administrator) a gasoline which meets the following specifications:

BASELINE GASOLINE FUEL PROPERTIES	
API Gravity	57.4
Sulfur, ppm	339
Benzene, %	1.53
RVP, psi	8.7
Octane, R+M/2	87.3
IBP, F	91
10%, F	128
50%, F	218
90%, F	330

End Point, F	415
Aromatics, %	32.0
Olefins, %	9.2
Saturates, %	58.8

(ii) Wintertime

The Administrator shall establish the specifications of "baseline gasoline" for gasoline sold at times other than the high ozone period (as defined by the Administrator). Such specifications shall be the specifications of 1990 industry average gasoline sold during such period.

(C) Toxic air pollutants

The term "toxic air pollutants" means the aggregate emissions of the following:
Benzene
1,3 Butadiene
Polycyclic organic matter (POM)
Acetaldehyde
Formaldehyde.

(D) Covered area

The 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989 shall be "covered areas" for purposes of this subsection. Effective one year after the reclassification of any ozone nonattainment area as a Severe ozone nonattainment area under section 7511(b) of this title, such Severe area shall also be a "covered area" for purposes of this subsection.

(E) Reformulated gasoline

The term "reformulated gasoline" means any gasoline which is certified by the Administrator under this section as complying with this subsection.

(F) Conventional gasoline

The term "conventional gasoline" means any gasoline which does not meet specifications set by a certification under this subsection.

(l) Detergents

Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. Not later than 2 years after November 15, 1990, the Administrator shall promulgate a rule establishing specifications for such additives.

(m) Oxygenated fuels

(1) Plan revisions for CO nonattainment areas

(A) Each State in which there is located all or part of an area which is designated under subchapter I as a nonattainment area for carbon monoxide and which has a carbon monoxide design value of 9.5 parts per million (ppm) or above based on data for the 2-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator prior to November 15, 1990, shall submit to the Administrator a State implementation plan revision under section 7410 of this title and part D of subchapter I for such area which shall contain the provisions specified under this subsection regarding oxygenated gasoline.

(B) A plan revision which contains such provisions shall also be submitted by each State in which there is located any area which, for any 2-year period after 1989 has a carbon monoxide

design value of 9.5 ppm or above. The revision shall be submitted within 18 months after such 2-year period.

(2) Oxygenated gasoline in CO nonattainment areas

Each plan revision under this subsection shall contain provisions to require that any gasoline sold, or dispensed, to the ultimate consumer in the carbon monoxide nonattainment area or sold or dispensed directly or indirectly by fuel refiners or marketers to persons who sell or dispense to ultimate consumers, in the larger of—

(A) the Consolidated Metropolitan Statistical Area (CMSA) in which the area is located, or

(B) if the area is not located in a CMSA, the Metropolitan Statistical Area in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide to contain not less than 2.7 percent oxygen by weight (subject to a testing tolerance established by the Administrator). The portion of the year in which the area is prone to high ambient concentrations of carbon monoxide shall be as determined by the Administrator, but shall not be less than 4 months. At the request of a State with respect to any area designated as nonattainment for carbon monoxide, the Administrator may reduce the period specified in the preceding sentence if the State can demonstrate that because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period. For areas with a carbon monoxide design value of 9.5 ppm or more of [7] November 15, 1990, the revision shall provide that such requirement shall take effect no later than November 1, 1992 (or at such other date during 1992 as the Administrator establishes under the preceding provisions of this paragraph). For other areas, the revision shall provide that such requirement shall take effect no later than November 1 of the third year after the last year of the applicable 2-year period referred to in paragraph (1) (or at such other date during such third year as the Administrator establishes under the preceding provisions of this paragraph) and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(3) Waivers

(A) The Administrator shall waive, in whole or in part, the requirements of paragraph (2) upon a demonstration by the State to the satisfaction of the Administrator that the use of oxygenated gasoline would prevent or interfere with the attainment by the area of a national primary ambient air quality standard (or a State or local ambient air quality standard) for any air pollutant other than carbon monoxide.

(B) The Administrator shall, upon demonstration by the State satisfactory to the Administrator, waive the requirement of paragraph (2) where the Administrator determines that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in an area.

(C)(i) Any person may petition the Administrator to make a finding that there is, or is likely to be, for any area, an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline meeting the requirements of paragraph (2) or fuel additives (oxygenates) necessary to meet such requirements. The Administrator shall act on such petition within 6 months after receipt of the petition.

(ii) If the Administrator determines, in response to a petition under clause (i), that there is an inadequate supply or capacity described in clause (i), the Administrator shall delay the effective date of paragraph (2) for 1 year. Upon petition, the Administrator may extend such effective date for one additional year. No partial delay or lesser waiver may be granted under this clause.

(iii) In granting waivers under this subparagraph the Administrator shall consider distribution capacity separately from the adequacy of domestic supply and shall grant such waivers in such manner as will assure that, if supplies of oxygenated gasoline are limited, areas having the highest design value for carbon monoxide will have a priority in obtaining oxygenated gasoline which meets the requirements of paragraph (2).

(iv) As used in this subparagraph, the term distribution capacity includes capacity for

transportation, storage, and blending.

(4) Fuel dispensing systems

Any person selling oxygenated gasoline at retail pursuant to this subsection shall be required under regulations promulgated by the Administrator to label the fuel dispensing system with a notice that the gasoline is oxygenated and will reduce the carbon monoxide emissions from the motor vehicle.

(5) Guidelines for credit

The Administrator shall promulgate guidelines, within 9 months after November 15, 1990, allowing the use of marketable oxygen credits from gasolines during that portion of the year specified in paragraph (2) with higher oxygen content than required to offset the sale or use of gasoline with a lower oxygen content than required. No credits may be transferred between nonattainment areas.

(6) Attainment areas

Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment for carbon monoxide, except that in a carbon monoxide nonattainment area which is redesignated as attainment for carbon monoxide, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard thereafter in the area.

(7) Failure to attain CO standard

If the Administrator determines under section 7512(b)(2) of this title that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that the minimum oxygen content of gasoline referred to in paragraph (2) shall be 3.1 percent by weight unless such requirement is waived in accordance with the provisions of this subsection.

(n) Prohibition on leaded gasoline for highway use

After December 31, 1995, it shall be unlawful for any person to sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce, for use as fuel in any motor vehicle (as defined in section 7554(2) [8] of this title) any gasoline which contains lead or lead additives.

(o) Renewable fuel program

(1) Definitions

In this section:

(A) Additional renewable fuel

The term "additional renewable fuel" means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel.

(B) Advanced biofuel

(i) In general

The term "advanced biofuel" means renewable fuel, other than ethanol derived from corn starch, that has lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, that are at least 50 percent less than baseline lifecycle greenhouse gas emissions.

(ii) Inclusions

The types of fuels eligible for consideration as "advanced biofuel" may include any of the following:

(I) Ethanol derived from cellulose, hemicellulose, or lignin.

(II) Ethanol derived from sugar or starch (other than corn starch).

(III) Ethanol derived from waste material, including crop residue, other vegetative waste material, animal waste, and food waste and yard waste.

(IV) Biomass-based diesel.

(V) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass.

(VI) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass.

(VII) Other fuel derived from cellulosic biomass.

(C) Baseline lifecycle greenhouse gas emissions

The term "baseline lifecycle greenhouse gas emissions" means the average lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, for gasoline or diesel (whichever is being replaced by the renewable fuel) sold or distributed as transportation fuel in 2005.

(D) Biomass-based diesel

The term "biomass-based diesel" means renewable fuel that is biodiesel as defined in section 13220(f) of this title and that has lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, that are at least 50 percent less than the baseline lifecycle greenhouse gas emissions. Notwithstanding the preceding sentence, renewable fuel derived from co-processing biomass with a petroleum feedstock shall be advanced biofuel if it meets the requirements of subparagraph (B), but is not biomass-based diesel.

(E) Cellulosic biofuel

The term "cellulosic biofuel" means renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle greenhouse gas emissions, as determined by the Administrator, that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.

(F) Conventional biofuel

The term "conventional biofuel" means renewable fuel that is ethanol derived from corn starch.

(G) Greenhouse gas

The term "greenhouse gas" means carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons,[9] sulfur hexafluoride. The Administrator may include any other anthropogenically-emitted gas that is determined by the Administrator, after notice and comment, to contribute to global warming.

(H) Lifecycle greenhouse gas emissions

The term "lifecycle greenhouse gas emissions" means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

(I) Renewable biomass

The term "renewable biomass" means each of the following:

(i) Planted crops and crop residue harvested from agricultural land cleared or cultivated at any time prior to December 19, 2007, that is either actively managed or fallow, and nonforested.

(ii) Planted trees and tree residue from actively managed tree plantations on non-federal [10] land cleared at any time prior to December 19, 2007, including land belonging to an Indian

tribe or an Indian individual, that is held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(iii) Animal waste material and animal byproducts.

(iv) Slash and pre-commercial thinnings that are from non-federal [10] forestlands, including forestlands belonging to an Indian tribe or an Indian individual, that are held in trust by the United States or subject to a restriction against alienation imposed by the United States, but not forests or forestlands that are ecological communities with a global or State ranking of critically imperiled, imperiled, or rare pursuant to a State Natural Heritage Program, old growth forest, or late successional forest.

(v) Biomass obtained from the immediate vicinity of buildings and other areas regularly occupied by people, or of public infrastructure, at risk from wildfire.

(vi) Algae.

(vii) Separated yard waste or food waste, including recycled cooking and trap grease.

(J) Renewable fuel

The term "renewable fuel" means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.

(K) Small refinery

The term "small refinery" means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

(L) Transportation fuel

The term "transportation fuel" means fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except for ocean-going vessels).

(2) Renewable fuel program

(A) Regulations

(i) In general

Not later than 1 year after August 8, 2005, the Administrator shall promulgate regulations to ensure that gasoline sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B). Not later than 1 year after December 19, 2007, the Administrator shall revise the regulations under this paragraph to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel, determined in accordance with subparagraph (B) and, in the case of any such renewable fuel produced from new facilities that commence construction after December 19, 2007, achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions.

(ii) Noncontiguous State opt-in

(I) In general

On the petition of a noncontiguous State or territory, the Administrator may allow the renewable fuel program established under this subsection to apply in the noncontiguous State or territory at the same time or any time after the Administrator promulgates regulations under this subparagraph.

(II) Other actions

In carrying out this clause, the Administrator may—

(aa) issue or revise regulations under this paragraph;

(bb) establish applicable percentages under paragraph (3);

(cc) provide for the generation of credits under paragraph (5); and

(dd) take such other actions as are necessary to allow for the application of the renewable fuels program in a noncontiguous State or territory.

(iii) Provisions of regulations

Regardless of the date of promulgation, the regulations promulgated under clause (i)—

(I) shall contain compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements of this paragraph are met; but

(II) shall not—

(aa) restrict geographic areas in which renewable fuel may be used; or

(bb) impose any per-gallon obligation for the use of renewable fuel.

(iv) Requirement in case of failure to promulgate regulations

If the Administrator does not promulgate regulations under clause (i), the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States, on a volume basis, shall be 2.78 percent for calendar year 2006.

(B) Applicable volumes

(i) Calendar years after 2005

(I) Renewable fuel

For the purpose of subparagraph (A), the applicable volume of renewable fuel for the calendar years 2006 through 2022 shall be determined in accordance with the following table:

Calendar year:	**Applicable volume of renewable fuel (in billions of gallons):**
2006	4.0
2007	4.7
2008	9.0
2009	11.1
2010	12.95
2011	13.95
2012	15.2
2013	16.55
2014	18.15
2015	20.5
2016	22.25
2017	24.0
2018	26.0
2019	28.0
2020	30.0
2021	33.0
2022	36.0

(II) Advanced biofuel

For the purpose of subparagraph (A), of the volume of renewable fuel required under subclause (I), the applicable volume of advanced biofuel for the calendar years 2009 through 2022 shall be determined in accordance with the following table:

Calendar year:	**Applicable volume of advanced biofuel (in billions of gallons):**
2009	0.6
2010	0.95
2011	1.35
2012	2.0
2013	2.75
2014	3.75
2015	5.5
2016	7.25
2017	9.0
2018	11.0
2019	13.0
2020	15.0
2021	18.0
2022	21.0

(III) Cellulosic biofuel

For the purpose of subparagraph (A), of the volume of advanced biofuel required under subclause (II), the applicable volume of cellulosic biofuel for the calendar years 2010 through 2022 shall be determined in accordance with the following table:

Calendar year:	**Applicable volume of cellulosic biofuel (in billions of gallons):**
2010	0.1
2011	0.25
2012	0.5
2013	1.0
2014	1.75
2015	3.0
2016	4.25
2017	5.5
2018	7.0
2019	8.5
2020	10.5
2021	13.5
2022	16.0

(IV) Biomass-based diesel

For the purpose of subparagraph (A), of the volume of advanced biofuel required under subclause (II), the applicable volume of biomass-based diesel for the calendar years 2009 through 2012 shall be determined in accordance with the following table:

Calendar year:	**Applicable volume of biomass-based diesel (in billions**

	of gallons):
2009	0.5
2010	0.65
2011	0.80
2012	1.0

(ii) Other calendar years

For the purposes of subparagraph (A), the applicable volumes of each fuel specified in the tables in clause (i) for calendar years after the calendar years specified in the tables shall be determined by the Administrator, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years specified in the tables, and an analysis of—

(I) the impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;

(II) the impact of renewable fuels on the energy security of the United States;

(III) the expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and biomass-based diesel);

(IV) the impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;

(V) the impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and

(VI) the impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The Administrator shall promulgate rules establishing the applicable volumes under this clause no later than 14 months before the first year for which such applicable volume will apply.

(iii) Applicable volume of advanced biofuel

For the purpose of making the determinations in clause (ii), for each calendar year, the applicable volume of advanced biofuel shall be at least the same percentage of the applicable volume of renewable fuel as in calendar year 2022.

(iv) Applicable volume of cellulosic biofuel

For the purpose of making the determinations in clause (ii), for each calendar year, the applicable volume of cellulosic biofuel established by the Administrator shall be based on the assumption that the Administrator will not need to issue a waiver for such years under paragraph (7)(D).

(v) Minimum applicable volume of biomass-based diesel

For the purpose of making the determinations in clause (ii), the applicable volume of biomass-based diesel shall not be less than the applicable volume listed in clause (i)(IV) for calendar year 2012.

(3) Applicable percentages

(A) Provision of estimate of volumes of gasoline sales

Not later than October 31 of each of calendar years 2005 through 2021, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the United States.

(B) Determination of applicable percentages

(i) In general

Not later than November 30 of each of calendar years 2005 through 2021, based on the estimate provided under subparagraph (A), the Administrator of the Environmental Protection Agency shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

(ii) Required elements

The renewable fuel obligation determined for a calendar year under clause (i) shall—

(I) be applicable to refineries, blenders, and importers, as appropriate;

(II) be expressed in terms of a volume percentage of transportation fuel sold or introduced into commerce in the United States; and

(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

(C) Adjustments

In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

(i) to prevent the imposition of redundant obligations on any person specified in subparagraph (B)(ii)(I); and

(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (9).

(4) Modification of greenhouse gas reduction percentages

(A) In general

The Administrator may, in the regulations under the last sentence of paragraph (2)(A)(i), adjust the 20 percent, 50 percent, and 60 percent reductions in lifecycle greenhouse gas emissions specified in paragraphs (2)(A)(i) (relating to renewable fuel), (1)(D) (relating to biomass-based diesel), (1)(B)(i) (relating to advanced biofuel), and (1)(E) (relating to cellulosic biofuel) to a lower percentage. For the 50 and 60 percent reductions, the Administrator may make such an adjustment only if he determines that generally such reduction is not commercially feasible for fuels made using a variety of feedstocks, technologies, and processes to meet the applicable reduction.

(B) Amount of adjustment

In promulgating regulations under this paragraph, the specified 50 percent reduction in greenhouse gas emissions from advanced biofuel and in biomass-based diesel may not be reduced below 40 percent. The specified 20 percent reduction in greenhouse gas emissions from renewable fuel may not be reduced below 10 percent, and the specified 60 percent reduction in greenhouse gas emissions from cellulosic biofuel may not be reduced below 50 percent.

(C) Adjusted reduction levels

An adjustment under this paragraph to a percent less than the specified 20 percent greenhouse gas reduction for renewable fuel shall be the minimum possible adjustment, and the adjusted greenhouse gas reduction shall be established by the Administrator at the maximum achievable level, taking cost in consideration, for natural gas fired corn-based ethanol plants, allowing for the use of a variety of technologies and processes. An adjustment in the 50 or 60 percent greenhouse gas levels shall be the minimum possible adjustment for the fuel or fuels concerned, and the adjusted greenhouse gas reduction shall be established at the maximum achievable level, taking cost in consideration, allowing for the use of a variety of feedstocks, technologies, and processes.

(D) 5-year review

Whenever the Administrator makes any adjustment under this paragraph, not later than 5

years thereafter he shall review and revise (based upon the same criteria and standards as required for the initial adjustment) the regulations establishing the adjusted level.

(E) Subsequent adjustments

After the Administrator has promulgated a final rule under the last sentence of paragraph (2)(A)(i) with respect to the method of determining lifecycle greenhouse gas emissions, except as provided in subparagraph (D), the Administrator may not adjust the percent greenhouse gas reduction levels unless he determines that there has been a significant change in the analytical methodology used for determining the lifecycle greenhouse gas emissions. If he makes such determination, he may adjust the 20, 50, or 60 percent reduction levels through rulemaking using the criteria and standards set forth in this paragraph.

(F) Limit on upward adjustments

If, under subparagraph (D) or (E), the Administrator revises a percent level adjusted as provided in subparagraphs (A), (B), and (C) to a higher percent, such higher percent may not exceed the applicable percent specified in paragraph (2)(A)(i), (1)(D), (1)(B)(i), or (1)(E).

(G) Applicability of adjustments

If the Administrator adjusts, or revises, a percent level referred to in this paragraph or makes a change in the analytical methodology used for determining the lifecycle greenhouse gas emissions, such adjustment, revision, or change (or any combination thereof) shall only apply to renewable fuel from new facilities that commence construction after the effective date of such adjustment, revision, or change.

(5) Credit program

(A) In general

The regulations promulgated under paragraph (2)(A) shall provide—

(i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2);

(ii) for the generation of an appropriate amount of credits for biodiesel; and

(iii) for the generation of credits by small refineries in accordance with paragraph (9)(C).

(B) Use of credits

A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(C) Duration of credits

A credit generated under this paragraph shall be valid to show compliance for the 12 months as of the date of generation.

(D) Inability to generate or purchase sufficient credits

The regulations promulgated under paragraph (2)(A) shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements of paragraph (2) to carry forward a renewable fuel deficit on condition that the person, in the calendar year following the year in which the renewable fuel deficit is created—

(i) achieves compliance with the renewable fuel requirement under paragraph (2); and

(ii) generates or purchases additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

(E) Credits for additional renewable fuel

The Administrator may issue regulations providing: (i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports additional renewable fuels specified by the Administrator; and (ii) for the use of such credits by the generator, or the transfer of all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(6) Seasonal variations in renewable fuel use

(A) Study

For each of calendar years 2006 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuel blending to determine whether there are excessive seasonal variations in the use of renewable fuel.

(B) Regulation of excessive seasonal variations

If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator of the Environmental Protection Agency shall promulgate regulations to ensure that 25 percent or more of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) is used during each of the 2 periods specified in subparagraph (D) of each subsequent calendar year.

(C) Determinations

The determinations referred to in subparagraph (B) are that—

(i) less than 25 percent of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) has been used during 1 of the 2 periods specified in subparagraph (D) of the calendar year;

(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

(iii) promulgating regulations or other requirements to impose a 25 percent or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

(D) Periods

The 2 periods referred to in this paragraph are—

(i) April through September; and

(ii) January through March and October through December.

(E) Exclusion

Renewable fuel blended or consumed in calendar year 2006 in a State that has received a waiver under section 7543(b) of this title shall not be included in the study under subparagraph (A).

(F) State exemption from seasonality requirements

Notwithstanding any other provision of law, the seasonality requirement relating to renewable fuel use established by this paragraph shall not apply to any State that has received a waiver under section 7543(b) of this title or any State dependent on refineries in such State for gasoline supplies.

(7) Waivers

(A) In general

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part on petition by one or more States, by any person subject to the requirements of this subsection, or by the Administrator on his own motion by reducing the national quantity of renewable fuel required under paragraph (2)—

(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply.

(B) Petitions for waivers

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a petition for a waiver of the requirements of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

(C) Termination of waivers

A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

(D) Cellulosic biofuel

(i) For any calendar year for which the projected volume of cellulosic biofuel production is less than the minimum applicable volume established under paragraph (2)(B), as determined by the Administrator based on the estimate provided under paragraph (3)(A), not later than November 30 of the preceding calendar year, the Administrator shall reduce the applicable volume of cellulosic biofuel required under paragraph (2)(B) to the projected volume available during that calendar year. For any calendar year in which the Administrator makes such a reduction, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(ii) Whenever the Administrator reduces the minimum cellulosic biofuel volume under this subparagraph, the Administrator shall make available for sale cellulosic biofuel credits at the higher of $0.25 per gallon or the amount by which $3.00 per gallon exceeds the average wholesale price of a gallon of gasoline in the United States. Such amounts shall be adjusted for inflation by the Administrator for years after 2008.

(iii) Eighteen months after December 19, 2007, the Administrator shall promulgate regulations to govern the issuance of credits under this subparagraph. The regulations shall set forth the method for determining the exact price of credits in the event of a waiver. The price of such credits shall not be changed more frequently than once each quarter. These regulations shall include such provisions, including limiting the credits' uses and useful life, as the Administrator deems appropriate to assist market liquidity and transparency, to provide appropriate certainty for regulated entities and renewable fuel producers, and to limit any potential misuse of cellulosic biofuel credits to reduce the use of other renewable fuels, and for such other purposes as the Administrator determines will help achieve the goals of this subsection. The regulations shall limit the number of cellulosic biofuel credits for any calendar year to the minimum applicable volume (as reduced under this subparagraph) of cellulosic biofuel for that year.

(E) Biomass-based diesel

(i) Market evaluation

The Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall periodically evaluate the impact of the biomass-based diesel requirements established under this paragraph on the price of diesel fuel.

(ii) Waiver

If the Administrator determines that there is a significant renewable feedstock disruption or other market circumstances that would make the price of biomass-based diesel fuel increase significantly, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall issue an order to reduce, for up to a 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed 15 percent of the applicable annual requirement for biomass-based diesel. For any calendar year in which the Administrator makes a reduction under this subparagraph, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(iii) Extensions

If the Administrator determines that the feedstock disruption or circumstances described in clause (ii) is continuing beyond the 60-day period described in clause (ii) or this clause, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, may issue an order to reduce, for up to an additional 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed an additional 15 percent of the applicable annual requirement for biomass-based diesel.

(F) Modification of applicable volumes

For any of the tables in paragraph (2)(B), if the Administrator waives—

(i) at least 20 percent of the applicable volume requirement set forth in any such table for 2 consecutive years; or

(ii) at least 50 percent of such volume requirement for a single year,

the Administrator shall promulgate a rule (within 1 year after issuing such waiver) that modifies the applicable volumes set forth in the table concerned for all years following the final year to which the waiver applies, except that no such modification in applicable volumes shall be made for any year before 2016. In promulgating such a rule, the Administrator shall comply with the processes, criteria, and standards set forth in paragraph (2)(B)(ii).

(8) Study and waiver for initial year of program

(A) In general

Not later than 180 days after August 8, 2005, the Secretary of Energy shall conduct for the Administrator a study assessing whether the renewable fuel requirement under paragraph (2) will likely result in significant adverse impacts on consumers in 2006, on a national, regional, or State basis.

(B) Required evaluations

The study shall evaluate renewable fuel—

(i) supplies and prices;

(ii) blendstock supplies; and

(iii) supply and distribution system capabilities.

(C) Recommendations by the Secretary

Based on the results of the study, the Secretary of Energy shall make specific recommendations to the Administrator concerning waiver of the requirements of paragraph (2), in whole or in part, to prevent any adverse impacts described in subparagraph (A).

(D) Waiver

(i) In general

Not later than 270 days after August 8, 2005, the Administrator shall, if and to the extent recommended by the Secretary of Energy under subparagraph (C), waive, in whole or in part, the renewable fuel requirement under paragraph (2) by reducing the national quantity of renewable fuel required under paragraph (2) in calendar year 2006.

(ii) No effect on waiver authority

Clause (i) does not limit the authority of the Administrator to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7).

(9) Small refineries

(A) Temporary exemption

(i) In general

The requirements of paragraph (2) shall not apply to small refineries until calendar year

2011.

(ii) Extension of exemption

(I) Study by Secretary of Energy

Not later than December 31, 2008, the Secretary of Energy shall conduct for the Administrator a study to determine whether compliance with the requirements of paragraph (2) would impose a disproportionate economic hardship on small refineries.

(II) Extension of exemption

In the case of a small refinery that the Secretary of Energy determines under subclause (I) would be subject to a disproportionate economic hardship if required to comply with paragraph (2), the Administrator shall extend the exemption under clause (i) for the small refinery for a period of not less than 2 additional years.

(B) Petitions based on disproportionate economic hardship

(i) Extension of exemption

A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.

(ii) Evaluation of petitions

In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.

(iii) Deadline for action on petitions

The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

(C) Credit program

If a small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A), the regulations promulgated under paragraph (2)(A) shall provide for the generation of credits by the small refinery under paragraph (5) beginning in the calendar year following the date of notification.

(D) Opt-in for small refineries

A small refinery shall be subject to the requirements of paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A).

(10) Ethanol market concentration analysis

(A) Analysis

(i) In general

Not later than 180 days after August 8, 2005, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price-setting and other anticompetitive behavior.

(ii) Scoring

For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

(B) Report

Not later than December 1, 2005, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).

(11) Periodic reviews

To allow for the appropriate adjustment of the requirements described in subparagraph (B) of paragraph (2), the Administrator shall conduct periodic reviews of—

(A) existing technologies;

(B) the feasibility of achieving compliance with the requirements; and

(C) the impacts of the requirements described in subsection (a)(2) [11] on each individual and entity described in paragraph (2).

(12) Effect on other provisions

Nothing in this subsection, or regulations issued pursuant to this subsection, shall affect or be construed to affect the regulatory status of carbon dioxide or any other greenhouse gas, or to expand or limit regulatory authority regarding carbon dioxide or any other greenhouse gas, for purposes of other provisions (including section 7475) of this chapter. The previous sentence shall not affect implementation and enforcement of this subsection.

(q) [12] Analyses of motor vehicle fuel changes and emissions model

(1) Anti-backsliding analysis

(A) Draft analysis

Not later than 4 years after August 8, 2005, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by the Energy Policy Act of 2005.

(B) Final analysis

After providing a reasonable opportunity for comment but not later than 5 years after August 8, 2005, the Administrator shall publish the analysis in final form.

(2) Emissions model

For the purposes of this section, not later than 4 years after August 8, 2005, the Administrator shall develop and finalize an emissions model that reflects, to the maximum extent practicable, the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2007.

(3) Permeation effects study

(A) In general

Not later than 1 year after August 8, 2005, the Administrator shall conduct a study, and report to Congress the results of the study, on the effects of ethanol content in gasoline on permeation, the process by which fuel molecules migrate through the elastomeric materials (rubber and plastic parts) that make up the fuel and fuel vapor systems of a motor vehicle.

(B) Evaporative emissions

The study shall include estimates of the increase in total evaporative emissions likely to result from the use of gasoline with ethanol content in a motor vehicle, and the fleet of motor vehicles, due to permeation.

(r) Fuel and fuel additive importers and importation

For the purposes of this section, the term "manufacturer" includes an importer and the term "manufacture" includes importation.

(s) Conversion assistance for cellulosic biomass, waste-derived ethanol, approved renewable fuels

(1) In general

The Secretary of Energy may provide grants to merchant producers of cellulosic biomass ethanol, waste-derived ethanol, and approved renewable fuels in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of

ethanol or approved renewable fuels.

(2) Eligible production facilities

A production facility shall be eligible to receive a grant under this subsection if the production facility—

(A) is located in the United States; and

(B) uses cellulosic or renewable biomass or waste-derived feedstocks derived from agricultural residues, wood residues, municipal solid waste, or agricultural byproducts.

(3) Authorization of appropriations

There are authorized to be appropriated the following amounts to carry out this subsection:

(A) $100,000,000 for fiscal year 2006.

(B) $250,000,000 for fiscal year 2007.

(C) $400,000,000 for fiscal year 2008.

(4) Definitions

For the purposes of this subsection:

(A) The term "approved renewable fuels" are fuels and components of fuels that have been approved by the Department of Energy, as defined in section 13211 of this title, which have been made from renewable biomass.

(B) The term "renewable biomass" is, as defined in Presidential Executive Order 13134, published in the Federal Register on August 16, 1999, any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, animal wastes, wood and wood residues, paper and paper residues, and other vegetative waste materials. Old-growth timber means timber of a forest from the late successional stage of forest development.

(t) Blending of compliant reformulated gasolines

(1) In general

Notwithstanding subsections (h) and (k) and subject to the limitations in paragraph (2) of this subsection, it shall not be a violation of this part [13] for a gasoline retailer, during any month of the year, to blend at a retail location batches of ethanol-blended and non-ethanol-blended reformulated gasoline, provided that—

(A) each batch of gasoline to be blended has been individually certified as in compliance with subsections (h) and (k) prior to being blended;

(B) the retailer notifies the Administrator prior to such blending, and identifies the exact location of the retail station and the specific tank in which such blending will take place;

(C) the retailer retains and, as requested by the Administrator or the Administrator's designee, makes available for inspection such certifications accounting for all gasoline at the retail outlet; and

(D) the retailer does not, between June 1 and September 15 of each year, blend a batch of VOC-controlled, or "summer", gasoline with a batch of non-VOC-controlled, or "winter", gasoline (as these terms are defined under subsections (h) and (k)).

(2) Limitations

(A) Frequency limitation

A retailer shall only be permitted to blend batches of compliant reformulated gasoline under this subsection a maximum of two blending periods between May 1 and September 15 of each calendar year.

(B) Duration of blending period

Each blending period authorized under subparagraph (A) shall extend for a period of no more than 10 consecutive calendar days.

(3) Surveys

A sample of gasoline taken from a retail location that has blended gasoline within the past 30 days and is in compliance with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not be used in a VOC survey mandated by 40 CFR Part 80.

(4) State implementation plans

A State shall be held harmless and shall not be required to revise its State implementation plan under section 7410 of this title to account for the emissions from blended gasoline authorized under paragraph (1).

(5) Preservation of State law

Nothing in this subsection shall—

(A) preempt existing State laws or regulations regulating the blending of compliant gasolines; or

(B) prohibit a State from adopting such restrictions in the future.

(6) Regulations

The Administrator shall promulgate, after notice and comment, regulations implementing this subsection within 1 year after August 8, 2005.

(7) Effective date

This subsection shall become effective 15 months after August 8, 2005, and shall apply to blended batches of reformulated gasoline on or after that date, regardless of whether the implementing regulations required by paragraph (6) have been promulgated by the Administrator by that date.

(8) Liability

No person other than the person responsible for blending under this subsection shall be subject to an enforcement action or penalties under subsection (d) solely arising from the blending of compliant reformulated gasolines by the retailers.

(9) Formulation of gasoline

This subsection does not grant authority to the Administrator or any State (or any subdivision thereof) to require reformulation of gasoline at the refinery to adjust for potential or actual emissions increases due to the blending authorized by this subsection.

(u) Standard specifications for biodiesel

(1) Unless the American Society for Testing and Materials has adopted a standard for diesel fuel containing 20 percent biodiesel (commonly known as "B20") within 1 year after December 19, 2007, the Administrator shall initiate a rulemaking to establish a uniform per gallon fuel standard for such fuel and designate an identification number so that vehicle manufacturers are able to design engines to use fuel meeting such standard.

(2) Unless the American Society for Testing and Materials has adopted a standard for diesel fuel containing 5 percent biodiesel (commonly known as "B5") within 1 year after December 19, 2007, the Administrator shall initiate a rulemaking to establish a uniform per gallon fuel standard for such fuel and designate an identification so that vehicle manufacturers are able to design engines to use fuel meeting such standard.

(3) Whenever the Administrator is required to initiate a rulemaking under paragraph (1) or (2), the Administrator shall promulgate a final rule within 18 months after December 19, 2007.

(4) Not later than 180 days after December 19, 2007, the Administrator shall establish an annual inspection and enforcement program to ensure that diesel fuel containing biodiesel sold or distributed in interstate commerce meets the standards established under regulations under this section, including testing and certification for compliance with applicable standards of the American Society for Testing and Materials. There are authorized to be appropriated to carry out the inspection and enforcement program under this paragraph $3,000,000 for each of fiscal years 2008 through 2010.

(5) For purposes of this subsection, the term "biodiesel" has the meaning provided by section 13220(f) of this title.

(v) Prevention of air quality deterioration

(1) Study

(A) In general

Not later than 18 months after December 19, 2007, the Administrator shall complete a study to determine whether the renewable fuel volumes required by this section will adversely impact air quality as a result of changes in vehicle and engine emissions of air pollutants regulated under this chapter.

(B) Considerations

The study shall include consideration of—

(i) different blend levels, types of renewable fuels, and available vehicle technologies; and

(ii) appropriate national, regional, and local air quality control measures.

(2) Regulations

Not later than 3 years after December 19, 2007, the Administrator shall—

(A) promulgate fuel regulations to implement appropriate measures to mitigate, to the greatest extent achievable, considering the results of the study under paragraph (1), any adverse impacts on air quality, as the result of the renewable volumes required by this section; or

(B) make a determination that no such measures are necessary.

(July 14, 1955, ch. 360, title II, §211, formerly §210, as added Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 502; renumbered and amended Pub. L. 91–604, §§8(a), 9(a), Dec. 31, 1970, 84 Stat. 1694, 1698; Pub. L. 92–157, title III, §302(d), (e), Nov. 18, 1971, 85 Stat. 464; Pub. L. 95–95, title II, §§222, 223, title IV, §401(e), Aug. 7, 1977, 91 Stat. 762, 764, 791; Pub. L. 95–190, §14(a)(73), (74), Nov. 16, 1977, 91 Stat. 1403, 1404; Pub. L. 101–549, title II, §§212–221, 228(d), Nov. 15, 1990, 104 Stat. 2488–2500, 2510; Pub. L. 109–58, title XV, §§1501(a)–(c), 1504(a)(1), (b), 1505–1507, 1512, 1513, 1541(a), (b), Aug. 8, 2005, 119 Stat. 1067–1074, 1076, 1077, 1080, 1081, 1088, 1089, 1106, 1107; Pub. L. 110–140, title II, §§201, 202, 203(f), 208, 209, 210(b), 247, 251, Dec. 19, 2007, 121 Stat. 1519, 1521, 1529, 1531, 1532, 1547, 1548.)

EDITORIAL NOTES

REFERENCES IN TEXT

August 8, 2005, referred to in subsec. (c)(4)(C)(v)(II), was in the original "enactment", which was translated as meaning the date of enactment of Pub. L. 109–58, which enacted subsec. (c)(4)(C)(v), to reflect the probable intent of Congress.

Section 7521(l) of this title, referred to in subsec. (k)(1)(B)(vi), was in the original "section 202(1) of the Clean Air Act", which was translated as meaning section 202(l) of the Clean Air Act, to reflect the probable intent of Congress.

The Energy Policy Act of 2005, referred to in subsec. (q)(1)(A), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

Executive Order 13134, referred to in subsec. (s)(4)(B), which was set out as a note under section 8601 of Title 7, Agriculture, was revoked by Ex. Ord. No. 13423, §11(a)(iii), Jan. 24, 2007, 72 F.R. 3923.

This part, referred to in subsec. (t)(1), was in the original "this subtitle" which was translated as "this part", meaning part A of title II of act July 14, 1955, as the probable intent of Congress, because title II of act July 14, 1955, does not contain subtitles.

CODIFICATION

Section was formerly classified to section 1857f–6c of this title.

PRIOR PROVISIONS

A prior section 211 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 503, provided for a national emissions standards study and was classified to section 1857f–6d of this title, prior to repeal by section 8(a) of Pub. L. 91–604.

AMENDMENTS

2007—Subsec. (c)(1). Pub. L. 110–140, §208, substituted "nonroad vehicle if, in the judgment of the Administrator, any fuel or fuel additive or" for "nonroad vehicle (A) if in the judgment of the Administrator" and "air pollution or water pollution (including any degradation in the quality of groundwater) that" for "air pollution which".

Subsec. (f)(4). Pub. L. 110–140, §251, amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or (3) of this subsection or the limitation specified in paragraph (2) of this subsection, if he determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 7525 of this title. If the Administrator has not acted to grant or deny an application under this paragraph within one hundred and eighty days of receipt of such application, the waiver authorized by this paragraph shall be treated as granted."

Subsec. (o)(1). Pub. L. 110–140, §201, amended par. (1) generally. Prior to amendment, par. (1) defined "cellulosic biomass ethanol", "waste derived ethanol", "renewable fuel", and "small refinery".

Subsec. (o)(2)(A)(i). Pub. L. 110–140, §202(a)(1), inserted at end "Not later than 1 year after December 19, 2007, the Administrator shall revise the regulations under this paragraph to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel, determined in accordance with subparagraph (B) and, in the case of any such renewable fuel produced from new facilities that commence construction after December 19, 2007, achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions."

Subsec. (o)(2)(B). Pub. L. 110–140, §202(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) set forth table of applicable volumes for renewable fuel and related to determination of applicable volumes after the years addressed by the table, including the minimum quantity of renewable fuel to be derived from cellulosic biomass and the method of calculating the minimum applicable volume.

Subsec. (o)(3)(A). Pub. L. 110–140, §202(b)(1), (2), substituted "2021" for "2011" and "transportation fuel, biomass-based diesel, and cellulosic biofuel" for "gasoline".

Subsec. (o)(3)(B)(i). Pub. L. 110–140, §202(b)(3), substituted "2021" for "2012".

Subsec. (o)(3)(B)(ii)(II). Pub. L. 110–140, §202(b)(4), substituted "transportation fuel" for "gasoline".

Subsec. (o)(4). Pub. L. 110–140, §202(c), amended par. (4) generally. Prior to amendment, text read as follows: "For the purpose of paragraph (2), 1 gallon of cellulosic biomass ethanol or waste derived ethanol shall be considered to be the equivalent of 2.5 gallons of renewable fuel."

Subsec. (o)(5)(E). Pub. L. 110–140, §202(d), added subpar. (E).

Subsec. (o)(7)(A). Pub. L. 110–140, §202(e)(1), inserted ", by any person subject to the requirements of this subsection, or by the Administrator on his own motion" after "one or more States" in introductory provisions.

Subsec. (o)(7)(B). Pub. L. 110–140, §202(e)(1), struck out "State" before "petition for a waiver".

Subsec. (o)(7)(D) to (F). Pub. L. 110–140, §202(e)(2), (3), added subpars. (D) to (F).

Subsec. (o)(11). Pub. L. 110–140, §203(f), added par. (11).

Subsec. (o)(12). Pub. L. 110–140, §210(b), added par. (12).

Subsecs. (r), (s). Pub. L. 110–140, §247, redesignated subsecs. (r), relating to conversion assistance for cellulosic biomass, waste-derived ethanol, approved renewable fuels, and (s) as (s) and (t), respectively.

Subsec. (u). Pub. L. 110–140, §247, which directed amendment of this section by adding subsec. (u) at the end, was executed by adding subsec. (u) after subsec. (t) to reflect the probable intent of Congress.

Subsec. (v). Pub. L. 110–140, §209, added subsec. (v).

2005—Subsec. (b)(2). Pub. L. 109–58, §1505(1)(A), substituted "shall, on a regular basis," for "may also" in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 109–58, §1505(1)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: "to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and".

Subsec. (b)(4). Pub. L. 109–58, §1505(2), added par. (4).

Subsec. (c)(4)(C). Pub. L. 109–58, §1541(a), designated existing provisions as cl. (i) and added cls. (ii) to (iv) and (v) relating to waiver authority.

Subsec. (c)(4)(C)(v). Pub. L. 109–58, §1541(b), added cl. (v) relating to approval of fuels.

Subsec. (d)(1). Pub. L. 109–58, §1501(b)(1), substituted "(n), or (o)" for "or (n)" in two places in first

sentence and "(m), or (o)" for "or (m)" in second sentence.

Subsec. (d)(2). Pub. L. 109–58, §1501(b)(2), substituted "(n), and (o)" for "and (n)" in two places in first sentence.

Subsec. (h)(5), (6). Pub. L. 109–58, §1501(c), added par. (5) and redesignated former par. (5) as (6).

Subsec. (k)(1). Pub. L. 109–58, §1504(b), designated existing provisions as subpar. (A), inserted heading, substituted "Not later than November 15, 1991," for "Within 1 year after November 15, 1990,", and added subpar. (B).

Subsec. (k)(2)(A). Pub. L. 109–58, §1504(a)(1)(A)(i), struck out "(including the oxygen content requirement contained in subparagraph (B))" after "requirements of this paragraph".

Subsec. (k)(2)(B) to (D). Pub. L. 109–58, §1504(a)(1)(A)(ii), (iii), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out heading and text of former subpar. (B). Text read as follows: "The oxygen content of the gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this chapter. The Administrator may waive, in whole or in part, the application of this subparagraph for any ozone nonattainment area upon a determination by the Administrator that compliance with such requirement would prevent or interfere with the attainment by the area of a national primary ambient air quality standard."

Subsec. (k)(3)(A)(v). Pub. L. 109–58, §1504(a)(1)(B), struck out heading and text of cl. (v). Text read as follows: "The oxygen content of the reformulated gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this chapter."

Subsec. (k)(6). Pub. L. 109–58, §1507, redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), inserted subpar. and cl. headings, in cl. (ii) substituted "clause (i)" for "subparagraph (A)" and "this subparagraph" for "this paragraph", and added subpar. (B).

Subsec. (k)(7)(A). Pub. L. 109–58, §1504(a)(1)(C)(i), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: "has an oxygen content (by weight) that exceeds the minimum oxygen content specified in paragraph (2);".

Subsec. (k)(7)(C)(ii), (iii). Pub. L. 109–58, §1504(a)(1)(C)(ii), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: "An average gasoline oxygen content (by weight) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) lower than the average gasoline oxygen content (by weight) that would occur in the absence of using any such credits."

Subsec. (o). Pub. L. 109–58, §1501(a)(2), added subsec. (o). Former subsec. (o) redesignated (r) relating to fuel and fuel additive importers and importation.

Subsec. (q). Pub. L. 109–58, §1506, which directed amendment of this section by adding subsec. (q) after subsec. (p), was executed by making the addition after subsec. (o) to reflect the probable intent of Congress.

Subsec. (r). Pub. L. 109–58, §1512, added subsec. (r) relating to conversion assistance for cellulosic biomass, waste-derived ethanol, approved renewable fuels.

Pub. L. 109–58, §1501(a)(1), redesignated subsec. (o) as (r) relating to fuel and fuel additive importers and importation.

Subsec. (s). Pub. L. 109–58, §1513, added subsec. (s).

1990—Subsec. (a). Pub. L. 101–549, §212, inserted "(including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles)" after "fuel or fuel additive".

Subsecs. (b)(2)(B), (c)(1). Pub. L. 101–549, §212(b), (c), inserted reference to nonroad engine or nonroad vehicle.

Subsec. (c)(4)(A). Pub. L. 101–549, §213(a), substituted "any characteristic or component of a" for "use of a", inserted "of the characteristic or component of a fuel or fuel additive" after "control or prohibition" in cl. (i), and inserted "characteristic or component of a" after "such" in cl. (ii).

Subsec. (c)(4)(C). Pub. L. 101–549, §213(b), inserted last two sentences, authorizing Administrator to make a finding that State control or prohibition is necessary to achieve the standard.

Subsec. (d). Pub. L. 101–549, §228(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Any person who violates subsection (a) or (f) or the regulations prescribed under subsection (c) or who fails to furnish any information required by the Administrator under subsection (b) shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications."

Subsec. (f)(1). Pub. L. 101–549, §214(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(3). Pub. L. 101–549, §214(b), substituted reference to paragraph (1)(A) for reference to paragraph (1).

Subsec. (g). Pub. L. 101–549, §215, amended subsec. (g) generally, substituting present provisions for provisions which defined "gasoline", "refinery", and "small refinery" and which limited Administrator's authority to require small refineries to reduce average lead content per gallon of gasoline.

Subsec. (h). Pub. L. 101–549, §216, added subsec. (h).

Subsec. (i). Pub. L. 101–549, §217, added subsec. (i).

Subsec. (j). Pub. L. 101–549, §218(a), added subsec. (j).

Subsecs. (k) to (m). Pub. L. 101–549, §219, added subsecs. (k) to (m).

Subsec. (n). Pub. L. 101–549, §220, added subsec. (n).

Subsec. (o). Pub. L. 101–549, §221, added subsec. (o).

1977—Subsec. (c)(1)(A). Pub. L. 95–95, §401(e), substituted "if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger" for "if any emission products of such fuel or fuel additive will endanger".

Subsec. (d). Pub. L. 95–95, §222(b), inserted "or (f)" after "Any person who violates subsection (a)".

Subsecs. (e), (f). Pub. L. 95–95, §222(a), added subsecs. (e) and (f).

Subsec. (f)(2). Pub. L. 95–190, §14(a)(73), inserted provision relating to waiver under par. (4) of this subsec., and struck out "first" before "introduce".

Subsec. (f)(4). Pub. L. 95–190, §14(a)(74), inserted provision relating to applicability of limitation specified under par. (2) of this subsection.

Subsec. (g). Pub. L. 95–95, §223, added subsec. (g).

1971—Subsec. (c)(3)(A). Pub. L. 92–157, §302(d), substituted "purpose of obtaining" for "purpose of".

Subsec. (d). Pub. L. 92–157, §302(e), substituted "subsection (b)" for "subsection (c)" where appearing the second time.

1970—Subsec. (a). Pub. L. 91–604, §9(a), substituted "Administrator" for "Secretary" as the registering authority, inserted references to fuel additives, and substituted the selling, offering for sale, and introduction into commerce of fuel or fuel additives, for the delivery for introduction into interstate commerce or delivery to another person who can reasonably be expected to deliver fuel into interstate commerce.

Subsec. (b). Pub. L. 91–604, §9(a), designated existing provisions as pars. (1) and (3), added par. (2), and substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (c). Pub. L. 91–604, §9(a), substituted provisions covering the control or prohibition of offending fuels and fuel additives, for provisions covering trade secrets and substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (d). Pub. L. 91–604, §9(a), inserted references to failure to obey regulations prescribed under subsec. (c) and failure to furnish information required by the Administrator under subsec. (c), increased the daily civil penalty from $1,000 to $10,000 and substituted "Administrator" for "Secretary".

Subsec. (e). Pub. L. 91–604, §9(a), struck out subsec. (e) which directed the various United States Attorneys to prosecute for the recovery of forfeitures.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–140, title II, §210(c), Dec. 19, 2007, 121 Stat. 1532, provided that: "The amendments made by this title to section 211(o) of the Clean Air Act [42 U.S.C. 7545(o)] shall take effect January 1, 2009, except that the Administrator [of the Environmental Protection Agency] shall promulgate regulations to carry out such amendments not later than 1 year after the enactment of this Act [Dec. 19, 2007]."

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, §1504(a)(2), Aug. 8, 2005, 119 Stat. 1077, provided that: "The amendments made by paragraph (1) [amending this section] apply—

"(A) in the case of a State that has received a waiver under section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)), beginning on the date of enactment of this Act [Aug. 8, 2005]; and

"(B) in the case of any other State, beginning 270 days after the date of enactment of this Act [Aug. 8, 2005]."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

SAVINGS

Pub. L. 109–58, title XV, §1504(d), Aug. 8, 2005, 119 Stat. 1079, provided that:

"(1) IN GENERAL.—Nothing in this section [amending this section and enacting provisions set out as notes under this section] or any amendment made by this section affects or prejudices any legal claim or action with respect to regulations promulgated by the Administrator [of the Environmental Protection Agency] before the date of enactment of this Act [Aug. 8, 2005] regarding—

"(A) emissions of toxic air pollutants from motor vehicles; or

"(B) the adjustment of standards applicable to a specific refinery or importer made under those regulations.

"(2) ADJUSTMENT OF STANDARDS.—

"(A) APPLICABILITY.—The Administrator may apply any adjustments to the standards applicable to a refinery or importer under subparagraph (B)(iii)(I) of section 211(k)(1) of the Clean Air Act [42 U.S.C. 7545(k)(1)(B)(iii)(I)] (as added by subsection (b)(2)), except that—

"(i) the Administrator shall revise the adjustments to be based only on calendar years 1999 and 2000;

"(ii) any such adjustment shall not be made at a level below the average percentage of reductions of emissions of toxic air pollutants for reformulated gasoline supplied to PADD I during calendar years 1999 and 2000; and

"(iii) in the case of an adjustment based on toxic air pollutant emissions from reformulated gasoline significantly below the national annual average emissions of toxic air pollutants from all reformulated gasoline—

"(I) the Administrator may revise the adjustment to take account of the scope of the prohibition on methyl tertiary butyl ether imposed by a State; and

"(II) any such adjustment shall require the refiner or importer, to the maximum extent practicable, to maintain the reduction achieved during calendar years 1999 and 2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refiner or importer."

ENVIRONMENTAL AND RESOURCE CONSERVATION IMPACTS

Pub. L. 110–140, title II, §204, Dec. 19, 2007, 121 Stat. 1529, provided that:

"(a) IN GENERAL.—Not later than 3 years after the enactment of this section [Dec. 19, 2007] and every 3 years thereafter, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall assess and report to Congress on the impacts to date and likely future impacts of the requirements of section 211(o) of the Clean Air Act [42 U.S.C. 7545(o)] on the following:

"(1) Environmental issues, including air quality, effects on hypoxia, pesticides, sediment, nutrient and pathogen levels in waters, acreage and function of waters, and soil environmental quality.

"(2) Resource conservation issues, including soil conservation, water availability, and ecosystem health and biodiversity, including impacts on forests, grasslands, and wetlands.

"(3) The growth and use of cultivated invasive or noxious plants and their impacts on the environment and agriculture.

In advance of preparing the report required by this subsection, the Administrator may seek the views of the National Academy of Sciences or another appropriate independent research institute. The report shall include the annual volume of imported renewable fuels and feedstocks for renewable fuels, and the environmental impacts outside the United States of producing such fuels and feedstocks. The report required by this subsection shall include recommendations for actions to address any adverse impacts found.

"(b) EFFECT ON AIR QUALITY AND OTHER ENVIRONMENTAL REQUIREMENTS.—Except as provided in section 211(o)(12) of the Clean Air Act [42 U.S.C. 7545(o)(12)], nothing in the amendments made by this title to section 211(o) of the Clean Air Act shall be construed as superseding, or limiting, any more environmentally protective requirement under the Clean Air Act [42 U.S.C. 7401 et seq.], or under any other provision of State or Federal law or regulation, including any environmental law or regulation."

TRANSITION RULES

Pub. L. 110–140, title II, §210(a), Dec. 19, 2007, 121 Stat. 1532, provided that:

"(1) For calendar year 2008, transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), that is produced from facilities that commence construction

after the date of enactment of this Act [Dec. 19, 2007] shall be treated as renewable fuel within the meaning of section 211(o) of the Clean Air Act [42 U.S.C. 7545(o)] only if it achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions. For calendar years 2008 and 2009, any ethanol plant that is fired with natural gas, biomass, or any combination thereof is deemed to be in compliance with such 20 percent reduction requirement and with the 20 percent reduction requirement of section 211(o)(1) of the Clean Air Act. The terms used in this subsection shall have the same meaning as provided in the amendment made by this Act to section 211(o) of the Clean Air Act.

"(2) Until January 1, 2009, the Administrator of the Environmental Protection Agency shall implement section 211(o) of the Clean Air Act and the rules promulgated under that section in accordance with the provisions of that section as in effect before the enactment of this Act and in accordance with the rules promulgated before the enactment of this Act, except that for calendar year 2008, the number '9.0' shall be substituted for the number '5.4' in the table in section 211(o)(2)(B) and in the corresponding rules promulgated to carry out those provisions. The Administrator is authorized to take such other actions as may be necessary to carry out this paragraph notwithstanding any other provision of law."

SURVEY OF RENEWABLE FUEL MARKET

Pub. L. 109–58, title XV, §1501(d), Aug. 8, 2005, 119 Stat. 1075, provided that:

"(1) SURVEY AND REPORT.—Not later than December 1, 2006, and annually thereafter, the Administrator of the Environmental Protection Agency (in consultation with the Secretary [of Energy] acting through the Administrator of the Energy Information Administration) shall—

"(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

"(i) conventional gasoline containing ethanol;

"(ii) reformulated gasoline containing ethanol;

"(iii) conventional gasoline containing renewable fuel; and

"(iv) reformulated gasoline containing renewable fuel; and

"(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

"(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the 'Administrator') may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator, to avoid duplicative requirements, shall rely, to the extent practicable, on existing reporting and recordkeeping requirements and other information available to the Administrator including gasoline distribution patterns that include multistate use areas.

"(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses."

FINDINGS

Pub. L. 109–58, title XV, §1502, Aug. 8, 2005, 119 Stat. 1076, provided that: "Congress finds that—

"(1) since 1979, methyl tertiary butyl ether (hereinafter in this section referred to as 'MTBE') has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

"(2) Public Law 101–549 (commonly known as the 'Clean Air Act Amendments of 1990') (42 U.S.C. 7401 et seq.) [see Tables for classification] established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight; and

"(3) the fuel industry responded to the fuel oxygenate standard established by Public Law 101–549 by making substantial investments in—

"(A) MTBE production capacity; and

"(B) systems to deliver MTBE-containing gasoline to the marketplace."

CLAIMS FILED AFTER AUGUST 8, 2005

Pub. L. 109–58, title XV, §1503, Aug. 8, 2005, 119 Stat. 1076, provided that: "Claims and legal actions filed after the date of enactment of this Act [Aug. 8, 2005] related to allegations involving actual or threatened contamination of methyl tertiary butyl ether (MTBE) may be removed to the appropriate United States district court."

FINDINGS AND SENSE OF CONGRESS ON ETHANOL USAGE

Pub. L. 100–203, title I, §1508, Dec. 22, 1987, 101 Stat. 1330–29, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) the United States is dependent for a large and growing share of its energy needs on the Middle East at a time when world petroleum reserves are declining;

"(2) the burning of gasoline causes pollution;

"(3) ethanol can be blended with gasoline to produce a cleaner source of fuel;

"(4) ethanol can be produced from grain, a renewable resource that is in considerable surplus in the United States;

"(5) the conversion of grain into ethanol would reduce farm program costs and grain surpluses; and

"(6) increasing the quantity of motor fuels that contain at least 10 percent ethanol from current levels to 50 percent by 1992 would create thousands of new jobs in ethanol production facilities.

"(b) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator of the Environmental Protection Agency should use authority provided under the Clean Air Act (42 U.S.C. 7401 et seq.) to require greater use of ethanol as motor fuel."

AGRICULTURAL MACHINERY: STUDY OF UNLEADED FUEL

Pub. L. 99–198, title XVII, §1765, Dec. 23, 1985, 99 Stat. 1653, directed Administrator of EPA and Secretary of Agriculture jointly to conduct a study of use of fuel containing lead additives, and alternative lubricating additives, in gasoline engines that are used in agricultural machinery, and designed to combust fuel containing such additives, study to analyze potential for mechanical problems (including but not limited to valve recession) that may be associated with use of other fuels in such engines, and not later than Jan. 1, 1987, Administrator and Secretary to publish results of the study, with Administrator to publish in Federal Register notice of publication of such study and a summary thereof; directed Administrator, after notice and opportunity for hearing, but not later than 6 months after publication of the study, to make findings and recommendations on need for lead additives in gasoline to be used on a farm for farming purposes, including a determination of whether a modification of regulations limiting lead content of gasoline would be appropriate in the case of gasoline used on a farm for farming purposes, and submit to President and Congress a report containing the study, a summary of comments received during public hearing (including comments of Secretary), and findings and recommendations of Administrator made in accordance with clause (1), such report to be transmitted named congressional committees; directed Administrator between Jan. 1, 1986, and Dec. 31, 1987, to monitor actual lead content of leaded gasoline sold in the United States, with Administrator to determine average lead content of such gasoline for each 3-month period between Jan. 1, 1986, and Dec. 31, 1987, and if actual lead content falls below an average of 0.2 of a gram of lead per gallon in any such 3-month period, to report to Congress, and publish a notice thereof in Federal Register; provided that until Jan. 1, 1988, no regulation of Administrator issued under this section 211 could require an average lead content per gallon that is less than 0.1 of a gram per gallon; and authorized an appropriation.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. Probably should be "the".

[2] So in original. Par. (1) does not contain a cl. (A).

[3] So in original. Two cls. (v) have been enacted.

[4] So in original. Probably should be section "7625–1".

[5] So in original. See References in Text note below.

[6] So in original. Probably should be "properly".

[7] So in original. Probably should be "as of".

[8] So in original. Probably should be section "7550(2)".

[9] So in original. The word "and" probably should appear.

[10] So in original. Probably should be "non-Federal".

[11] So in original. Subsection (a) does not contain a par. (2).

[12] So in original. No subsec. (p) has been enacted.

[13] See References in Text note below.

§7546. Renewable fuel

(a) Definitions

In this section:

(1) Municipal solid waste

The term "municipal solid waste" has the meaning given the term "solid waste" in section 6903 of this title.

(2) RFG State

The term "RFG State" means a State in which is located one or more covered areas (as defined in section 7545(k)(10)(D) of this title).

(3) Secretary

The term "Secretary" means the Secretary of Energy.

(b) Cellulosic biomass ethanol and municipal solid waste loan guarantee program

(1) In general

Funds may be provided for the cost (as defined in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of loan guarantees issued under title XIV of the Energy Policy Act [1] to carry out commercial demonstration projects for celluosic [2] biomass and sucrose-derived ethanol.

(2) Demonstration projects

(A) In general

The Secretary shall issue loan guarantees under this section to carry out not more than 4 projects to commercially demonstrate the feasibility and viability of producing cellulosic biomass ethanol or sucrose-derived ethanol, including at least 1 project that uses cereal straw as a feedstock and 1 project that uses municipal solid waste as a feedstock.

(B) Design capacity

Each project shall have a design capacity to produce at least 30,000,000 gallons of cellulosic biomass ethanol each year.

(3) Applicant assurances

An applicant for a loan guarantee under this section shall provide assurances, satisfactory to the Secretary, that—

(A) the project design has been validated through the operation of a continuous process facility with a cumulative output of at least 50,000 gallons of ethanol;

(B) the project has been subject to a full technical review;

(C) the project is covered by adequate project performance guarantees;
(D) the project, with the loan guarantee, is economically viable; and
(E) there is a reasonable assurance of repayment of the guaranteed loan.

(4) Limitations

(A) Maximum guarantee

Except as provided in subparagraph (B), a loan guarantee under this section may be issued for up to 80 percent of the estimated cost of a project, but may not exceed $250,000,000 for a project.

(B) Additional guarantees

(i) In general

The Secretary may issue additional loan guarantees for a project to cover up to 80 percent of the excess of actual project cost over estimated project cost but not to exceed 15 percent of the amount of the original guarantee.

(ii) Principal and interest

Subject to subparagraph (A), the Secretary shall guarantee 100 percent of the principal and interest of a loan made under subparagraph (A).

(5) Equity contributions

To be eligible for a loan guarantee under this section, an applicant for the loan guarantee shall have binding commitments from equity investors to provide an initial equity contribution of at least 20 percent of the total project cost.

(6) Insufficient amounts

If the amount made available to carry out this section is insufficient to allow the Secretary to make loan guarantees for 3 projects described in subsection (b), the Secretary shall issue loan guarantees for one or more qualifying projects under this section in the order in which the applications for the projects are received by the Secretary.

(7) Approval

An application for a loan guarantee under this section shall be approved or disapproved by the Secretary not later than 90 days after the application is received by the Secretary.

(c) Authorization of appropriations for resource center

There is authorized to be appropriated, for a resource center to further develop bioconversion technology using low-cost biomass for the production of ethanol at the Center for Biomass-Based Energy at the Mississippi State University and the Oklahoma State University, $4,000,000 for each of fiscal years 2005 through 2007.

(d) Renewable fuel production research and development grants

(1) In general

The Administrator shall provide grants for the research into, and development and implementation of, renewable fuel production technologies in RFG States with low rates of ethanol production, including low rates of production of cellulosic biomass ethanol.

(2) Eligibility

(A) In general

The entities eligible to receive a grant under this subsection are academic institutions in RFG States, and consortia made up of combinations of academic institutions, industry, State government agencies, or local government agencies in RFG States, that have proven experience and capabilities with relevant technologies.

(B) Application

To be eligible to receive a grant under this subsection, an eligible entity shall submit to the

Administrator an application in such manner and form, and accompanied by such information, as the Administrator may specify.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $25,000,000 for each of fiscal years 2006 through 2010.

(e) Cellulosic biomass ethanol conversion assistance

(1) In general

The Secretary may provide grants to merchant producers of cellulosic biomass ethanol in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of cellulosic biomass ethanol.

(2) Eligible production facilities

A production facility shall be eligible to receive a grant under this subsection if the production facility—

(A) is located in the United States; and

(B) uses cellulosic biomass feedstocks derived from agricultural residues or municipal solid waste.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection—

(A) $250,000,000 for fiscal year 2006; and

(B) $400,000,000 for fiscal year 2007.

(July 14, 1955, ch. 360, title II, §212, as added Pub. L. 109–58, title XV, §1511, Aug. 8, 2005, 119 Stat. 1086.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (b)(1), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

The Energy Policy Act, referred to in subsec. (b)(1), probably means the Energy Policy Act of 2005, Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594. Title XIV of the Act probably should be a reference to title XV of the Act which relates to ethanol and motor fuels and enacted subchapter XIV (§16501 et seq.) of chapter 149 of this title and sections 6991i to 6991m and 7546 of this title, amended sections 6991 to 6991f, 6991h, 1991i, 7135, 7545, and 13220 of this title, and enacted provisions set out as notes under section 7545 of this title. Title XIV of the Act, which contains miscellaneous provisions, is classified principally to subchapter XIII (§16491 et seq.) of chapter 149 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

PRIOR PROVISIONS

A prior section 7546, act July 14, 1955, ch. 360, title II, §212, as added Dec. 31, 1970, Pub. L. 91–604, §10(c), 84 Stat. 1700; amended Dec. 31, 1970, Pub. L. 91–605, §202(a), 84 Stat. 1739; Apr. 9, 1973, Pub. L. 93–15, §1(b), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, §13(b), 88 Stat. 265, related to low-emission vehicles, prior to repeal by Pub. L. 101–549, title II, §230(10), Nov. 15, 1990, 104 Stat. 2529.

A prior section 212 of act July 14, 1955, was renumbered section 213 by Pub. L. 91–604, renumbered section 214 by Pub. L. 93–319, and renumbered section 216 by Pub. L. 95–95, and is classified to section 7550 of this title.

[1] *See References in Text note below.*

[2] *So in original.*

§7547. Nonroad engines and vehicles

(a) Emissions standards

(1) The Administrator shall conduct a study of emissions from nonroad engines and nonroad vehicles (other than locomotives or engines used in locomotives) to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such study shall be completed within 12 months of November 15, 1990.

(2) After notice and opportunity for public hearing, the Administrator shall determine within 12 months after completion of the study under paragraph (1), based upon the results of such study, whether emissions of carbon monoxide, oxides of nitrogen, and volatile organic compounds from new and existing nonroad engines or nonroad vehicles (other than locomotives or engines used in locomotives) are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide. Such determination shall be included in the regulations under paragraph (3).

(3) If the Administrator makes an affirmative determination under paragraph (2) the Administrator shall, within 12 months after completion of the study under paragraph (1), promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 7521 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(4) If the Administrator determines that any emissions not referred to in paragraph (2) from new nonroad engines or vehicles significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, the Administrator may promulgate (and from time to time revise) such regulations as the Administrator deems appropriate containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution, taking into account costs, noise, safety, and energy factors associated with the application of technology which the Administrator determines will be available for the engines and vehicles to which such standards apply. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(5) Within 5 years after November 15, 1990, the Administrator shall promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(b) Effective date

Standards under this section shall take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety.

(c) Safe controls

Effective with respect to new engines or vehicles to which standards under this section apply, no emission control device, system, or element of design shall be used in such a new nonroad engine or new nonroad vehicle for purposes of complying with such standards if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function. In determining whether an unreasonable risk exists, the Administrator shall consider factors including those described in section 7521(a)(4)(B) of this title.

(d) Enforcement

The standards under this section shall be subject to sections 7525, 7541, 7542, and 7543 of this title, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 7521 of this title. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section.

(July 14, 1955, ch. 360, title II, §213, as added Pub. L. 93–319, §10, June 22, 1974, 88 Stat. 261; amended Pub. L. 101–549, title II, §222(a), Nov. 15, 1990, 104 Stat. 2500.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–6f of this title.

PRIOR PROVISIONS

A prior section 213 of act July 14, 1955, was renumbered section 214 by Pub. L. 93–319 and renumbered section 216 by Pub. L. 95–95, and is classified to section 7550 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions requiring Administrator and Secretary of Transportation to conduct study on fuel economy improvement for new motor vehicles manufactured during and after model year 1980.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATIONS RELATING TO STANDARDS TO REDUCE EMISSIONS

Pub. L. 108–199, div. G, title IV, §428(b), Jan. 23, 2004, 118 Stat. 418, provided that: "Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations under the Clean Air Act [42 U.S.C. 7401 et seq.] that shall contain standards to reduce emissions from new nonroad spark-ignition engines smaller than 50 horsepower. Not later than December 31, 2005, the Administrator shall publish in the Federal Register final regulations containing such standards."

§7548. Study of particulate emissions from motor vehicles

(a) Study and analysis

(1) The Administrator shall conduct a study concerning the effects on health and welfare of particulate emissions from motor vehicles or motor vehicle engines to which section 7521 of this title applies. Such study shall characterize and quantify such emissions and analyze the relationship of such emissions to various fuels and fuel additives.

(2) The study shall also include an analysis of particulate emissions from mobile sources which are not related to engine emissions (including, but not limited to tire debris, and asbestos from brake lining).

(b) Report to Congress

The Administrator shall report to the Congress the findings and results of the study conducted under subsection (a) not later than two years after August 7, 1977. Such report shall also include recommendations for standards or methods to regulate particulate emissions described in paragraph

(2) of subsection (a).

(July 14, 1955, ch. 360, title II, §214, as added Pub. L. 95–95, title II, §224(d), Aug. 7, 1977, 91 Stat. 767.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 214 of act July 14, 1955, was renumbered section 216 by Pub. L. 95–95 and is classified to section 7550 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY ON SUSPENDED PARTICULATE MATTER

Pub. L. 95–95, title IV, §403(a), Aug. 7, 1977, 91 Stat. 792, directed Administrator of EPA, not later than 18 months after Aug. 7, 1977, in cooperation with National Academy of Sciences, to study and report to Congress on relationship between size, weight, and chemical composition of suspended particulate matter and nature and degree of endangerment to public health or welfare presented by such particulate matter and availability of technology for controlling such particulate matter.

§7549. High altitude performance adjustments

(a) Instruction of the manufacturer

(1) Any action taken with respect to any element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter (including any alteration or adjustment of such element), shall be treated as not in violation of section 7522(a) of this title if such action is performed in accordance with high altitude adjustment instructions provided by the manufacturer under subsection (b) and approved by the Administrator.

(2) If the Administrator finds that adjustments or modifications made pursuant to instructions of the manufacturer under paragraph (1) will not insure emission control performance with respect to each standard under section 7521 of this title at least equivalent to that which would result if no such adjustments or modifications were made, he shall disapprove such instructions. Such finding shall be based upon minimum engineering evaluations consistent with good engineering practice.

(b) Regulations

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

(2) Any knowing violation by a manufacturer of requirements of the Administrator under paragraph (1) shall be treated as a violation by such manufacturer of section 7522(a)(3) of this title for purposes of the penalties contained in section 7524 of this title.

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

(c) Manufacturer parts

No instructions under this section respecting adjustments or modifications may require the use of any manufacturer parts (as defined in section 7522(a) of this title) unless the manufacturer demonstrates to the satisfaction of the Administrator that the use of such manufacturer parts is necessary to insure emission control performance.

(d) State inspection and maintenance programs

Before January 1, 1981 the authority provided by this section shall be available in any high altitude State (as determined under regulations of the Administrator under regulations promulgated before August 7, 1977) but after December 31, 1980, such authority shall be available only in any such State in which an inspection and maintenance program for the testing of motor vehicle emissions has been instituted for the portions of the State where any national ambient air quality standard for auto-related pollutants has not been attained.

(e) High altitude testing

(1) The Administrator shall promptly establish at least one testing center (in addition to the testing centers existing on November 15, 1990) located at a site that represents high altitude conditions, to ascertain in a reasonable manner whether, when in actual use throughout their useful life (as determined under section 7521(d) of this title), each class or category of vehicle and engines to which regulations under section 7521 of this title apply conforms to the emissions standards established by such regulations. For purposes of this subsection, the term "high altitude conditions" refers to high altitude as defined in regulations of the Administrator in effect as of November 15, 1990.

(2) The Administrator, in cooperation with the Secretary of Energy and the Administrator of the Federal Transit Administration, and such other agencies as the Administrator deems appropriate, shall establish a research and technology assessment center to provide for the development and evaluation of less-polluting heavy-duty engines and fuels for use in buses, heavy-duty trucks, and non-road engines and vehicles, which shall be located at a high-altitude site that represents high-altitude conditions. In establishing and funding such a center, the Administrator shall give preference to proposals which provide for local cost-sharing of facilities and recovery of costs of operation through utilization of such facility for the purposes of this section.

(3) The Administrator shall designate at least one center at high-altitude conditions to provide research on after-market emission components, dual-fueled vehicles and conversion kits, the effects of tampering on emissions equipment, testing of alternate fuels and conversion kits, and the development of curricula, training courses, and materials to maximize the effectiveness of inspection and maintenance programs as they relate to promoting effective control of vehicle emissions at high-altitude elevations. Preference shall be given to existing vehicle emissions testing and research centers that have established reputations for vehicle emissions research and development and training, and that possess in-house Federal Test Procedure capacity.

(July 14, 1955, ch. 360, title II, §215, as added Pub. L. 95–95, title II, §211(b), Aug. 7, 1977, 91 Stat. 757; amended Pub. L. 95–190, §14(a)(75), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title II, §224, Nov. 15, 1990, 104 Stat. 2503; Pub. L. 102–240, title III, §3004(b), Dec. 18, 1991, 105 Stat. 2088.)

EDITORIAL NOTES

CODIFICATION

In subsec. (d), "August 7, 1977" substituted for "the date of enactment of this Act" to reflect the probable intent of Congress that such date of enactment meant the date of enactment of Pub. L. 95–95.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–549 added subsec. (e).

1977—Subsec. (d). Pub. L. 95–190 substituted "December 31, 1980" for "December 31, 1981".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Federal Transit Administration" substituted for "Urban Mass Transportation Administration" in subsec. (e)(2) pursuant to section 3004(b) of Pub. L. 102–240, set out as a note under section 107 of Title 49, Transportation.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7550. Definitions

As used in this part—

(1) The term "manufacturer" as used in sections 7521, 7522, 7525, 7541, and 7542 of this title means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.

(2) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term "new motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 7521 of this title which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term "dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term "ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

(7) VEHICLE CURB WEIGHT, GROSS VEHICLE WEIGHT RATING, LIGHT-DUTY TRUCK, LIGHT-DUTY VEHICLE, AND LOADED VEHICLE WEIGHT.—The terms "vehicle curb weight", "gross vehicle weight rating" (GVWR), "light-duty truck" (LDT), light-duty vehicle, [1] and "loaded vehicle weight" (LVW) have the meaning provided in regulations promulgated by the Administrator and in effect as of November 15, 1990. The abbreviations in parentheses corresponding to any term referred to in this paragraph shall have the same meaning as the corresponding term.

(8) TEST WEIGHT.—The term "test weight" and the abbreviation "tw" mean the vehicle curb weight added to the gross vehicle weight rating (gvwr) and divided by 2.

(9) MOTOR VEHICLE OR ENGINE PART MANUFACTURER.—The term "motor vehicle or engine part manufacturer" as used in sections 7541 and 7542 of this title means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines.

(10) NONROAD ENGINE.—The term "nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

(11) NONROAD VEHICLE.—The term "nonroad vehicle" means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(July 14, 1955, ch. 360, title II, §216, formerly §208, as added Pub. L. 89–272, title I, §101(8), Oct.

20, 1965, 79 Stat. 994; renumbered §212, and amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 503; renumbered §213, and amended Pub. L. 91–604, §§8(a), 10(d), 11(a)(2)(A), Dec. 31, 1970, 84 Stat. 1694, 1703, 1705; renumbered §214, Pub. L. 93–319, §10, June 22, 1974, 88 Stat. 261; renumbered §216, Pub. L. 95–95, title II, §224(d), Aug. 7, 1977, 91 Stat. 767; Pub. L. 101–549, title II, §223, Nov. 15, 1990, 104 Stat. 2503.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–7 of this title.

AMENDMENTS

1990—Par. (1). Pub. L. 101–549, §223(b), inserted references to new nonroad vehicles or new nonroad engines.

Pars. (7) to (11). Pub. L. 101–549, §223(a), added pars. (7) to (11).

1970—Pub. L. 91–604, §11(a)(2)(A), substituted "part" for "subchapter".

Par. (1). Pub. L. 91–604, §10(d)(1), inserted reference to section 7521 of this title.

Par. (3). Pub. L. 91–604, §10(d)(2), inserted provisions which defined such terms with respect to imported vehicles or engines.

1967—Pub. L. 90–148 inserted "as used in sections 7522, 7525, 7541, and 7542 of this title" after "manufacturer" in par. (1).

[1] So in original. Probably should be set off by quotation marks.

§7551. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 95–95, title II, §203, Aug. 7, 1977, 91 Stat. 754; Pub. L. 97–375, title I, §106(a), Dec. 21, 1982, 96 Stat. 1820, which required the Administrator of the Environmental Protection Agency to report to Congress respecting the motor vehicle fuel consumption associated with the standards applicable for the immediately preceding model year, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 165 of House Document No. 103–7. Section was enacted as part of the Clean Air Act Amendments of 1977, and not as part of the Clean Air Act which comprises this chapter.

§7552. Motor vehicle compliance program fees

(a) Fee collection

Consistent with section 9701 of title 31, the Administrator may promulgate (and from time to time revise) regulations establishing fees to recover all reasonable costs to the Administrator associated with—

(1) new vehicle or engine certification under section 7525(a) of this title or part C,

(2) new vehicle or engine compliance monitoring and testing under section 7525(b) of this title or part C, and

(3) in-use vehicle or engine compliance monitoring and testing under section 7541(c) of this title or part C.

The Administrator may establish for all foreign and domestic manufacturers a fee schedule based on such factors as the Administrator finds appropriate and equitable and nondiscriminatory, including the number of vehicles or engines produced under a certificate of conformity. In the case

of heavy-duty engine and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs.

(b) Special Treasury fund

Any fees collected under this section shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.

(c) Limitation on fund use

Moneys in the special fund referred to in subsection (b) shall not be used until after the first fiscal year commencing after the first July 1 when fees are paid into the fund.

(d) Administrator's testing authority

Nothing in this subsection shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in this part.

(July 14, 1955, ch. 360, title II, §217, as added Pub. L. 101–549, title II, §225, Nov. 15, 1990, 104 Stat. 2504.)

§7553. Prohibition on production of engines requiring leaded gasoline

The Administrator shall promulgate regulations applicable to motor vehicle engines and nonroad engines manufactured after model year 1992 that prohibit the manufacture, sale, or introduction into commerce of any engine that requires leaded gasoline.

(July 14, 1955, ch. 360, title II, §218, as added Pub. L. 101–549, title II, §226, Nov. 15, 1990, 104 Stat. 2505.)

§7554. Urban bus standards

(a) Standards for model years after 1993

Not later than January 1, 1992, the Administrator shall promulgate regulations under section 7521(a) of this title applicable to urban buses for the model year 1994 and thereafter. Such standards shall be based on the best technology that can reasonably be anticipated to be available at the time such measures are to be implemented, taking costs, safety, energy, lead time, and other relevant factors into account. Such regulations shall require that such urban buses comply with the provisions of subsection (b) of this section (and subsection (c) of this subsection,[1] if applicable) in addition to compliance with the standards applicable under section 7521(a) of this title for heavy-duty vehicles of the same type and model year.

(b) PM standard

(1) 50 percent reduction

The standards under section 7521(a) of this title applicable to urban buses shall require that, effective for the model year 1994 and thereafter, emissions of particulate matter (PM) from urban buses shall not exceed 50 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 7521(a) of this title as of November 15, 1990, for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(2) Revised reduction

The Administrator shall increase the level of emissions of particulate matter allowed under the standard referred to in paragraph (1) if the Administrator determines that the 50 percent reduction referred to in paragraph (1) is not technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors. The Administrator may not increase such level of

emissions above 70 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 7521(a) of this title as of November 15, 1990, for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(3) Determination as part of rule

As part of the rulemaking under subsection (a), the Administrator shall make a determination as to whether the 50 percent reduction referred to in paragraph (1) is technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors.

(c) Low-polluting fuel requirement

(1) Annual testing

Beginning with model year 1994 buses, the Administrator shall conduct annual tests of a representative sample of operating urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) to determine whether such buses comply with such standard in use over their full useful life.

(2) Promulgation of additional low-polluting fuel requirement

(A) If the Administrator determines, based on the testing under paragraph (1), that urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) do not comply with such standard in use over their full useful life, he shall revise the standards applicable to such buses to require (in addition to compliance with the PM standard applicable pursuant to subsection (b)) that all new urban buses purchased or placed into service by owners or operators of urban buses in all metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of 750,000 or more shall be capable of operating, and shall be exclusively operated, on low-polluting fuels. The Administrator shall establish the pass-fail rate for purposes of testing under this subparagraph.

(B) The Administrator shall promulgate a schedule phasing in any low-polluting fuel requirement established pursuant to this paragraph to an increasing percentage of new urban buses purchased or placed into service in each of the first 5 model years commencing 3 years after the determination under subparagraph (A). Under such schedule 100 percent of new urban buses placed into service in the fifth model year commencing 3 years after the determination under subparagraph (A) shall comply with the low-polluting fuel requirement established pursuant to this paragraph.

(C) The Administrator may extend the requirements of this paragraph to metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of less than 750,000, if the Administrator determines that a significant benefit to public health could be expected to result from such extension.

(d) Retrofit requirements

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under section 7521(a) of this title requiring that urban buses which—

(1) are operating in areas referred to in subparagraph (A) of subsection (c)(2) (or subparagraph (C) of subsection (c)(2) if the Administrator has taken action under that subparagraph);

(2) were not subject to standards in effect under the regulations under subsection (a) of this section; and

(3) have their engines replaced or rebuilt after January 1, 1995,

shall comply with an emissions standard or emissions control technology requirement established by the Administrator in such regulations. Such emissions standard or emissions control technology requirement shall reflect the best retrofit technology and maintenance practices reasonably achievable.

(e) Procedures for administration and enforcement

The Administrator shall establish, within 18 months after November 15, 1990, and in accordance

with section 7525(h) of this title, procedures for the administration and enforcement of standards for buses subject to standards under this section, testing procedures, sampling protocols, in-use compliance requirements, and criteria governing evaluation of buses. Procedures for testing (including, but not limited to, certification testing) shall reflect actual operating conditions.

(f) Definitions

For purposes of this section—

(1) Urban bus

The term "urban bus" has the meaning provided under regulations of the Administrator promulgated under section 7521(a) of this title.

(2) Low-polluting fuel

The term "low-polluting fuel" means methanol, ethanol, propane, or natural gas, or any comparably low-polluting fuel. In determining whether a fuel is comparably low-polluting, the Administrator shall consider both the level of emissions of air pollutants from vehicles using the fuel and the contribution of such emissions to ambient levels of air pollutants. For purposes of this paragraph, the term "methanol" includes any fuel which contains at least 85 percent methanol unless the Administrator increases such percentage as he deems appropriate to protect public health and welfare.

(July 14, 1955, ch. 360, title II, §219, as added Pub. L. 101–549, title II, §227[(a)], Nov. 15, 1990, 104 Stat. 2505.)

[1] So in original. Probably should be "section,".

PART B—AIRCRAFT EMISSION STANDARDS

§7571. Establishment of standards

(a) Study; proposed standards; hearings; issuance of regulations

(1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2)(A) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B)(i) The Administrator shall consult with the Administrator of the Federal Aviation Administration on aircraft engine emission standards.

(ii) The Administrator shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

(b) Effective date of regulations

Any regulation prescribed under this section (and any revision thereof) shall take effect after such

period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(c) Regulations which create hazards to aircraft safety

Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.

(July 14, 1955, ch. 360, title II, §231, as added Pub. L. 91–604, §11(a)(1), Dec. 31, 1970, 84 Stat. 1703; amended Pub. L. 95–95, title II, §225, title IV, §401(f), Aug. 7, 1977, 91 Stat. 769, 791; Pub. L. 104–264, title IV, §406(b), Oct. 9, 1996, 110 Stat. 3257.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–9 of this title.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–264 designated existing provisions as subpar. (A) and added subpar. (B).

1977—Subsec. (a)(2). Pub. L. 95–95, §401(f), substituted "The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare" for "Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare".

Subsec. (c). Pub. L. 95–95, §225, substituted "Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety" for "Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety" and inserted provision that findings include a reasonably specific statement of the basis upon which the finding was made.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect

immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY AND INVESTIGATION OF UNINSTALLED AIRCRAFT ENGINES

Pub. L. 101–549, title II, §233, Nov. 15, 1990, 104 Stat. 2529, provided that:

"(a) STUDY.—The Administrator of the Environmental Protection Agency and the Secretary of Transportation, in consultation with the Secretary of Defense, shall commence a study and investigation of the testing of uninstalled aircraft engines in enclosed test cells that shall address at a minimum the following issues and such other issues as they shall deem appropriate—

"(1) whether technologies exist to control some or all emissions of oxides of nitrogen from test cells;

"(2) the effectiveness of such technologies;

"(3) the cost of implementing such technologies;

"(4) whether such technologies affect the safety, design, structure, operation, or performance of aircraft engines;

"(5) whether such technologies impair the effectiveness and accuracy of aircraft engine safety design, and performance tests conducted in test cells; and

"(6) the impact of not controlling such oxides of nitrogen in the applicable nonattainment areas and on other sources, stationary and mobile, on oxides of nitrogen in such areas.

"(b) REPORT, AUTHORITY TO REGULATE.—Not later than 24 months after enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator of the Environmental Protection Agency and the Secretary of Transportation shall submit to Congress a report of the study conducted under this section. Following the completion of such study, any of the States may adopt or enforce any standard for emissions of oxides of nitrogen from test cells only after issuing a public notice stating whether such standards are in accordance with the findings of the study."

§7572. Enforcement of standards

(a) Regulations to insure compliance with standards

The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 7571 of this title by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by part A of subtitle VII of title 49 or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and,[1] may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

(b) Notice and appeal rights

In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 7571 of this title or of a regulation prescribed under subsection (a) is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in part A of subtitle VII of title 49 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

(July 14, 1955, ch. 360, title II, §232, as added Pub. L. 91–604, §11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Department of Transportation Act, referred to in subsecs. (a) and (b), is Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The

Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103–272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104–287, §7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

CODIFICATION

In subsecs. (a) and (b), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act [49 App. U.S.C. 1301 et seq.]" and "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f–10 of this title.

[1] *So in original. The comma probably should not appear.*

§7573. State standards and controls

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

(July 14, 1955, ch. 360, title II, §233, as added Pub. L. 91–604, §11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857f–11 of this title.

§7574. Definitions

Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 40102(a) of title 49.

(July 14, 1955, ch. 360, title II, §234, as added Pub. L. 91–604, §11(a)(1), Dec. 31, 1970, 84 Stat. 1705.)

EDITORIAL NOTES

CODIFICATION

In text, "section 40102(a) of title 49" substituted for "section 101 of the Federal Aviation Act of 1958" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f–12 of this title.

PART C—CLEAN FUEL VEHICLES

§7581. Definitions

For purposes of this part—

(1) Terms defined in part A

The definitions applicable to part A under section 7550 of this title shall also apply for purposes

of this part.

(2) Clean alternative fuel

The term "clean alternative fuel" means any fuel (including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, and hydrogen) or power source (including electricity) used in a clean-fuel vehicle that complies with the standards and requirements applicable to such vehicle under this subchapter when using such fuel or power source. In the case of any flexible fuel vehicle or dual fuel vehicle, the term "clean alternative fuel" means only a fuel with respect to which such vehicle was certified as a clean-fuel vehicle meeting the standards applicable to clean-fuel vehicles under section 7583(d)(2) of this title when operating on clean alternative fuel (or any CARB standards which replaces such standards pursuant to section 7583(e) of this title).

(3) NMOG

The term nonmethane organic gas ("NMOG") means the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample, including, at a minimum, all oxygenated organic gases containing 5 or fewer carbon atoms (i.e., aldehydes, ketones, alcohols, ethers, etc.), and all known alkanes, alkenes, alkynes, and aromatics containing 12 or fewer carbon atoms. To demonstrate compliance with a NMOG standard, NMOG emissions shall be measured in accordance with the "California Non-Methane Organic Gas Test Procedures". In the case of vehicles using fuels other than base gasoline, the level of NMOG emissions shall be adjusted based on the reactivity of the emissions relative to vehicles using base gasoline.

(4) Base gasoline

The term "base gasoline" means gasoline which meets the following specifications:

Specifications of Base Gasoline Used as Basis for Reactivity Readjustment:	
API gravity	57.8
Sulfur, ppm	317
Color	Purple
Benzene, vol. %	1.35
Reid vapor pressure	8.7
Drivability	1195
Antiknock index	87.3
Distillation, D–86 °F	
IBP	92
10%	126
50%	219
90%	327
EP	414
Hydrocarbon Type, Vol. % FIA:	
Aromatics	30.9
Olefins	8.2
Saturates	60.9

The Administrator shall modify the definitions of NMOG, base gasoline, and the methods for making reactivity adjustments, to conform to the definitions and method used in California under

the Low-Emission Vehicle and Clean Fuel Regulations of the California Air Resources Board, so long as the California definitions are, in the aggregate, at least as protective of public health and welfare as the definitions in this section.

(5) Covered fleet

The term "covered fleet" means 10 or more motor vehicles which are owned or operated by a single person. In determining the number of vehicles owned or operated by a single person for purposes of this paragraph, all motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person. The term "covered fleet" shall not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, or nonroad vehicles (including farm and construction vehicles).

(6) Covered fleet vehicle

The term "covered fleet vehicle" means only a motor vehicle which is—

(i) in a vehicle class for which standards are applicable under this part; and

(ii) in a covered fleet which is centrally fueled (or capable of being centrally fueled).

No vehicle which under normal operations is garaged at a personal residence at night shall be considered to be a vehicle which is capable of being centrally fueled within the meaning of this paragraph.

(7) Clean-fuel vehicle

The term "clean-fuel vehicle" means a vehicle in a class or category of vehicles which has been certified to meet for any model year the clean-fuel vehicle standards applicable under this part for that model year to clean-fuel vehicles in that class or category.

(July 14, 1955, ch. 360, title II, §241, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2511.)

§7582. Requirements applicable to clean-fuel vehicles

(a) Promulgation of standards

Not later than 24 months after November 15, 1990, the Administrator shall promulgate regulations under this part containing clean-fuel vehicle standards for the clean-fuel vehicles specified in this part.

(b) Other requirements

Clean-fuel vehicles of up to 8,500 gvwr subject to standards set forth in this part shall comply with all motor vehicle requirements of this subchapter (such as requirements relating to on-board diagnostics, evaporative emissions, etc.) which are applicable to conventional gasoline-fueled vehicles of the same category and model year, except as provided in section 7584 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part. Clean-fuel vehicles of 8,500 gvwr or greater subject to standards set forth in this part shall comply with all requirements of this subchapter which are applicable in the case of conventional gasoline-fueled or diesel fueled vehicles of the same category and model year, except as provided in section 7584 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part.

(c) In-use useful life and testing

(1) In the case of light-duty vehicles and light-duty trucks up to 6,000 lbs gvwr, the useful life for

purposes of determining in-use compliance with the standards under section 7583 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 10 years or 100,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(2) In the case of light-duty trucks of more than 6,000 lbs gvwr, the useful life for purposes of determining in-use compliance with the standards under section 7583 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 11 years or 120,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

(July 14, 1955, ch. 360, title II, §242, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2513.)

§7583. Standards for light-duty clean-fuel vehicles

(a) Exhaust standards for light-duty vehicles and certain light-duty trucks

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (gvwr) (but not including light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw)) or light-duty vehicles:

(1) Phase I

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table:

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO_x	PM	HCHO (formaldehyde)
50,000 mile standard	0.125	3.4	0.4		0.015
100,000 mile standard	0.156	4.2	0.6	0.08*	0.018

Standards are expressed in grams per mile (gpm).

*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(2) Phase II

Beginning with model year 2001, for air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND

LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)	
50,000 mile standard	0.075	3.4	0.2			0.015
100,000 mile standard	0.090	4.2	0.3	0.08		0.018

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(b) Exhaust standards for light-duty trucks of more than 3,750 lbs. LVW and up to 5,750 lbs. LVW and up to 6,000 lbs. GVWR

The standards set forth in this paragraph [1] shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw) but not more than 5,750 lbs. lvw and not more than 6,000 lbs. gross weight rating (GVWR):

(1) Phase I

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)	
50,000 mile standard	0.160	4.4	0.7			0.018
100,000 mile standard	0.200	5.5	0.9	0.08		0.023

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(2) Phase II

Beginning with model year 2001, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. LVW AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)	
50,000 mile standard	0.100	4.4	0.4			0.018
100,000 mile standard	0.130	5.5	0.5	0.08		0.023

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of

certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(c) Exhaust standards for light-duty trucks greater than 6,000 lbs. GVWR

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 6,000 lbs. gross weight rating (GVWR) and less than or equal to 8,500 lbs. GVWR, beginning with model year 1998. For the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions of vehicles within the test weight categories specified in the following table shall not exceed the levels specified in such table.

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)	
50,000 mile standard	0.125	3.4	0.4**			0.015
120,000 mile standard	0.180	5.0	0.6	0.08		0.022

Test Weight Category: Above 3,750 but not above 5,750 lbs. tw

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)	
50,000 mile standard	0.160	4.4	0.7**			0.018
120,000 mile standard	0.230	6.4	1.0	0.10		0.027

Test Weight Category: Above 5,750 tw but not above 8,500 lbs. gvwr

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)	
50,000 mile standard	0.195	5.0	1.1**			0.022
120,000 mile standard	0.280	7.3	1.5	0.12		0.032

Standards are expressed in grams per mile (gpm).

*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

**Standard not applicable to diesel-fueled vehicles.

For the 50,000 mile standards and the 120,000 mile standards set forth in the table, the applicable useful life for purposes of certification shall be 50,000 miles or 120,000 miles, respectively.

(d) Flexible and dual-fuel vehicles

(1) In general

The Administrator shall establish standards and requirements under this section for the model year 1996 and thereafter for vehicles weighing not more than 8,500 lbs. gvwr which are capable of operating on more than one fuel. Such standards shall require that such vehicles meet the exhaust standards applicable under subsection [2] (a), (b), and (c) for CO, NO_x, and HCHO, and if appropriate, PM for single-fuel vehicles of the same vehicle category and model year.

(2) Exhaust NMOG standard for operation on clean alternative fuel

In addition to standards for the pollutants referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below when the vehicle is operated on the clean alternative fuel for which such vehicle is certified:

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)

Beginning MY 1996:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles	0.125	0.156
LDT's (3,751–5,750 lbs. LVW)	0.160	0.20
Beginning MY 2001:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles	0.075	0.090
LDT's (3,751–5,750 lbs. LVW)	0.100	0.130

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks More than 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard	Column B (120,000 mi.) Standard
Beginning MY 1998:		
LDT's (0–3,750 lbs. TW)	0.125	0.180
LDT's (3,751–5,750 lbs. TW)	0.160	0.230
LDT's (above 5,750 lbs. TW)	0.195	0.280

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

(3) NMOG standard for operation on conventional fuel

In addition to the standards referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below:

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles	0.25	0.31
LDT's (3,751–5,750 lbs. LVW)	0.32	0.40
Beginning MY 2001:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles	0.125	0.156
LDT's (3,751–5,750 lbs. LVW)	0.160	0.200

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks of up to 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard	Column B (120,000 mi.) Standard
Beginning MY 1998:		
LDT's (0–3,750 lbs. TW)	0.25	0.36
LDT's (3,751–5,750 lbs. TW)	0.32	0.46
LDT's (above 5,750 lbs. TW)	0.39	0.56

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

(e) Replacement by CARB standards

(1) Single set of CARB standards

If the State of California promulgates regulations establishing and implementing a single set of standards applicable in California pursuant to a waiver approved under section 7543 of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and such set of standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 7582 of this title and subsection (a), (b), (c), or (d) of this section, such set of California standards shall apply to clean-fuel vehicles in such category in lieu of the standards otherwise applicable under section 7582 of this title and subsection (a), (b), (c), or (d) of this section, as the case may be.

(2) Multiple sets of CARB standards

If the State of California promulgates regulations establishing and implementing several different sets of standards applicable in California pursuant to a waiver approved under section 7543 of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and each of such sets of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 7582 of this title and subsection (a), (b), (c), or (d) of this section, such standards shall be treated as "qualifying California standards" for purposes of this paragraph. Where more than one set of qualifying standards are established and administered by the State of California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to such vehicles under section 7582 of this title and this section.

(f) Less stringent CARB standards

If the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board applicable to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section are modified after November 15, 1990, to provide an emissions standard which is less stringent than the otherwise applicable standard set forth in subsection (a), (b), (c), or (d), or if any effective date contained in such regulations is delayed, such modified standards or such delay (or both, as the case may be) shall apply, for an interim period, in lieu of the standard or effective date otherwise applicable under subsection (a), (b), (c), or (d) to any vehicles covered by such modified standard or delayed effective date. The interim period shall be a period of not more than 2 model years from the effective date otherwise applicable under subsection (a), (b), (c), or (d). After such interim period, the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) shall take effect with respect to such vehicles (unless subsequently replaced under subsection (e)).

(g) Not applicable to heavy-duty vehicles

Notwithstanding any provision of the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board nothing in this section shall apply to heavy-duty engines in vehicles of more than 8,500 lbs. GVWR.

(July 14, 1955, ch. 360, title II, §243, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2514.)

[1] *So in original. Probably should be "subsection".*

[2] *So in original. Probably should be "subsections".*

§7584. Administration and enforcement as per California standards

Where the numerical clean-fuel vehicle standards applicable under this part to vehicles of not more than 8,500 lbs. GVWR are the same as numerical emission standards applicable in California under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board ("CARB"), such standards shall be administered and enforced by the Administrator—

(1) in the same manner and with the same flexibility as the State of California administers and enforces corresponding standards applicable under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board ("CARB"); and

(2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of such CARB standards, including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance,

unless the Administrator determines (in promulgating the rules establishing the clean fuel vehicle program under this section) that any such administration and enforcement would not meet the criteria for a waiver under section 7543 of this title. Nothing in this section shall apply in the case of standards under section 7585 of this title for heavy-duty vehicles.

(July 14, 1955, ch. 360, title II, §244, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2519.)

§7585. Standards for heavy-duty clean-fuel vehicles (GVWR above 8,500 up to 26,000 lbs.)

(a) Model years after 1997; combined NO_x and NMHC standard

For classes or categories of heavy-duty vehicles or engines manufactured for the model year 1998 or thereafter and having a GVWR greater than 8,500 lbs. and up to 26,000 lbs. GVWR, the standards under this part for clean-fuel vehicles shall require that combined emissions of oxides of nitrogen (NO_x) and nonmethane hydrocarbons (NMHC) shall not exceed 3.15 grams per brake horsepower hour (equivalent to 50 percent of the combined emission standards applicable under section 7521 of this title for such air pollutants in the case of a conventional model year 1994 heavy-duty diesel-fueled vehicle or engine). No standard shall be promulgated as provided in this section for any heavy-duty vehicle of more than 26,000 lbs. GVWR.

(b) Revised standards that are less stringent

(1) The Administrator may promulgate a revised less stringent standard for the vehicles or engines referred to in subsection (a) if the Administrator determines that the 50 percent reduction required under subsection (a) is not technologically feasible for clean diesel-fueled vehicles and engines, taking into account durability, costs, lead time, safety, and other relevant factors. To provide adequate lead time the Administrator shall make a determination with regard to the technological feasibility of such 50 percent reduction before December 31, 1993.

(2) Any person may at any time petition the Administrator to make a determination under paragraph (1). The Administrator shall act on such a petition within 6 months after the petition is filed.

(3) Any revised less stringent standards promulgated as provided in this subsection shall require at least a 30 percent reduction in lieu of the 50 percent reduction referred to in paragraph (1).

(July 14, 1955, ch. 360, title II, §245, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104

Stat. 2519.)

§7586. Centrally fueled fleets

(a) Fleet program required for certain nonattainment areas

(1) SIP revision

Each State in which there is located all or part of a covered area (as defined in paragraph (2)) shall submit, within 42 months after November 15, 1990, a State implementation plan revision under section 7410 of this title and part D of subchapter I to establish a clean-fuel vehicle program for fleets under this section.

(2) Covered areas

For purposes of this subsection, each of the following shall be a "covered area":

(A) Ozone nonattainment areas

Any ozone nonattainment area with a 1980 population of 250,000 or more classified under subpart 2 of part D of subchapter I of this chapter as Serious, Severe, or Extreme based on data for the calendar years 1987, 1988, and 1989. In determining the ozone nonattainment areas to be treated as covered areas pursuant to this subparagraph, the Administrator shall use the most recent interpretation methodology issued by the Administrator prior to November 15, 1990.

(B) Carbon monoxide nonattainment areas

Any carbon monoxide nonattainment area with a 1980 population of 250,000 or more and a carbon monoxide design value at or above 16.0 parts per million based on data for calendar years 1988 and 1989 (as calculated according to the most recent interpretation methodology issued prior to November 15, 1990, by the United States Environmental Protection Agency), excluding those carbon monoxide nonattainment areas in which mobile sources do not contribute significantly to carbon monoxide exceedances.

(3) Plan revisions for reclassified areas

In the case of ozone nonattainment areas reclassified as Serious, Severe, or Extreme under part D of subchapter I with a 1980 population of 250,000 or more, the State shall submit a plan revision meeting the requirements of this subsection within 1 year after reclassification. Such plan revision shall implement the requirements applicable under this subsection at the time of reclassification and thereafter, except that the Administrator may adjust for a limited period the deadlines for compliance where compliance with such deadlines would be infeasible.

(4) Consultation; consideration of factors

Each State required to submit an implementation plan revision under this subsection shall develop such revision in consultation with fleet operators, vehicle manufacturers, fuel producers and distributors, motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values of vehicles and equipment and other relevant factors.

(b) Phase-in of requirements

The plan revision required under this section shall contain provisions requiring that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area. For the applicable model years (MY) specified in the following table and thereafter, the specified percentage shall be as provided in the table for the vehicle types set forth in the table:

CLEAN FUEL VEHICLE PHASE-IN REQUIREMENTS FOR FLEETS

Vehicle Type	MY1998	MY1999	MY2000

Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles	30%	50%	70%
Heavy-duty trucks above 8,500 lbs. GVWR	50%	50%	50%

The term MY refers to model year.

(c) Accelerated standard for light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles

Notwithstanding the model years for which clean-fuel vehicle standards are applicable as provided in section 7583 of this title, for purposes of this section, light duty [1] trucks of up to 6,000 lbs. GVWR and light-duty vehicles manufactured in model years 1998 through model year 2000 shall be treated as clean-fuel vehicles only if such vehicles comply with the standards applicable under section 7583 of this title for vehicles in the same class for the model year 2001. The requirements of subsection (b) shall take effect on the earlier of the following:

(1) The first model year after model year 1997 in which new light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles which comply with the model year 2001 standards under section 7583 of this title are offered for sale in California.

(2) Model year 2001.

Whenever the effective date of subsection (b) is delayed pursuant to paragraph (1) of this subsection, the phase-in schedule under subsection (b) shall be modified to commence with the model year referred to in paragraph (1) in lieu of model year 1998.

(d) Choice of vehicles and fuel

The plan revision under this subsection shall provide that the choice of clean-fuel vehicles and clean alternative fuels shall be made by the covered fleet operator subject to the requirements of this subsection.

(e) Availability of clean alternative fuel

The plan revision shall require fuel providers to make clean alternative fuel available to covered fleet operators at locations at which covered fleet vehicles are centrally fueled.

(f) Credits

(1) Issuance of credits

The State plan revision required under this section shall provide for the issuance by the State of appropriate credits to a fleet operator for any of the following (or any combination thereof):

(A) The purchase of more clean-fuel vehicles than required under this section.

(B) The purchase of clean fuel [2] vehicles which meet more stringent standards established by the Administrator pursuant to paragraph (4).

(C) The purchase of vehicles in categories which are not covered by this section but which meet standards established for such vehicles under paragraph (4).

(2) Use of credits; limitations based on weight classes

(A) Use of credits

Credits under this subsection may be used by the person holding such credits to demonstrate compliance with this section or may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area. Credits obtained at any time may be held or banked for use at any later time, and when so used, such credits shall maintain the same value as if used at an earlier date.

(B) Limitations based on weight classes

Credits issued with respect to the purchase of vehicles of up to 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles of more than 8,500 lbs. GVWR. Credits issued with respect to the purchase of vehicles of more than 8,500 lbs. GVWR may not be used to demonstrate

compliance by any person with the requirements applicable under this subsection to vehicles weighing up to 8,500 lbs. GVWR.

(C) Weighting

Credits issued for purchase of a clean fuel [2] vehicle under this subsection shall be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle.

(3) Regulations and administration

Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program. The State shall administer the credit program established under this subsection.

(4) Standards for issuing credits for cleaner vehicles

Solely for purposes of issuing credits under paragraph (1)(B), the Administrator shall establish under this paragraph standards for Ultra-Low Emission Vehicles ("ULEV"s) and Zero Emissions Vehicles ("ZEV"s) which shall be more stringent than those otherwise applicable to clean-fuel vehicles under this part. The Administrator shall certify clean fuel [2] vehicles as complying with such more stringent standards, and administer and enforce such more stringent standards, in the same manner as in the case of the otherwise applicable clean-fuel vehicle standards established under this section. The standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class. For vehicles of 8,500 lbs. GVWR or more, the Administrator shall promulgate comparable standards for purposes of this subsection.

(5) Early fleet credits

The State plan revision shall provide credits under this subsection to fleet operators that purchase vehicles certified to meet clean-fuel vehicle standards under this part during any period after approval of the plan revision and prior to the effective date of the fleet program under this section.

(g) Availability to public

At any facility owned or operated by a department, agency, or instrumentality of the United States where vehicles subject to this subsection are supplied with clean alternative fuel, such fuel shall be offered for sale to the public for use in other vehicles during reasonable business times and subject to national security concerns, unless such fuel is commercially available for vehicles in the vicinity of such Federal facilities.

(h) Transportation control measures

The Administrator shall by rule, within 1 year after November 15, 1990, ensure that certain transportation control measures including time-of-day or day-of-week restrictions, and other similar measures that restrict vehicle usage, do not apply to any clean-fuel vehicle that meets the requirements of this section. This subsection shall apply notwithstanding subchapter I.

(July 14, 1955, ch. 360, title II, §246, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2520.)

[1] So in original. Probably should be "light-duty".

[2] So in original. Probably should be "clean-fuel".

§7587. Vehicle conversions

(a) Conversion of existing and new conventional vehicles to clean-fuel vehicles

The requirements of section 7586 of this title may be met through the conversion of existing or

new gasoline or diesel-powered vehicles to clean-fuel vehicles which comply with the applicable requirements of that section. For purposes of such provisions the conversion of a vehicle to clean fuel [1] vehicle shall be treated as the purchase of a clean fuel [1] vehicle. Nothing in this part shall be construed to provide that any covered fleet operator subject to fleet vehicle purchase requirements under section 7586 of this title shall be required to convert existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles or to purchase converted vehicles.

(b) Regulations

The Administrator shall, within 24 months after November 15, 1990, consistent with the requirements of this subchapter applicable to new vehicles, promulgate regulations governing conversions of conventional vehicles to clean-fuel vehicles. Such regulations shall establish criteria for such conversions which will ensure that a converted vehicle will comply with the standards applicable under this part to clean-fuel vehicles. Such regulations shall provide for the application to such conversions of the same provisions of this subchapter (including provisions relating to administration enforcement) as are applicable to standards under section [2] 7582, 7583, 7584, and 7585 of this title, except that in the case of conversions the Administrator may modify the applicable regulations implementing such provisions as the Administrator deems necessary to implement this part.

(c) Enforcement

Any person who converts conventional vehicles to clean fuel [1] vehicles pursuant to subsection (b), shall be considered a manufacturer for purposes of sections 7525 and 7541 of this title and related enforcement provisions. Nothing in the preceding sentence shall require a person who performs such conversions to warrant any part or operation of a vehicle other than as required under this part. Nothing in this paragraph shall limit the applicability of any other warranty to unrelated parts or operations.

(d) Tampering

The conversion from a vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel vehicle shall not be considered a violation of section 7522(a)(3) of this title if such conversion complies with the regulations promulgated under subsection (b).

(e) Safety

The Secretary of Transportation shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles.

(July 14, 1955, ch. 360, title II, §247, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2523.)

[1] So in original. Probably should be "clean-fuel".

[2] So in original. Probably should be "sections".

§7588. Federal agency fleets

(a) Additional provisions applicable

The provisions of this section shall apply, in addition to the other provisions of this part, in the case of covered fleet vehicles owned or operated by an agency, department, or instrumentality of the United States, except as otherwise provided in subsection (e).

(b) Cost of vehicles to Federal agency

Notwithstanding the provisions of sections 601–611 of title 40, the Administrator of General Services shall not include the incremental costs of clean-fuel vehicles in the amount to be reimbursed

by Federal agencies if the Administrator of General Services determines that appropriations provided pursuant to this paragraph are sufficient to provide for the incremental cost of such vehicles over the cost of comparable conventional vehicles.

(c) Limitations on appropriations

Funds appropriated pursuant to the authorization under this paragraph shall be applicable only—

(1) to the portion of the cost of acquisition, maintenance and operation of vehicles acquired under this subparagraph which exceeds the cost of acquisition, maintenance and operation of comparable conventional vehicles;

(2) to the portion of the costs of fuel storage and dispensing equipment attributable to such vehicles which exceeds the costs for such purposes required for conventional vehicles; and

(3) to the portion of the costs of acquisition of clean-fuel vehicles which represents a reduction in revenue from the disposal of such vehicles as compared to revenue resulting from the disposal of comparable conventional vehicles.

(d) Vehicle costs

The incremental cost of vehicles acquired under this part over the cost of comparable conventional vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be required by the United States.

(e) Exemptions

The requirements of this part shall not apply to vehicles with respect to which the Secretary of Defense has certified to the Administrator that an exemption is needed based on national security consideration.

(f) Acquisition requirement

Federal agencies, to the extent practicable, shall obtain clean-fuel vehicles from original equipment manufacturers.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be required to carry out the provisions of this section: *Provided*, That such sums as are appropriated for the Administrator of General Services pursuant to the authorization under this section shall be added to the General Supply Fund established in section 321 of title 40.

(July 14, 1955, ch. 360, title II, §248, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2524.)

EDITORIAL NOTES

CODIFICATION

In subsec. (b), "sections 601–611 of title 40" substituted for "section 211 of the Federal Property and Administrative Services Act of 1949", and, in subsec. (g), "the General Supply Fund established in section 321 of title 40" substituted for "the General Supply Fund established in section 109 of the Federal Property and Administrative Services Act of 1949", on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF GENERAL SUPPLY FUND

The General Supply Fund, referred to in subsec. (g), was abolished and its capital assets and balances transferred to the Acquisition Services Fund by section 3(a)–(c) of Pub. L. 109–313, set out as an Acquisition Services Fund note under section 321 of Title 40, Public Buildings, Property, and Works.

§7589. California pilot test program

(a) Establishment

The Administrator shall establish a pilot program in the State of California to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas.

(b) Applicability

The provisions of this section shall only apply to light-duty trucks and light-duty vehicles, and such provisions shall apply only in the State of California, except as provided in subsection (f).

(c) Program requirements

Not later than 24 months after November 15, 1990, the Administrator shall promulgate regulations establishing requirements under this section applicable in the State of California. The regulations shall provide the following:

(1) Clean-fuel vehicles

Clean-fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets referred to in section 7586 of this title) in numbers that meet or exceed the following schedule:

Model Years	Number of Clean-Fuel Vehicles
1996, 1997, 1998	150,000 vehicles
1999 and thereafter	300,000 vehicles

(2) Clean alternative fuels

(A) Within 2 years after November 15, 1990, the State of California shall submit a revision of the applicable implementation plan under part D of subchapter I and section 7410 of this title containing a clean fuel plan that requires that clean alternative fuels on which the clean-fuel vehicles required under this paragraph can operate shall be produced and distributed by fuel suppliers and made available in California. At a minimum, sufficient clean alternative fuels shall be produced, distributed and made available to assure that all clean-fuel vehicles required under this section can operate, to the maximum extent practicable, exclusively on such fuels in California. The State shall require that clean alternative fuels be made available and offered for sale at an adequate number of locations with sufficient geographic distribution to ensure convenient refueling with clean alternative fuels, considering the number of, and type of, such vehicles sold and the geographic distribution of such vehicles within the State. The State shall determine the clean alternative fuels to be produced, distributed, and made available based on motor vehicle manufacturers' projections of future sales of such vehicles and consultations with the affected local governments and fuel suppliers.

(B) The State may by regulation grant persons subject to the requirements prescribed under this paragraph an appropriate amount of credits for exceeding such requirements, and any person granted credits may transfer some or all of the credits for use by one or more persons in demonstrating compliance with such requirements. The State may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as the State finds appropriate.

(C) The State may also by regulation establish specifications for any clean alternative fuel produced and made available under this paragraph as the State finds necessary to reduce or eliminate an unreasonable risk to public health, welfare, or safety associated with its use or to ensure acceptable vehicle maintenance and performance characteristics.

(D) If a retail gasoline dispensing facility would have to remove or replace one or more motor vehicle fuel underground storage tanks and accompanying piping in order to comply with the provisions of this section, and it had removed and replaced such tank or tanks and accompanying

piping in order to comply with subtitle I of the Solid Waste Disposal Act [42 U.S.C. 6991 et seq.] prior to November 15, 1990, it shall not be required to comply with this subsection until a period of 7 years has passed from the date of the removal and replacement of such tank or tanks.

(E) Nothing in this section authorizes any State other than California to adopt provisions regarding clean alternative fuels.

(F) If the State of California fails to adopt a clean fuel program that meets the requirements of this paragraph, the Administrator shall, within 4 years after November 15, 1990, establish a clean fuel program for the State of California under this paragraph and section 7410(c) of this title that meets the requirements of this paragraph.

(d) Credits for motor vehicle manufacturers

(1) The Administrator may (by regulation) grant a motor vehicle manufacturer an appropriate amount of credits toward fulfillment of such manufacturer's share of the requirements of subsection (c)(1) of this section for any of the following (or any combination thereof):

(A) The sale of more clean-fuel vehicles than required under subsection (c)(1) of this section.

(B) The sale of clean fuel [1] vehicles which meet standards established by the Administrator as provided in paragraph (3) which are more stringent than the clean-fuel vehicle standards otherwise applicable to such clean-fuel vehicle. A manufacturer granted credits under this paragraph may transfer some or all of the credits for use by one or more other manufacturers in demonstrating compliance with the requirements prescribed under this paragraph. The Administrator may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as he finds appropriate. The Administrator shall grant credits in accordance with this paragraph, notwithstanding any requirements of State law or any credits granted with respect to the same vehicles under any State law, rule, or regulation.

(2) REGULATIONS AND ADMINISTRATION.—The Administrator shall administer the credit program established under this subsection. Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program.

(3) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—The more stringent standards and other requirements (including requirements relating to the weighting of credits) established by the Administrator for purposes of the credit program under 7585(e) [2] of this title (relating to credits for clean fuel [1] vehicles in the fleets program) shall also apply for purposes of the credit program under this paragraph.

(e) Program evaluation

(1) Not later than June 30, 1994 and again in connection with the report under paragraph (2), the Administrator shall provide a report to the Congress on the status of the California Air Resources Board Low-Emissions Vehicles and Clean Fuels Program. Such report shall examine the capability, from a technological standpoint, of motor vehicle manufacturers and motor vehicle fuel suppliers to comply with the requirements of such program and with the requirements of the California Pilot Program under this section.

(2) Not later than June 30, 1998, the Administrator shall complete and submit a report to Congress on the effectiveness of the California pilot program under this section. The report shall evaluate the level of emission reductions achieved under the program, the costs of the program, the advantages and disadvantages of extending the program to other nonattainment areas, and desirability of continuing or expanding the program in California.

(3) The program under this section cannot be extended or terminated by the Administrator except by Act of Congress enacted after November 15, 1990. Section 7507 of this title does not apply to the program under this section.

(f) Voluntary opt-in for other States

(1) EPA regulations

Not later than 2 years after November 15, 1990, the Administrator shall promulgate regulations

establishing a voluntary opt-in program under this subsection pursuant to which—

(A) clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California under this section, and

(B) clean alternative fuels required to be produced and distributed under this section by fuel suppliers and made available in California [3]

may also be sold and used in other States which submit plan revisions under paragraph (2).

(2) Plan revisions

Any State in which there is located all or part of an ozone nonattainment area classified under subpart [4] D of subchapter I as Serious, Severe, or Extreme may submit a revision of the applicable implementation plan under part D of subchapter I and section 7410 of this title to provide incentives for the sale or use in such an area or State of clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California, and for the use in such an area or State of clean alternative fuels required to be produced and distributed by fuel suppliers and made available in California. Such plan provisions shall not take effect until 1 year after the State has provided notice of such provisions to motor vehicle manufacturers and to fuel suppliers.

(3) Incentives

The incentives referred to in paragraph (2) may include any or all of the following:

(A) A State registration fee on new motor vehicles registered in the State which are not clean-fuel vehicles in the amount of at least 1 percent of the cost of the vehicle. The proceeds of such fee shall be used to provide financial incentives to purchasers of clean-fuel vehicles and to vehicle dealers who sell high volumes or high percentages of clean-fuel vehicles and to defray the administrative costs of the incentive program.

(B) Provisions to exempt clean-fuel vehicles from high occupancy vehicle or trip reduction requirements.

(C) Provisions to provide preference in the use of existing parking spaces for clean-fuel vehicles.

The incentives under this paragraph shall not apply in the case of covered fleet vehicles.

(4) No sales or production mandate

The regulations and plan revisions under paragraphs (1) and (2) shall not include any production or sales mandate for clean-fuel vehicles or clean alternative fuels. Such regulations and plan revisions shall also provide that vehicle manufacturers and fuel suppliers may not be subject to penalties or sanctions for failing to produce or sell clean-fuel vehicles or clean alternative fuels.

(July 14, 1955, ch. 360, title II, §249, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2525.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2)(D), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle I of the Act is classified generally to subchapter IX (§6991 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

November 15, 1990, referred to in subsec. (e)(3), was in the original "the date of the Clean Air Act Amendments of 1990", which was translated as meaning the date of enactment of Pub. L. 101–549, which enacted this section, to reflect the probable intent of Congress.

[1] So in original. Probably should be "clean-fuel".

[2] So in original. Probably should be "section 7586(f)".

[3] *So in original. Probably should be followed by a comma.*

[4] *So in original. Probably should be "part".*

§7590. General provisions

(a) State refueling facilities

If any State adopts enforceable provisions in an implementation plan applicable to a nonattainment area which provides that existing State refueling facilities will be made available to the public for the purchase of clean alternative fuels or that State-operated refueling facilities for such fuels will be constructed and operated by the State and made available to the public at reasonable times, taking into consideration safety, costs, and other relevant factors, in approving such plan under section 7410 of this title and part D,[1] the Administrator may credit a State with the emission reductions for purposes of part D [1] attributable to such actions.

(b) No production mandate

The Administrator shall have no authority under this part to mandate the production of clean-fuel vehicles except as provided in the California pilot test program or to specify as applicable the models, lines, or types of, or marketing or price practices, policies, or strategies for, vehicles subject to this part. Nothing in this part shall be construed to give the Administrator authority to mandate marketing or pricing practices, policies, or strategies for fuels.

(c) Tank and fuel system safety

The Secretary of Transportation shall, in accordance with chapter 301 of title 49, promulgate applicable regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles.

(d) Consultation with Department of Energy and Department of Transportation

The Administrator shall coordinate with the Secretaries of the Department of Energy and the Department of Transportation in carrying out the Administrator's duties under this part.

(July 14, 1955, ch. 360, title II, §250, as added Pub. L. 101–549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2528.)

EDITORIAL NOTES

CODIFICATION

In subsec. (c), "chapter 301 of title 49" substituted for "the National Motor Vehicle Traffic Safety Act of 1966 [15 U.S.C. 1381 et seq.]", meaning "the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]", on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

[1] *So in original. Probably should refer to part D of subchapter I.*

SUBCHAPTER III—GENERAL PROVISIONS

§7601. Administration

(a) Regulations; delegation of powers and duties; regional officers and employees

(1) The Administrator is authorized to prescribe such regulations as are necessary to carry out his

functions under this chapter. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this chapter, except the making of regulations subject to section 7607(d) of this title, as he may deem necessary or expedient.

(2) Not later than one year after August 7, 1977, the Administrator shall promulgate regulations establishing general applicable procedures and policies for regional officers and employees (including the Regional Administrator) to follow in carrying out a delegation under paragraph (1), if any. Such regulations shall be designed—

(A) to assure fairness and uniformity in the criteria, procedures, and policies applied by the various regions in implementing and enforcing the chapter;

(B) to assure at least an adequate quality audit of each State's performance and adherence to the requirements of this chapter in implementing and enforcing the chapter, particularly in the review of new sources and in enforcement of the chapter; and

(C) to provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the chapter.

(b) Detail of Environmental Protection Agency personnel to air pollution control agencies

Upon the request of an air pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter.

(c) Payments under grants; installments; advances or reimbursements

Payments under grants made under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

(d) Tribal authority

(1) Subject to the provisions of paragraph (2), the Administrator—

(A) is authorized to treat Indian tribes as States under this chapter, except for purposes of the requirement that makes available for application by each State no less than one-half of 1 percent of annual appropriations under section 7405 of this title; and

(B) may provide any such Indian tribe grant and contract assistance to carry out functions provided by this chapter.

(2) The Administrator shall promulgate regulations within 18 months after November 15, 1990, specifying those provisions of this chapter for which it is appropriate to treat Indian tribes as States. Such treatment shall be authorized only if—

(A) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(C) the Indian tribe is reasonably expected to be capable, in the judgment of the Administrator, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this chapter and all applicable regulations.

(3) The Administrator may promulgate regulations which establish the elements of tribal implementation plans and procedures for approval or disapproval of tribal implementation plans and portions thereof.

(4) In any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.

(5) Until such time as the Administrator promulgates regulations pursuant to this subsection, the Administrator may continue to provide financial assistance to eligible Indian tribes under section 7405 of this title.

(July 14, 1955, ch. 360, title III, §301, formerly §8, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89–272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91–604, §§3(b)(2), 15(c)(2), Dec. 31, 1970, 84 Stat. 1677, 1713; Pub. L. 95–95, title III, §305(e), Aug. 7, 1977, 91 Stat. 776; Pub. L. 101–549, title I, §§107(d), 108(i), Nov. 15, 1990, 104 Stat. 2464, 2467.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857g of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, §108(i), inserted "subject to section 7607(d) of this title" after "regulations".

Subsec. (d). Pub. L. 101–549, §107(d), added subsec. (d).

1977—Subsec. (a). Pub. L. 95–95 designated existing provisions as par. (1) and added par. (2).

1970—Subsec. (a). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (b). Pub. L. 91–604, §3(b)(2), substituted "Environmental Protection Agency" for "Public Health Service" and struck out provisions covering the payment of salaries and allowances.

Subsec. (c). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary".

1967—Pub. L. 90–148 reenacted section without change.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

DISADVANTAGED BUSINESS CONCERNS; USE OF QUOTAS PROHIBITED

Pub. L. 101–549, title X, Nov. 15, 1990, 104 Stat. 2708, provided that:

"SEC. 1001. DISADVANTAGED BUSINESS CONCERNS.

"(a) IN GENERAL.—In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments of 1990 [Pub. L. 101–549, see Tables for classification] which uses funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of total Federal funding for such research will be made available to disadvantaged business concerns.

"(b) DEFINITION.—

"(1)(A) For purposes of subsection (a), the term 'disadvantaged business concern' means a concern—

"(i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly traded company, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

"(ii) the management and daily business operations of which are controlled by such individuals.

"(B)(i) A for-profit business concern is presumed to be a disadvantaged business concern for purposes of subsection (a) if it is at least 51 percent owned by, or in the case of a concern which is a publicly traded company at least 51 percent of the stock of the company is owned by, one or more individuals who are

members of the following groups:

"(I) Black Americans.

"(II) Hispanic Americans.

"(III) Native Americans.

"(IV) Asian Americans.

"(V) Women.

"(VI) Disabled Americans.

"(ii) The presumption established by clause (i) may be rebutted with respect to a particular business concern if it is reasonably established that the individual or individuals referred to in that clause with respect to that business concern are not experiencing impediments to establishing or developing such concern as a result of the individual's identification as a member of a group specified in that clause.

"(C) The following institutions are presumed to be disadvantaged business concerns for purposes of subsection (a):

"(i) Historically black colleges and universities, and colleges and universities having a student body in which 40 percent of the students are Hispanic.

"(ii) Minority institutions (as that term is defined by the Secretary of Education pursuant to the General Education Provision Act (20 U.S.C. 1221 et seq.)).

"(iii) Private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

"(D) A joint venture may be considered to be a disadvantaged business concern under subsection (a), notwithstanding the size of such joint venture, if—

"(i) a party to the joint venture is a disadvantaged business concern; and

"(ii) that party owns at least 51 percent of the joint venture.

A person who is not an economically disadvantaged individual or a disadvantaged business concern, as a party to a joint venture, may not be a party to more than 2 awarded contracts in a fiscal year solely by reason of this subparagraph.

"(E) Nothing in this paragraph shall prohibit any member of a racial or ethnic group that is not listed in subparagraph (B)(i) from establishing that they have been impeded in establishing or developing a business concern as a result of racial or ethnic discrimination.

"SEC. 1002. USE OF QUOTAS PROHIBITED.—Nothing in this title shall permit or require the use of quotas or a requirement that has the effect of a quota in determining eligibility under section 1001."

§7602. Definitions

When used in this chapter—

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) The term "air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter.

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency.

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(5) An agency of an Indian tribe.

(c) The term "interstate air pollution control agency" means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern

Mariana Islands.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(i) The term "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms "emission limitation" and "emission standard" mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter..[1]

(l) The term "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term "means of emission limitation" means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics).

(n) The term "primary standard attainment date" means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(o) The term "delayed compliance order" means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term "schedule and timetable of compliance" means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(q) For purposes of this chapter, the term "applicable implementation plan" means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 7410 of this title, or promulgated under section 7410(c) of this title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this title and which implements the relevant requirements of this chapter.

(r) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(s) VOC.—The term "VOC" means volatile organic compound, as defined by the Administrator.

(t) PM–10.—The term "PM–10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine.

(u) NAAQS AND CTG.—The term "NAAQS" means national ambient air quality standard. The term "CTG" means a Control Technique Guideline published by the Administrator under section 7408 of this title.

(v) NO_x.—The term "NO_x" means oxides of nitrogen.

(w) CO.—The term "CO" means carbon monoxide.

(x) SMALL SOURCE.—The term "small source" means a source that emits less than 100 tons of regulated pollutants per year, or any class of persons that the Administrator determines, through regulation, generally lack technical ability or knowledge regarding control of air pollution.

(y) FEDERAL IMPLEMENTATION PLAN.—The term "Federal implementation plan" means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

(z) STATIONARY SOURCE.—The term "stationary source" means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title.

(July 14, 1955, ch. 360, title III, §302, formerly §9, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89–272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91–604, §15(a)(1), (c)(1), Dec. 31, 1970, 84 Stat. 1710, 1713; Pub. L. 95–95, title II, §218(c), title III, §301, Aug. 7, 1977, 91 Stat. 761, 769; Pub. L. 95–190, §14(a)(76), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title I, §§101(d)(4), 107(a), (b), 108(j), 109(b), title III, §302(e), title VII, §709, Nov. 15, 1990, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857h of this title.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (b) and (d) of this section were contained in a section 1857e of this title, act July 14, 1955, ch. 360, §6, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (b)(1) to (3). Pub. L. 101–549, §107(a)(1), (2), struck out "or" at end of par. (3) and substituted periods for semicolons at end of pars. (1) to (3).

Subsec. (b)(5). Pub. L. 101–549, §107(a)(3), added par. (5).

Subsec. (g). Pub. L. 101–549, §108(j)(2), inserted at end "Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used."

Subsec. (h). Pub. L. 101–549, §109(b), inserted before period at end ", whether caused by transformation, conversion, or combination with other air pollutants".

Subsec. (k). Pub. L. 101–549, §303(e), inserted before period at end ", and any design, equipment, work practice or operational standard promulgated under this chapter."

Subsec. (q). Pub. L. 101–549, §101(d)(4), added subsec. (q).

Subsec. (r). Pub. L. 101–549, §107(b), added subsec. (r).

Subsecs. (s) to (y). Pub. L. 101–549, §108(j)(1), added subsecs. (s) to (y).

Subsec. (z). Pub. L. 101–549, §709, added subsec. (z).

1977—Subsec. (d). Pub. L. 95–95, §218(c), inserted "and includes the Commonwealth of the Northern

Mariana Islands" after "American Samoa".

Subsec. (e). Pub. L. 95–190 substituted "individual, corporation" for "individual corporation".

Pub. L. 95–95, §301(b), expanded definition of "person" to include agencies, departments, and instrumentalities of the United States and officers, agents, and employees thereof.

Subsec. (g). Pub. L. 95–95, §301(c), expanded definition of "air pollutant" so as, expressly, to include physical, chemical, biological, and radioactive substances or matter emitted into or otherwise entering the ambient air.

Subsecs. (i) to (p). Pub. L. 95–95, §301(a), added subsecs. (i) to (p).

1970—Subsec. (a). Pub. L. 91–604, §15(c)(1), substituted definition of "Administrator" as meaning Administrator of the Environmental Protection Agency for definition of "Secretary" as meaning Secretary of Health, Education, and Welfare.

Subsecs. (g), (h). Pub. L. 91–604, §15(a)(1), added subsec. (g) defining "air pollutant", redesignated former subsec. (g) as (h) and substituted references to effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate for references to injury to agricultural crops and livestock, and inserted references to effects on economic values and on personal comfort and well being.

1967—Pub. L. 90–148 reenacted section without change.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

[1] *So in original.*

§7603. Emergency powers

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

(July 14, 1955, ch. 360, title III, §303, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1705; amended Pub. L. 95–95, title III, §302(a), Aug. 7, 1977, 91 Stat. 770; Pub. L. 101–549, title VII, §704, Nov. 15, 1990, 104 Stat. 2681.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857h–1 of this title.

PRIOR PROVISIONS

A prior section 303 of act July 14, 1955, was renumbered section 310 by Pub. L. 91–604 and is classified to

section 7610 of this title.

AMENDMENTS

1990—Pub. L. 101–549, §704(2)–(5), struck out subsec. (a) designation before "Notwithstanding any other", struck out subsec. (b) which related to violation of or failure or refusal to comply with subsec. (a) orders, and substituted new provisions for provisions following first sentence which read as follows: "If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter."

Pub. L. 101–549, §704(1), which directed that "public health or welfare, or the environment" be substituted for "the health of persons and that appropriate State or local authorities have not acted to abate such sources", was executed by making the substitution for "the health of persons, and that appropriate State or local authorities have not acted to abate such sources" to reflect the probable intent of Congress.

1977—Pub. L. 95–95 designated existing provisions as subsec. (a), inserted provisions that, if it is not practicable to assure prompt protection of the health of persons solely by commencement of a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources), that, prior to taking any action under this section, the Administrator consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking, that the order be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period, and that, whenever the Administrator brings such an action within such period, such order be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter, and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7604. Citizen suits

(a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b), any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I (relating to significant deterioration of air quality) or part D of subchapter I (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties (except for actions under paragraph (2)). The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except that an action to compel agency action referred to in section 7607(b) of this title which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under section 7607(b) of this title. In any such action for unreasonable delay, notice to the entities referred to in subsection (b)(1)(A) shall be provided 180 days before commencing such action.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1)—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.[1]

(2) under subsection (a)(2) prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 7412(i)(3)(A) or (f)(4) of this title or an order issued by the Administrator pursuant to section 7413(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator; service of complaint; consent judgment

(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States.

(3) Whenever any action is brought under this section the plaintiff shall serve a copy of the

complaint on the Attorney General of the United States and on the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the Government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.

(d) Award of costs; security

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nonrestriction of other rights

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality,

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 7418 of this title.

(f) "Emission standard or limitation under this chapter" defined

For purposes of this section, the term "emission standard or limitation under this chapter" means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive, or [2]

(3) any condition or requirement of a permit under part C of subchapter I (relating to significant deterioration of air quality) or part D of subchapter I (relating to nonattainment),,[3] section 7419 of this title (relating to primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, section 7545(e) and (f) of this title (relating to fuels and fuel additives), section 7491 of this title (relating to visibility protection), any condition or requirement under subchapter VI (relating to ozone protection), or any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise); [4] or

(4) any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations.[5]

which is in effect under this chapter (including a requirement applicable by reason of section 7418 of this title) or under an applicable implementation plan.

(g) Penalty fund

(1) Penalties received under subsection (a) shall be deposited in a special fund in the United States

Treasury for licensing and other services. Amounts in such fund are authorized to be appropriated and shall remain available until expended, for use by the Administrator to finance air compliance and enforcement activities. The Administrator shall annually report to the Congress about the sums deposited into the fund, the sources thereof, and the actual and proposed uses thereof.

(2) Notwithstanding paragraph (1) the court in any action under this subsection [6] to apply civil penalties shall have discretion to order that such civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this chapter and enhance the public health or the environment. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects. The amount of any such payment in any such action shall not exceed $100,000.

(July 14, 1955, ch. 360, title III, §304, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1706; amended Pub. L. 95–95, title III, §303(a)–(c), Aug. 7, 1977, 91 Stat. 771, 772; Pub. L. 95–190, §14(a) (77), (78), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title III, §302(f), title VII, §707(a)–(g), Nov. 15, 1990, 104 Stat. 2574, 2682, 2683.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Section was formerly classified to section 1857h–2 of this title.

PRIOR PROVISIONS

A prior section 304 of act July 14, 1955, was renumbered section 311 by Pub. L. 91–604 and is classified to section 7611 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, §707(a), (f), in closing provisions, inserted before period at end ", and to apply any appropriate civil penalties (except for actions under paragraph (2))" and inserted sentences at end giving courts jurisdiction to compel agency action unreasonably delayed and requiring 180 days notice prior to commencement of action.

Subsec. (a)(1), (3). Pub. L. 101–549, §707(g), inserted "to have violated (if there is evidence that the alleged violation has been repeated) or" before "to be in violation".

Subsec. (b). Pub. L. 101–549, §302(f), substituted "section 7412(i)(3)(A) or (f)(4)" for "section 7412(c)(1)(B)" in closing provisions.

Subsec. (c)(2). Pub. L. 101–549, §707(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In such action under this section, the Administrator, if not a party, may intervene as a matter of right."

Subsec. (c)(3). Pub. L. 101–549, §707(d), added subsec. (c)(3).

Subsec. (f)(3). Pub. L. 101–549, §707(e), struck out "any condition or requirement of section 7413(d) of this title (relating to certain enforcement orders)" before ", section 7419 of this title", substituted "subchapter VI" for "part B of subchapter I", and substituted "; or" for period at end.

Subsec. (f)(4). Pub. L. 101–549, §707(e), which directed that par. (4) be added at end of subsec. (f), was executed by adding par. (4) after par. (3), to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 101–549, §707(b), added subsec. (g).

1977—Subsec. (a)(3). Pub. L. 95–190, §14(a)(77), inserted "or modified" after "new".

Pub. L. 95–95, §303(a), added subsec. (a)(3).

Subsec. (e). Pub. L. 95–95, §303(c), inserted provisions which prohibited any construction of this section or any other law of the United States which would prohibit, exclude, or restrict any State, local, or interstate authority from bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court against the United States or bringing any administrative enforcement action or obtaining any administrative remedy or sanction against the United States in any State or local administrative agency, department, or instrumentality under State or local law.

Subsec. (f)(3). Pub. L. 95–190, §14(a)(78), inserted ", or" after "(relating to ozone protection)", substituted

"any condition or requirement under an" for "requirements under an", and struck out "or" before "section 7491".

Pub. L. 95–95, §303(b), added par. (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–549, title VII, §707(g), Nov. 15, 1990, 104 Stat. 2683, provided that: "The amendment made by this subsection [amending this section] shall take effect with respect to actions brought after the date 2 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990]."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (g)(1) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 6th item on page 165 of House Document No. 103–7.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. The period probably should be ", or".

[2] So in original. The word "or" probably should not appear.

[3] So in original.

[4] So in original. The semicolon probably should be a comma.

[5] So in original. The period probably should be a comma.

[6] So in original. Probably should be "this section".

§7605. Representation in litigation

(a) Attorney General; attorneys appointed by Administrator

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action, within a reasonable time,

attorneys appointed by the Administrator shall appear and represent him.

(b) Memorandum of understanding regarding legal representation

In the event the Attorney General agrees to appear and represent the Administrator in any such action, such representation shall be conducted in accordance with, and shall include participation by, attorneys appointed by the Administrator to the extent authorized by, the memorandum of understanding between the Department of Justice and the Environmental Protection Agency, dated June 13, 1977, respecting representation of the agency by the department in civil litigation.

(July 14, 1955, ch. 360, title III, §305, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 95–95, title III, §304(a), Aug. 7, 1977, 91 Stat. 772.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857h–3 of this title.

PRIOR PROVISIONS

A prior section 305 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 505, was renumbered section 312 by Pub. L. 91–604 and is classified to section 7612 of this title.

Another prior section 305 of act July 14, 1955, ch. 360, title III, formerly §12, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401, was renumbered section 305 by Pub. L. 89–272, renumbered section 308 by Pub. L. 90–148, and renumbered section 315 by Pub. L. 91–604, and is classified to section 7615 of this title.

AMENDMENTS

1977—Pub. L. 95–95 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7606. Federal procurement

(a) Contracts with violators prohibited

No Federal agency may enter into any contract with any person who is convicted of any offense under section 7413(c) of this title for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if

such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 7413(c)(2) of this title, the condition giving rise to the conviction also shall be considered to include any substantive violation of this chapter associated with the violation of 7413(c)(2) of this title. The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.

(b) Notification procedures

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

(c) Federal agency contracts

In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after December 31, 1970, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions; notification to Congress

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(July 14, 1955, ch. 360, title III, §306, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 101–549, title VII, §705, Nov. 15, 1990, 104 Stat. 2682.)

EDITORIAL NOTES

CODIFICATION

Subsec. (e) of this section, which required the President to annually report to Congress on measures taken toward implementing the purpose and intent of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 14th item on page 20 of House Document No. 103–7.

Section was formerly classified to section 1857h–4 of this title.

PRIOR PROVISIONS

A prior section 306 of act July 14, 1955, ch. 360, title III, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506, was renumbered section 313 by Pub. L. 91–604 and is classified to section 7613 of this title.

Another prior section 306 of act July 14, 1955, ch. 360, title III, formerly §13, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401, renumbered §306, Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), 79 Stat. 992, renumbered §309, Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506, renumbered §316, Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1705, related to appropriations and was classified to section 1857l of this title, prior to repeal by section 306 of Pub. L. 95–95. See section 7626 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549 substituted "section 7413(c)" for "section 7413(c)(1)" and inserted sentences at end relating to convictions arising under section 7413(c)(2) of this title and extension of prohibition to other facilities owned by convicted persons.

STATUTORY NOTES AND RELATED SUBSIDIARIES

FEDERAL ACQUISITION REGULATION: CONTRACTOR CERTIFICATION OR CONTRACT CLAUSE FOR ACQUISITION OF COMMERCIAL ITEMS

Pub. L. 103–355, title VIII, §8301(g), Oct. 13, 1994, 108 Stat. 3397, as amended by Pub. L. 115–232, div. A, title VIII, §836(g)(8), Aug. 13, 2018, 132 Stat. 1874, provided that: "The Federal Acquisition Regulation

may not contain a requirement for a certification by a contractor under a contract for the acquisition of commercial products or commercial services, or a requirement that such a contract include a contract clause, in order to implement a prohibition or requirement of section 306 of the Clean Air Act (42 U.S.C. 7606) or a prohibition or requirement issued in the implementation of that section, since there is nothing in such section 306 that requires such a certification or contract clause."

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 11602

Ex. Ord. No. 11602, June 29, 1971, 36 F.R. 12475, which related to the administration of the Clean Air Act with respect to Federal contracts, grants, or loans, was superseded by Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, set out below.

EX. ORD. NO. 11738. ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, provided:

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.) [42 U.S.C. 7401 et seq.], particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91–604) [this section], and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), particularly section 508 of that Act as added by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500) [33 U.S.C. 1368], it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act [this chapter] (hereinafter referred to as "the Air Act") and the Federal Water Pollution Control Act (hereinafter referred to as "the Water Act") [33 U.S.C. 1251 et seq.].

SEC. 2. *Designation of Facilities*. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as "the Administrator") shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Air Act [42 U.S.C. 7413(c)(1)] or section 309(c) of the Water Act [33 U.S.C. 1319(c)]. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. *Contracts, Grants, or Loans*. (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations*. The Federal Procurement Regulations, the Armed Services Procurement Regulations, and to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations*. The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance*. The head of each Federal agency shall take such steps as may be

necessary to insure that all officers and employees of this agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. *Enforcement*. The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress*. (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions*. The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. *Applicability*. This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. *Uniformity*. Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act [33 U.S.C. 1368] shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971 [formerly set out above], and section 306 of the Air Act [this section].

SEC. 12. *Order Superseded*. Executive Order No. 11602 of June 29, 1971, is hereby superseded.

RICHARD NIXON.

§7607. Administrative proceedings and judicial review

(a) Administrative subpenas; confidentiality; witnesses

In connection with any determination under section 7410(f) of this title, or for purposes of obtaining information under section 7521(b)(4) [1] or 7545(c)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the [2] chapter (including but not limited to section 7413, section 7414, section 7420, section 7429, section 7477, section 7524, section 7525, section 7542, section 7603, or section 7606 of this title),,[3] the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned

with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 7521(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph,[4] the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Judicial review

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title,,[3] any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5) [1] of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title, under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c–10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) Additional evidence

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such

terms and conditions as to [5] the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking

(1) This subsection applies to—

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) [6] of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV–A (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV–A (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the "comment period"). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b)) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(h) Public participation

It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of title 5, the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section [7] 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

(July 14, 1955, ch. 360, title III, §307, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 92–157, title III, §302(a), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93–319, §6(c), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title III, §§303(d), 305(a), (c), (f)–(h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub. L. 95–190, §14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title I, §§108(p), 110(5), title III, §302(g), (h), title VII, §§702(c), 703, 706, 707(h), 710(b), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681–2684.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7521(b)(4) of this title, referred to in subsec. (a), was repealed by Pub. L. 101–549, title II, §230(2), Nov. 15, 1990, 104 Stat. 2529.

Section 7521(b)(5) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 101–549, title II, §230(3), Nov. 15, 1990, 104 Stat. 2529.

Section 1857c–10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977), referred to in subsec. (b)(1), was in the original "section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, §3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Part C of subchapter I, referred to in subsec. (d)(1)(J), was in the original "subtitle C of title I", and was translated as reading "part C of title I" to reflect the probable intent of Congress, because title I does not contain subtitles.

CODIFICATION

In subsec. (h), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedures Act" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 1857h–5 of this title.

PRIOR PROVISIONS

A prior section 307 of act July 14, 1955, was renumbered section 314 by Pub. L. 91–604 and is classified to section 7614 of this title.

Another prior section 307 of act July 14, 1955, ch. 360, title III, formerly §14, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401, was renumbered section 307 by Pub. L. 89–272, renumbered section 310 by Pub. L. 90–148, and renumbered section 317 by Pub. L. 91–604, and is set out as a Short Title note under section 7401 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, §703, struck out par. (1) designation at beginning, inserted provisions authorizing issuance of subpoenas and administration of oaths for purposes of investigations, monitoring,

reporting requirements, entries, compliance inspections, or administrative enforcement proceedings under this chapter, and struck out "or section 7521(b)(5)" after "section 7410(f)".

Subsec. (b)(1). Pub. L. 101–549, §706(2), which directed amendment of second sentence by striking "under section 7413(d) of this title" immediately before "under section 7419 of this title", was executed by striking "under section 7413(d) of this title," before "under section 7419 of this title", to reflect the probable intent of Congress.

Pub. L. 101–549, §706(1), inserted at end: "The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action."

Pub. L. 101–549, §702(c), inserted "or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title," before "or any other final action of the Administrator".

Pub. L. 101–549, §302(g), substituted "section 7412" for "section 7412(c)".

Subsec. (b)(2). Pub. L. 101–549, §707(h), inserted sentence at end authorizing challenge to deferrals of performance of nondiscretionary statutory actions.

Subsec. (d)(1)(C). Pub. L. 101–549, §110(5)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "the promulgation or revision of any standard of performance under section 7411 of this title or emission standard under section 7412 of this title,".

Subsec. (d)(1)(D), (E). Pub. L. 101–549, §302(h), added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (d)(1)(F). Pub. L. 101–549, §302(h), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 101–549, §110(5)(B), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "promulgation or revision of regulations pertaining to orders for coal conversion under section 7413(d)(5) of this title (but not including orders granting or denying any such orders),".

Subsec. (d)(1)(G), (H). Pub. L. 101–549, §302(h), redesignated subpars. (F) and (G) as (G) and (H), respectively. Former subpar. (H) redesignated (I).

Subsec. (d)(1)(I). Pub. L. 101–549, §710(b), which directed that subpar. (H) be amended by substituting "subchapter VI" for "part B of subchapter I", was executed by making the substitution in subpar. (I), to reflect the probable intent of Congress and the intervening redesignation of subpar. (H) as (I) by Pub. L. 101–549, §302(h), see below.

Pub. L. 101–549, §302(h), redesignated subpar. (H) as (I). Former subpar. (I) redesignated (J).

Subsec. (d)(1)(J) to (M). Pub. L. 101–549, §302(h), redesignated subpars. (I) to (L) as (J) to (M), respectively. Former subpar. (M) redesignated (N).

Subsec. (d)(1)(N). Pub. L. 101–549, §302(h), redesignated subpar. (M) as (N). Former subpar. (N) redesignated (O).

Pub. L. 101–549, §110(5)(C), added subpar. (N) and redesignated former subpar. (N) as (U).

Subsec. (d)(1)(O) to (T). Pub. L. 101–549, §302(h), redesignated subpars. (N) to (S) as (O) to (T), respectively. Former subpar. (T) redesignated (U).

Pub. L. 101–549, §110(5)(C), added subpars. (O) to (T).

Subsec. (d)(1)(U). Pub. L. 101–549, §302(h), redesignated subpar. (T) as (U). Former subpar. (U) redesignated (V).

Pub. L. 101–549, §110(5)(C), redesignated former subpar. (N) as (U).

Subsec. (d)(1)(V). Pub. L. 101–549, §302(h), redesignated subpar. (U) as (V).

Subsec. (h). Pub. L. 101–549, §108(p), added subsec. (h).

1977—Subsec. (b)(1). Pub. L. 95–190 in text relating to filing of petitions for review in the United States Court of Appeals for the District of Columbia inserted provision respecting requirements under sections 7411 and 7412 of this title, and substituted provisions authorizing review of any rule issued under section 7413, 7419, or 7420 of this title, for provisions authorizing review of any rule or order issued under section 7420 of this title, relating to noncompliance penalties, and in text relating to filing of petitions for review in the United States Court of Appeals for the appropriate circuit inserted provision respecting review under section 7411(j), 7412(c), 7413(d), or 7419 of this title, provision authorizing review under section 1857c–10(c)(2)(A), (B), or (C) to the period prior to Aug. 7, 1977, and provisions authorizing review of denials or disapprovals by the Administrator under subchapter I of this chapter.

Pub. L. 95–95, §305(c), (h), inserted rules or orders issued under section 7420 of this title (relating to noncompliance penalties) and any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter to the enumeration of actions of the Administrator for which a petition

for review may be filed only in the United States Court of Appeals for the District of Columbia, added the approval or promulgation by the Administrator of orders under section 7420 of this title, or any other final action of the Administrator under this chapter which is locally or regionally applicable to the enumeration of actions by the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the appropriate circuit, inserted provision that petitions otherwise capable of being filed in the Court of Appeals for the appropriate circuit may be filed only in the Court of Appeals for the District of Columbia if the action is based on a determination of nationwide scope, and increased from 30 days to 60 days the period during which the petition must be filed.

Subsec. (d). Pub. L. 95–95, §305(a), added subsec. (d).

Subsec. (e). Pub. L. 95–95, §303(d), added subsec. (e).

Subsec. (f). Pub. L. 95–95, §305(f), added subsec. (f).

Subsec. (g). Pub. L. 95–95, §305(g), added subsec. (g).

1974—Subsec. (b)(1). Pub. L. 93–319 inserted reference to the Administrator's action under section 1857c–10(c)(2)(A), (B), or (C) of this title or under regulations thereunder and substituted reference to the filing of a petition within 30 days from the date of promulgation, approval, or action for reference to the filing of a petition within 30 days from the date of promulgation or approval.

1971—Subsec. (a)(1). Pub. L. 92–157 substituted reference to section "7545(c)(3)" for "7545(c)(4)" of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] See References in Text note below.

[2] So in original. Probably should be "this".

[3] So in original.

[4] So in original. Probably should be "subsection,".

[5] *So in original. The word "to" probably should not appear.*

[6] *So in original. There are no subpars. (D) and (F) of section 7412(g)(1) of this title.*

[7] *So in original. Probably should be "sections".*

§7608. Mandatory licensing

Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 7411, 7412, or 7521 of this title, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

(July 14, 1955, ch. 360, title III, §308, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1708.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857h–6 of this title.

PRIOR PROVISIONS

A prior section 308 of act July 14, 1955, was renumbered section 315 by Pub. L. 91–604 and is classified to section 7615 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7609. Policy review

(a) Environmental impact

The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of

the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) Unsatisfactory legislation, action, or regulation

In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

(July 14, 1955, ch. 360, title III, §309, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1709.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857h–7 of this title.

PRIOR PROVISIONS

A prior section 309 of act July 14, 1955, ch. 360, title III, formerly §13, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401; renumbered §306, Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), 79 Stat. 992; renumbered §309, Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506; renumbered §316, Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1705, related to appropriations and was classified to section 1857l of this title, prior to repeal by section 306 of Pub. L. 95–95. See section 7626 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7610. Other authority

(a) Authority and responsibilities under other laws not affected

Except as provided in subsection (b) of this section, this chapter shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

(b) Nonduplication of appropriations

No appropriation shall be authorized or made under section 241, 243, or 246 of this title for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this chapter.

(July 14, 1955, ch. 360, title III, §310, formerly §10, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 401; renumbered §303, Pub. L. 89–272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 505; renumbered §310 and amended Pub. L. 91–604, §§12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857i of this title.

PRIOR PROVISIONS

A prior section 310 of act July 14, 1955, was renumbered section 317 by Pub. L. 91–604 and is set out as a Short Title note under section 7401 of this title.

Provisions similar to those in subsec. (a) of this section were contained in section 1857f of this title, act July 14, 1955, ch. 360, §7, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary".

1967—Subsec. (b). Pub. L. 90–148 substituted reference to section 246 of this title for reference to section 246(c) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7611. Records and audit

(a) Recipients of assistance to keep prescribed records

Each recipient of assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audits

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(July 14, 1955, ch. 360, title III, §311, formerly §11, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 401; renumbered §304, Pub. L. 89–272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 505; renumbered §311 and amended Pub. L. 91–604, §§12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857j of this title.

AMENDMENTS

1970—Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" and "Secretary of Health, Education, and Welfare".

1967—Pub. L. 90–148 reenacted section without change.

STATUTORY NOTES AND RELATED SUBSIDIARIES

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7612. Economic impact analyses

(a) Cost-benefit analysis

The Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis (as established under subsection (f) of this section), shall conduct a comprehensive analysis of the impact of this chapter on the public health, economy, and environment of the United States. In performing such analysis, the Administrator should consider the costs, benefits and other effects associated with compliance with each standard issued for—

(1) a criteria air pollutant subject to a standard issued under section 7409 of this title;

(2) a hazardous air pollutant listed under section 7412 of this title, including any technology-based standard and any risk-based standard for such pollutant;

(3) emissions from mobile sources regulated under subchapter II of this chapter;

(4) a limitation under this chapter for emissions of sulfur dioxide or nitrogen oxides;

(5) a limitation under subchapter VI of this chapter on the production of any ozone-depleting substance; and

(6) any other section of this chapter.

(b) Benefits

In describing the benefits of a standard described in subsection (a), the Administrator shall consider all of the economic, public health, and environmental benefits of efforts to comply with such standard. In any case where numerical values are assigned to such benefits, a default assumption of zero value shall not be assigned to such benefits unless supported by specific data. The Administrator shall assess how benefits are measured in order to assure that damage to human health and the environment is more accurately measured and taken into account.

(c) Costs

In describing the costs of a standard described in subsection (a), the Administrator shall consider the effects of such standard on employment, productivity, cost of living, economic growth, and the overall economy of the United States.

(d) Initial report

Not later than 12 months after November 15, 1990, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, shall submit a report to the Congress that summarizes the results of the analysis described in subsection (a), which reports—

(1) all costs incurred previous to November 15, 1990, in the effort to comply with such standards; and

(2) all benefits that have accrued to the United States as a result of such costs.

(e) Omitted

(f) Appointment of Advisory Council on Clean Air Compliance Analysis

Not later than 6 months after November 15, 1990, the Administrator, in consultation with the Secretary of Commerce and the Secretary of Labor, shall appoint an Advisory Council on Clean Air Compliance Analysis of not less than nine members (hereafter in this section referred to as the "Council"). In appointing such members, the Administrator shall appoint recognized experts in the fields of the health and environmental effects of air pollution, economic analysis, environmental sciences, and such other fields that the Administrator determines to be appropriate.

(g) Duties of Advisory Council

The Council shall—

(1) review the data to be used for any analysis required under this section and make recommendations to the Administrator on the use of such data;

(2) review the methodology used to analyze such data and make recommendations to the Administrator on the use of such methodology; and

(3) prior to the issuance of a report required under subsection (d) or (e), review the findings of such report, and make recommendations to the Administrator concerning the validity and utility of such findings.

(July 14, 1955, ch. 360, title III, §312, formerly §305, as added Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 505; renumbered §312 and amended Pub. L. 91–604, §§12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713; Pub. L. 95–95, title II, §224(c), Aug. 7, 1977, 91 Stat. 767; Pub. L. 101–549, title VIII, §812(a), Nov. 15, 1990, 104 Stat. 2691.)

EDITORIAL NOTES

CODIFICATION

Subsec. (e) of this section, which required the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, to submit a report to Congress that updates the report issued pursuant to subsec. (d) of this section, and which, in addition, makes projections into the future regarding expected costs, benefits, and other effects of compliance with standards pursuant to this chapter as listed in subsec. (a) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 163 of House Document No. 103–7.

Section was formerly classified to section 1857j–1 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), detailed cost estimate, comprehensive cost and economic impact studies, and annual reevaluation; in subsec. (b), personnel study and report to President and Congress; and in subsec. (c), cost-effectiveness analyses.

1977—Subsec. (c). Pub. L. 95–95 added subsec. (c).

1970—Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

EQUIVALENT AIR QUALITY CONTROLS AMONG TRADING NATIONS

Pub. L. 101–549, title VIII, §811, Nov. 15, 1990, 104 Stat. 2690, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) all nations have the responsibility to adopt and enforce effective air quality standards and requirements and the United States, in enacting this Act [see Tables for classification], is carrying out its responsibility in this regard;

"(2) as a result of complying with this Act, businesses in the United States will make significant capital investments and incur incremental costs in implementing control technology standards;

"(3) such compliance may impair the competitiveness of certain United States jobs, production, processes, and products if foreign goods are produced under less costly environmental standards and requirements than are United States goods; and

"(4) mechanisms should be sought through which the United States and its trading partners can agree to eliminate or reduce competitive disadvantages.

"(b) ACTION BY THE PRESIDENT.—

"(1) IN GENERAL.—Within 18 months after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the President shall submit to the Congress a report—

"(A) identifying and evaluating the economic effects of—

"(i) the significant air quality standards and controls required under this Act, and

"(ii) the differences between the significant standards and controls required under this Act and similar standards and controls adopted and enforced by the major trading partners of the United States,

on the international competitiveness of United States manufacturers; and

"(B) containing a strategy for addressing such economic effects through trade consultations and negotiations.

"(2) ADDITIONAL REPORTING REQUIREMENTS.—(A) The evaluation required under paragraph (1)(A) shall examine the extent to which the significant air quality standards and controls required under this Act are comparable to existing internationally-agreed norms.

"(B) The strategy required to be developed under paragraph (1)(B) shall include recommended options (such as the harmonization of standards and trade adjustment measures) for reducing or eliminating competitive disadvantages caused by differences in standards and controls between the United States and each of its major trading partners.

"(3) PUBLIC COMMENT.—Interested parties shall be given an opportunity to submit comments regarding the evaluations and strategy required in the report under paragraph (1). The President shall take any such comment into account in preparing the report.

"(4) INTERIM REPORT.—Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the President shall submit to the Congress an interim report on the progress being made in complying with paragraph (1)."

GAO REPORTS ON COSTS AND BENEFITS

Pub. L. 101–549, title VIII, §812(b), Nov. 15, 1990, 104 Stat. 2693, which directed Comptroller General, commencing on second year after Nov. 15, 1990, and annually thereafter, in consultation with other agencies, to report to Congress on pollution control strategies and technologies required by Clean Air Act Amendments of 1990, was repealed by Pub. L. 104–316, title I, §122(r), Oct. 19, 1996, 110 Stat. 3838.

§7613. Repealed. Pub. L. 101–549, title VIII, §803, Nov. 15, 1990, 104 Stat. 2689

Section, act July 14, 1955, ch. 360, title III, §313, formerly §306, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506; renumbered §313 and amended Dec. 31, 1970, Pub. L. 91–604, §§12(a), 15(c)(2), 84 Stat. 1705, 1713; Aug. 7, 1977, Pub. L. 95–95, title III, §302(b), 91 Stat. 771, required annual report to Congress on progress of programs under this chapter.

§7614. Labor standards

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in

the locality as determined by the Secretary of Labor, in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection,[1] the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(July 14, 1955, ch. 360, title III, §314, formerly §307, as added Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 506; renumbered §314 and amended Pub. L. 91–604, §§12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

EDITORIAL NOTES

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, "sections 3141–3144, 3146, and 3147 of title 40" substituted for "the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a—276a–5)" and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c)", on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was formerly classified to section 1857j–3 of this title.

AMENDMENTS

1970—Pub. L. 91–604, §15(c)(2), substituted "Administrator" for "Secretary" meaning the Secretary of Health, Education, and Welfare.

[1] *So in original. Probably should be "section,".*

§7615. Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter shall not be affected thereby.

(July 14, 1955, ch. 360, title III, §315, formerly §12, as added Pub. L. 88–206, §1, Dec. 17, 1963, 77 Stat. 401; renumbered §305, Pub. L. 89–272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; renumbered §308 and amended, Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 506; renumbered §315, Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1705.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 1857k of this title.

AMENDMENTS

1967—Pub. L. 90–148 reenacted section without change.

§7616. Sewage treatment grants

(a) Construction

No grant which the Administrator is authorized to make to any applicant for construction of sewage treatment works in any area in any State may be withheld, conditioned, or restricted by the Administrator on the basis of any requirement of this chapter except as provided in subsection (b).

(b) Withholding, conditioning, or restriction of construction grants

The Administrator may withhold, condition, or restrict the making of any grant for construction referred to in subsection (a) only if he determines that—

(1) such treatment works will not comply with applicable standards under section 7411 or 7412 of this title,

(2) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator which expressly quantifies and provides for the increase in emissions of each air pollutant (from stationary and mobile sources in any area to which either part C or part D of subchapter I applies for such pollutant) which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity which would be created by such construction.[1]

(3) the construction of such treatment works would create new sewage treatment capacity which—

(A) may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any air pollutant in excess of the increase provided for under the provisions referred to in paragraph (2) for any such area, or

(B) would otherwise not be in conformity with the applicable implementation plan, or

(4) such increase in emissions would interfere with, or be inconsistent with, the applicable implementation plan for any other State.

In the case of construction of a treatment works which would result, directly or indirectly, in an increase in emissions of any air pollutant from stationary and mobile sources in an area to which part D of subchapter I applies, the quantification of emissions referred to in paragraph (2) shall include the emissions of any such pollutant resulting directly or indirectly from areawide and nonmajor stationary source growth (mobile and stationary) for each such area.

(c) National Environmental Policy Act

Nothing in this section shall be construed to amend or alter any provision of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] or to affect any determination as to whether or not the requirements of such Act have been met in the case of the construction of any sewage treatment works.

(July 14, 1955, ch. 360, title III, §316, as added Pub. L. 95–95, title III, §306, Aug. 7, 1977, 91 Stat. 777.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in subsec. (c), probably means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

PRIOR PROVISIONS

A prior section 316 of act July 14, 1955, ch. 360, title III, formerly §13, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401; renumbered §306 and amended Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, §2(a), 80 Stat. 954; renumbered §309 and amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506; renumbered §316 and amended Dec. 31, 1970, Pub. L. 91–604, §§12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93–15, §1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, §13(c), 88 Stat. 265, authorized appropriations for air pollution control, prior to repeal by section 306 of Pub. L. 95–95. See section 7626 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] *So in original. The period probably should be a comma.*

§7617. Economic impact assessment

(a) Notice of proposed rulemaking; substantial revisions

This section applies to action of the Administrator in promulgating or revising—

(1) any new source standard of performance under section 7411 of this title,

(2) any regulation under section 7411(d) of this title,

(3) any regulation under part B [1] of subchapter I (relating to ozone and stratosphere protection),

(4) any regulation under part C of subchapter I (relating to prevention of significant deterioration of air quality),

(5) any regulation establishing emission standards under section 7521 of this title and any other regulation promulgated under that section,

(6) any regulation controlling or prohibiting any fuel or fuel additive under section 7545(c) of this title, and

(7) any aircraft emission standard under section 7571 of this title.

Nothing in this section shall apply to any standard or regulation described in paragraphs (1) through (7) of this subsection unless the notice of proposed rulemaking in connection with such standard or regulation is published in the Federal Register after the date ninety days after August 7, 1977. In the case of revisions of such standards or regulations, this section shall apply only to revisions which the Administrator determines to be substantial revisions.

(b) Preparation of assessment by Administrator

Before publication of notice of proposed rulemaking with respect to any standard or regulation to which this section applies, the Administrator shall prepare an economic impact assessment respecting such standard or regulation. Such assessment shall be included in the docket required under section 7607(d)(2) of this title and shall be available to the public as provided in section 7607(d)(4) of this title. Notice of proposed rulemaking shall include notice of such availability together with an explanation of the extent and manner in which the Administrator has considered the analysis contained in such economic impact assessment in proposing the action. The Administrator shall also provide such an explanation in his notice of promulgation of any regulation or standard referred to in subsection (a). Each such explanation shall be part of the statements of basis and purpose required under sections 7607(d)(3) and 7607(d)(6) of this title.

(c) Analysis

Subject to subsection (d), the assessment required under this section with respect to any standard or regulation shall contain an analysis of—

(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;

(2) the potential inflationary or recessionary effects of the standard or regulation;

(3) the effects on competition of the standard or regulation with respect to small business;

(4) the effects of the standard or regulation on consumer costs; and

(5) the effects of the standard or regulation on energy use.

Nothing in this section shall be construed to provide that the analysis of the factors specified in this subsection affects or alters the factors which the Administrator is required to consider in taking

any action referred to in subsection (a).

(d) Extensiveness of assessment

The assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under this chapter.

(e) Limitations on construction of section

Nothing in this section shall be construed—

(1) to alter the basis on which a standard or regulation is promulgated under this chapter;

(2) to preclude the Administrator from carrying out his responsibility under this chapter to protect public health and welfare; or

(3) to authorize or require any judicial review of any such standard or regulation, or any stay or injunction of the proposal, promulgation, or effectiveness of such standard or regulation on the basis of failure to comply with this section.

(f) Citizen suits

The requirements imposed on the Administrator under this section shall be treated as nondiscretionary duties for purposes of section 7604(a)(2) of this title, relating to citizen suits. The sole method for enforcement of the Administrator's duty under this section shall be by bringing a citizen suit under such section 7604(a)(2) for a court order to compel the Administrator to perform such duty. Violation of any such order shall subject the Administrator to penalties for contempt of court.

(g) Costs

In the case of any provision of this chapter in which costs are expressly required to be taken into account, the adequacy or inadequacy of any assessment required under this section may be taken into consideration, but shall not be treated for purposes of judicial review of any such provision as conclusive with respect to compliance or noncompliance with the requirement of such provision to take cost into account.

(July 14, 1955, ch. 360, title III, §317, as added Pub. L. 95–95, title III, §307, Aug. 7, 1977, 91 Stat. 778; amended Pub. L. 95–623, §13(d), Nov. 9, 1978, 92 Stat. 3458.)

EDITORIAL NOTES

REFERENCES IN TEXT

Part B of subchapter I, referred to in subsec. (a)(3), was repealed by Pub. L. 101–549, title VI, §601, Nov. 15, 1990, 104 Stat. 2648. See subchapter VI (§7671 et seq.) of this chapter.

CODIFICATION

Another section 317 of act July 14, 1955, is set out as a Short Title note under section 7401 of this title.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95–623 substituted "section 7411" for "section 7411(b)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] *See References in Text note below.*

§7618. Repealed. Pub. L. 101–549, title I, §108(q), Nov. 15, 1990, 104 Stat. 2469

Section, act July 14, 1955, ch. 360, title III, §318, as added Aug. 7, 1977, Pub. L. 95–95, title III, §308, 91 Stat. 780, related to financial disclosure and conflicts of interest.

§7619. Air quality monitoring

(a) In general

After notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,

(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 7410 of this title shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

(b) Air quality monitoring data influenced by exceptional events

(1) Definition of exceptional event

In this section:

(A) In general

The term "exceptional event" means an event that—

(i) affects air quality;

(ii) is not reasonably controllable or preventable;

(iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and

(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

(B) Exclusions

In this subsection, the term "exceptional event" does not include—

(i) stagnation of air masses or meteorological inversions;

(ii) a meteorological event involving high temperatures or lack of precipitation; or

(iii) air pollution relating to source noncompliance.

(2) Regulations

(A) Proposed regulations

Not later than March 1, 2006, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

(B) Final regulations

Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or [1] air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

(3) Principles and requirements

(A) Principles

In promulgating regulations under this section, the Administrator shall follow—

(i) the principle that protection of public health is the highest priority;

(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

(iii) the principle that all ambient air quality data should be included in a timely manner,[2] an appropriate Federal air quality database that is accessible to the public;

(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

(B) Requirements

Regulations promulgated under this section shall, at a minimum, provide that—

(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

(iii) there is a public process for determining whether an event is exceptional; and

(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.

(4) Interim provision

Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).

(B) Areas affected by PM–10 natural events, May 30, 1996.

(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.

(July 14, 1955, ch. 360, title III, §319, as added Pub. L. 95–95, title III, §309, Aug. 7, 1977, 91 Stat. 781; amended Pub. L. 109–59, title VI, §6013(a), Aug. 10, 2005, 119 Stat. 1882.)

EDITORIAL NOTES

AMENDMENTS

2005—Pub. L. 109–59 designated existing provisions as subsec. (a), inserted heading, substituted "After notice and opportunity for public hearing" for "Not later than one year after August 7, 1977, and after notice and opportunity for public hearing", and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. Probably should be "of".

[2] So in original. Probably should be followed by "in".

§7620. Standardized air quality modeling

(a) Conferences

Not later than six months after August 7, 1977, and at least every three years thereafter, the Administrator shall conduct a conference on air quality modeling. In conducting such conference, special attention shall be given to appropriate modeling necessary for carrying out part C of subchapter I (relating to prevention of significant deterioration of air quality).

(b) Conferees

The conference conducted under this section shall provide for participation by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies, including the National Science Foundation; [1] the National Oceanic and Atmospheric Administration, and the National Institute of Standards and Technology.

(c) Comments; transcripts

Interested persons shall be permitted to submit written comments and a verbatim transcript of the conference proceedings shall be maintained.

(d) Promulgation and revision of regulations relating to air quality modeling

The comments submitted and the transcript maintained pursuant to subsection (c) shall be included in the docket required to be established for purposes of promulgating or revising any regulation relating to air quality modeling under part C of subchapter I.

(July 14, 1955, ch. 360, title III, §320, as added Pub. L. 95–95, title III, §310, Aug. 7, 1977, 91 Stat. 782; amended Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. The semicolon probably should be a comma.

§7621. Employment effects

(a) Continuous evaluation of potential loss or shifts of employment

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment

which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.

(b) Request for investigation; hearings; record; report

Any employee, or any representative of such employee, who is discharged or laid off, threatened with discharge or layoff, or whose employment is otherwise adversely affected or threatened to be adversely affected because of the alleged results of any requirement imposed or proposed to be imposed under this chapter, including any requirement applicable to Federal facilities and any requirement imposed by a State or political subdivision thereof, may request the Administrator to conduct a full investigation of the matter. Any such request shall be reduced to writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice. At such hearings, the Administrator shall require the parties, including the employer involved, to present information relating to the actual or potential effect of such requirements on employment and the detailed reasons or justification therefor. If the Administrator determines that there are no reasonable grounds for conducting a public hearing he shall notify (in writing) the party requesting such hearing of such a determination and the reasons therefor. If the Administrator does convene such a hearing, the hearing shall be on the record. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such requirements on employment and on the alleged actual or potential discharge, layoff, or other adverse effect on employment, and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public.

(c) Subpenas; confidential information; witnesses; penalty

In connection with any investigation or public hearing conducted under subsection (b) of this section or as authorized in section 7419 of this title (relating to primary nonferrous smelter orders), the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner, or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subparagraph,[1] the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Limitations on construction of section

Nothing in this section shall be construed to require or authorize the Administrator, the States, or political subdivisions thereof, to modify or withdraw any requirement imposed or proposed to be imposed under this chapter.

(July 14, 1955, ch. 360, title III, §321, as added Pub. L. 95–95, title III, §311, Aug. 7, 1977, 91 Stat. 782.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY OF POTENTIAL DISLOCATION OF EMPLOYEES

Pub. L. 95–95, title IV, §403(e), Aug. 7, 1977, 91 Stat. 793, provided that the Secretary of Labor, in consultation with the Administrator, conduct a study of potential dislocation of employees due to implementation of laws administered by the Administrator and that the Secretary submit to Congress the results of the study not more than one year after Aug. 7, 1977.

[1] *So in original. Probably should be "subsection,"*

§7622. Employee protection

(a) Discharge or discrimination prohibited

No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or a proceeding for the administration or enforcement of any requirement imposed under this chapter or under any applicable implementation plan,

(2) testified or is about to testify in any such proceeding, or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

(b) Complaint charging unlawful discharge or discrimination; investigation; order

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph [1] shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement of order by Secretary

Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Enforcement of order by person on whose behalf order was issued

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Mandamus

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violation by employee

Subsection (a) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter.

(July 14, 1955, ch. 360, title III, §322, as added Pub. L. 95–95, title III, §312, Aug. 7, 1977, 91 Stat. 783.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] *So in original.*

§7623. Repealed. Pub. L. 96–300, §1(c), July 2, 1980, 94 Stat. 831

Section, act July 14, 1955, ch. 360, title III, §323, as added Aug. 7, 1977, Pub. L. 95–95, title III, §313, 91 Stat. 785; amended Nov. 16, 1977, Pub. L. 95–190, §14(a)(81), 91 Stat. 1404; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980; July 2, 1980, Pub. L. 96–300, §1(a), 94 Stat. 831, established a National Commission on Air Quality, prescribed numerous subjects for study and report to Congress, enumerated specific questions for study and investigation, required specific identification of loss or irretrievable commitment of resources, and provided for appointment and confirmation of its membership, cooperation of Federal executive agencies,

submission of a National Academy of Sciences study to Congress, compensation and travel expenses, termination of Commission, appointment and compensation of staff, and public participation.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 96–300, §1(c), July 2, 1980, 94 Stat. 831, provided that this section is repealed on date on which National Commission on Air Quality ceases to exist pursuant to provisions of former subsec. (g) of this section, which provided that not later than Mar. 1, 1981, a report be submitted containing results of all Commission studies and investigations and that Commission cease to exist on Mar. 1, 1981, if report is not submitted on Mar. 1, 1981, or Commission would cease to exist on such date, but not later than May 1, 1981, as determined and ordered by Commission if report is submitted on Mar. 1, 1981.

NATIONAL COMMISSION ON AIR QUALITY; EXTENSION PROHIBITION

Pub. L. 96–300, §1(d), July 2, 1980, 94 Stat. 831, provided that nothing in any other authority of law shall be construed to authorize or permit the extension of the National Commission on Air Quality pursuant to any Executive order or other Executive or agency action.

§7624. Cost of vapor recovery equipment

(a) Costs to be borne by owner of retail outlet

The regulations under this chapter applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined under such regulations). Except as provided in subsection (b), such regulations shall provide that no lease of a retail outlet by the owner thereof which is entered into or renewed after August 7, 1977, may provide for a payment by the lessee of the cost of procurement and installation of vapor recovery equipment. Such regulations shall also provide that the cost of procurement and installation of vapor recovery equipment may be recovered by the owner of such outlet by means of price increases in the cost of any product sold by such owner, notwithstanding any provision of law.

(b) Payment by lessee

The regulations of the Administrator referred to in subsection (a) shall permit a lease of a retail outlet to provide for payment by the lessee of the cost of procurement and installation of vapor recovery equipment over a reasonable period (as determined in accordance with such regulations), if the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet.

(July 14, 1955, ch. 360, title III, §323, formerly §324, as added Pub. L. 95–95, title III, §314(a), Aug. 7, 1977, 91 Stat. 788; amended Pub. L. 95–190, §14(a)(82), Nov. 16, 1977, 91 Stat. 1404; renumbered §323 and amended Pub. L. 96–300, §1(b), (c), July 2, 1980, 94 Stat. 831.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 323 of act July 14, 1955, was classified to section 7623 of this title prior to repeal by Pub. L. 96–300, §1(c), July 2, 1980, 94 Stat. 831.

AMENDMENTS

1980—Pub. L. 96–300, §1(b), which directed that last sentence of this section be struck out was probably intended to strike sentence purportedly added by Pub. L. 95–190. See 1977 Amendment note below and section 7623(i) of this title.

1977—Pub. L. 95–190 which purported to amend subsec. (j) of this section by inserting "The Commission may appoint and fix the pay of such staff as it deems necessary." after "(j)" was not executed to this section because it did not contain a subsec. (j). See 1980 Amendment note above.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7625. Vapor recovery for small business marketers of petroleum products

(a) Marketers of gasoline

The regulations under this chapter applicable to vapor recovery from fueling of motor vehicles at retail outlets of gasoline shall not apply to any outlet owned by an independent small business marketer of gasoline having monthly sales of less than 50,000 gallons. In the case of any other outlet owned by an independent small business marketer, such regulations shall provide, with respect to independent small business marketers of gasoline, for a three-year phase-in period for the installation of such vapor recovery equipment at such outlets under which such marketers shall have—

(1) 33 percent of such outlets in compliance at the end of the first year during which such regulations apply to such marketers,

(2) 66 percent at the end of such second year, and

(3) 100 percent at the end of the third year.

(b) State requirements

Nothing in subsection (a) shall be construed to prohibit any State from adopting or enforcing, with respect to independent small business marketers of gasoline having monthly sales of less than 50,000 gallons, any vapor recovery requirements for mobile source fuels at retail outlets. Any vapor recovery requirement which is adopted by a State and submitted to the Administrator as part of its implementation plan may be approved and enforced by the Administrator as part of the applicable implementation plan for that State.

(c) Refiners

For purposes of this section, an independent small business marketer of gasoline is a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under section 7624 [1] of this title or under regulations of the Administrator, unless such person—

(1)(A) is a refiner, or [2]

(B) controls, is controlled by, or is under common control with, a refiner,

(C) is otherwise directly or indirectly affiliated (as determined under the regulations of the Administrator) with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person), or

(2) receives less than 50 percent of his annual income from refining or marketing of gasoline.

For the purpose of this section, the term "refiner" shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this section, "control" of a corporation means ownership of more than 50 percent of its stock.

(July 14, 1955, ch. 360, title III, §324, formerly §325, as added Pub. L. 95–95, title III, §314(b), Aug. 7, 1977, 91 Stat. 789; renumbered §324, Pub. L. 96–300, §1(c), July 2, 1980, 94 Stat. 831.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7624 of this title, referred to in subsec. (c), was in the original "section 324 of this Act", meaning section 324 of the Act July 14, 1955. Sections 324 and 325 of that Act, were renumbered sections 323 and 324, respectively, by Pub. L. 96–300, §1(b), July 2, 1980, 94 Stat. 831, and are classified to sections 7624 and 7625, respectively, of this title.

PRIOR PROVISIONS

A prior section 324 of act July 14, 1955, was renumbered section 323 by Pub. L. 96–300 and is classified to section 7624 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] See References in Text note below.

[2] So in original. The word "or" probably should appear at the end of subpar. (B).

§7625–1. Exemptions for certain territories

(a)(1) Upon petition by the governor [1] of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this chapter other than section 7412 of this title or any requirement under section 7410 of this title or part D [2] necessary to attain or maintain a national primary ambient air quality standard. Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 7607(d) of this title and any exemption under this subsection shall be considered final action by the Administrator for the purposes of section 7607(b) of this title.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Natural Resources of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this subsection and of the approval or rejection of such petition and the basis for such action.

(b) Notwithstanding any other provision of this chapter, any fossil fuel fired steam electric power plant operating within Guam as of December 8, 1983, is hereby exempted from:

(1) any requirement of the new source performance standards relating to sulfur dioxide promulgated under section 7411 of this title as of December 8, 1983; and

(2) any regulation relating to sulfur dioxide standards or limitations contained in a State implementation plan approved under section 7410 of this title as of December 8, 1983: *Provided*, That such exemption shall expire eighteen months after December 8, 1983, unless the Administrator determines that such plant is making all emissions reductions practicable to prevent exceedances of the national ambient air quality standards for sulfur dioxide.

(July 14, 1955, ch. 360, title III, §325, as added Pub. L. 98–213, §11, Dec. 8, 1983, 97 Stat. 1461; amended Pub. L. 101–549, title VIII, §806, Nov. 15, 1990, 104 Stat. 2689; Pub. L. 103–437, §15(s), Nov. 2, 1994, 108 Stat. 4594.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 325 of act July 14, 1955, was renumbered section 326 by Pub. L. 98–213 and is classified to section 7625a of this title.

Another prior section 325 of act July 14, 1955, was renumbered section 324 by Pub. L. 96–300 and is classified to section 7625 of this title.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–437 substituted "Natural Resources" for "Interior and Insular Affairs" before "of the House".

1990—Subsec. (a)(1). Pub. L. 101–549, which directed the insertion of "the Virgin Islands," after "American Samoa," in "[s]ection 324(a)(1) of the Clean Air Act (42 U.S.C. 7625–1(a)(1))", was executed by making the insertion in subsec. (a)(1) of this section to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

[1] *So in original. Probably should be capitalized.*

[2] *So in original. Probably should refer to part D of subchapter I.*

§7625a. Statutory construction

The parenthetical cross references in any provision of this chapter to other provisions of the chapter, or other provisions of law, where the words "relating to" or "pertaining to" are used, are made only for convenience, and shall be given no legal effect.

(July 14, 1955, ch. 360, title III, §326, as added Pub. L. 95–190, §14(a)(84), Nov. 16, 1977, 91 Stat. 1404; renumbered §325, Pub. L. 96–300, §1(c), July 2, 1980, 94 Stat. 831; renumbered §326, Pub. L. 98–213, §11, Dec. 8, 1983, 97 Stat. 1461.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 326 of act July 14, 1955, was renumbered section 327 by Pub. L. 98–213 and is classified to section 7626 of this title.

§7626. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for the 7 fiscal years commencing after November 15, 1990.

(b) Grants for planning

There are authorized to be appropriated (1) not more than $50,000,000 to carry out section 7505 of this title beginning in fiscal year 1991, to be available until expended, to develop plan revisions required by subpart 2, 3, or 4 of part D of subchapter I, and (2) not more than $15,000,000 for each of the 7 fiscal years commencing after November 15, 1990, to make grants to the States to prepare implementation plans as required by subpart 2, 3, or 4 of part D of subchapter I.

(July 14, 1955, ch. 360, title III, §327, formerly §325, as added Pub. L. 95–95, title III, §315, Aug. 7, 1977, 91 Stat. 790; renumbered §327 and amended Pub. L. 95–190, §14(a)(83), Nov. 16, 1977, 91 Stat. 1404; renumbered §326, Pub. L. 96–300, §1(c), July 2, 1980, 94 Stat. 831; renumbered §327, Pub. L. 98–213, §11, Dec. 8, 1983, 97 Stat. 1461; Pub. L. 101–549, title VIII, §822, Nov. 15, 1990, 104 Stat. 2699.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1857l of this title, act July 14, 1955, ch. 360, title III, §316, formerly §13, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401; renumbered §306 and amended Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, §2(a), 80 Stat. 954; renumbered §309 and amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506; renumbered §316 and amended Dec. 31, 1970, Pub. L. 91–604, §§12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93–15, §1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, §13(c), 88 Stat. 265, prior to repeal by section 306 of Pub. L. 95–95.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions authorizing specific appropriations for certain programs and periods and appropriations of $200,000,000 for fiscal years 1978 through 1981 to carry out the other programs under this chapter.

1977—Subsec. (b)(4). Pub. L. 95–190 substituted "section 7403(a)(5)" for "section 7403(b)(5)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§7627. Air pollution from Outer Continental Shelf activities

(a) Applicable requirements for certain areas

(1) In general

Not later than 12 months after November 15, 1990, following consultation with the Secretary of the Interior and the Commandant of the United States Coast Guard, the Administrator, by rule, shall establish requirements to control air pollution from Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts (other than Outer Continental Shelf sources located offshore of the North Slope Borough of the State of Alaska), and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minutes ("OCS sources") to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of subchapter I. For such sources located within 25 miles of the seaward boundary of such States, such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting. New OCS sources shall comply with such requirements on the date of promulgation and existing OCS sources shall comply on the date 24 months thereafter. The Administrator shall update such requirements as necessary to maintain consistency with onshore regulations and this chapter. The authority of this subsection shall supersede section 5(a)(8) of the Outer Continental Shelf Lands Act [43 U.S.C. 1334(a)(8)] but shall not repeal or modify any other Federal, State, or local authorities with respect to air quality. Each requirement established under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, and 7604 of this title, as a standard under section 7411 of this title and a violation of any such requirement shall be considered a violation of section 7411(e) of this title.

(2) Exemptions

The Administrator may exempt an OCS source from a specific requirement in effect under regulations under this subsection if the Administrator finds that compliance with a pollution control technology requirement is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator shall make written findings explaining the basis of any exemption issued pursuant to this subsection and shall impose another requirement equal to or as close in stringency to the original requirement as possible. The Administrator shall ensure that any increase in emissions due to the granting of an exemption is offset by reductions in actual emissions, not otherwise required by this chapter, from the same source or other sources in the area or in the corresponding onshore area. The Administrator shall establish procedures to provide for public notice and comment on exemptions proposed pursuant to this subsection.

(3) State procedures

Each State adjacent to an OCS source included under this subsection may promulgate and submit to the Administrator regulations for implementing and enforcing the requirements of this subsection. If the Administrator finds that the State regulations are adequate, the Administrator shall delegate to that State any authority the Administrator has under this chapter to implement and enforce such requirements. Nothing in this subsection shall prohibit the Administrator from enforcing any requirement of this section.

(4) Definitions

For purposes of subsections (a) and (b)—

(A) Outer Continental Shelf

The term "Outer Continental Shelf" has the meaning provided by section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(B) Corresponding onshore area

The term "corresponding onshore area" means, with respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions. Such determination shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal or State ambient air quality standard or to comply with the provisions of part C of subchapter I.

(C) Outer Continental Shelf source

The terms "Outer Continental Shelf source" and "OCS source" include any equipment, activity, or facility which—

(i) emits or has the potential to emit any air pollutant,

(ii) is regulated or authorized under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], and

(iii) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.

Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source.

(D) New and existing OCS sources

The term "new OCS source" means an OCS source which is a new source within the meaning of section 7411(a) of this title. The term "existing OCS source" means any OCS source other than a new OCS source.

(b) Requirements for other offshore areas

For portions of the United States Outer Continental Shelf that are adjacent to the States not covered by subsection (a) which are Texas, Louisiana, Mississippi, and Alabama or are adjacent to the North Slope Borough of the State of Alaska, the Secretary shall consult with the Administrator to assure coordination of air pollution control regulation for Outer Continental Shelf emissions and emissions in adjacent onshore areas. Concurrently with this obligation, the Secretary shall complete within 3 years of November 15, 1990, a research study examining the impacts of emissions from Outer Continental Shelf activities in such areas that fail to meet the national ambient air quality standards for either ozone or nitrogen dioxide. Based on the results of this study, the Secretary shall consult with the Administrator and determine if any additional actions are necessary. There are authorized to be appropriated such sums as may be necessary to provide funding for the study required under this section.

(c) Coastal waters

(1) The study report of section 7412(n) [1] of this title shall apply to the coastal waters of the United States to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.

(2) The regulatory requirements of section 7412(n) [1] of this title shall apply to the coastal waters of the States which are subject to subsection (a) of this section, to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.

(July 14, 1955, ch. 360, title III, §328, as added Pub. L. 101–549, title VIII, §801, Nov. 15, 1990, 104 Stat. 2685; amended Pub. L. 112–74, div. E, title IV, §432(b), (c), Dec. 23, 2011, 125 Stat. 1048, 1049.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a)(4)(C)(ii), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 112–74, §432(b), inserted "(other than Outer Continental Shelf sources located offshore of the North Slope Borough of the State of Alaska)" after "Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts" and "and this chapter" after "regulations".

Subsec. (b). Pub. L. 112–74, §432(c), struck out "Gulf Coast" after "United States" and inserted "or are adjacent to the North Slope Borough of the State of Alaska" after "Alabama".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 112–74, div. E, title IV, §432(a), Dec. 23, 2011, 125 Stat. 1048, provided that: "It is the purpose of this section [amending this section and enacting provisions set out as a note under this section] to ensure that the energy policy of the United States focuses on the expeditious and orderly development of domestic energy

resources in a manner that protects human health and the environment."

EFFECT OF TRANSFER OF AIR QUALITY PERMITTING AUTHORITY

Pub. L. 112–74, div. E, title IV, §432(d), Dec. 23, 2011, 125 Stat. 1049, provided that: "The transfer of air quality permitting authority pursuant to this section [amending this section and enacting provisions set out as a note under this section] shall not invalidate or stay—

"(1) any air quality permit pending or existing as of the date of the enactment of this Act [Dec. 23, 2011]; or

"(2) any proceeding related thereto."

[1] *So in original. Probably should be section "7412(m)".*

§7628. Demonstration grant program for local governments

(a) Grant program

(1) In general

The Administrator shall establish a demonstration program under which the Administrator shall provide competitive grants to assist local governments (such as municipalities and counties), with respect to local government buildings—

(A) to deploy cost-effective technologies and practices; and

(B) to achieve operational cost savings, through the application of cost-effective technologies and practices, as verified by the Administrator.

(2) Cost sharing

(A) In general

The Federal share of the cost of an activity carried out using a grant provided under this section shall be 40 percent.

(B) Waiver of non-Federal share

The Administrator may waive up to 100 percent of the local share of the cost of any grant under this section should the Administrator determine that the community is economically distressed, pursuant to objective economic criteria established by the Administrator in published guidelines.

(3) Maximum amount

The amount of a grant provided under this subsection shall not exceed $1,000,000.

(b) Guidelines

(1) In general

Not later than 1 year after December 19, 2007, the Administrator shall issue guidelines to implement the grant program established under subsection (a).

(2) Requirements

The guidelines under paragraph (1) shall establish—

(A) standards for monitoring and verification of operational cost savings through the application of cost-effective technologies and practices reported by grantees under this section;

(B) standards for grantees to implement training programs, and to provide technical assistance and education, relating to the retrofit of buildings using cost-effective technologies and practices; and

(C) a requirement that each local government that receives a grant under this section shall achieve facility-wide cost savings, through renovation of existing local government buildings using cost-effective technologies and practices, of at least 40 percent as compared to the baseline operational costs of the buildings before the renovation (as calculated assuming a 3-year, weather-normalized average).

(c) Compliance with State and local law

Nothing in this section or any program carried out using a grant provided under this section supersedes or otherwise affects any State or local law, to the extent that the State or local law contains a requirement that is more stringent than the relevant requirement of this section.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2007 through 2012.

(e) Reports

(1) In general

The Administrator shall provide annual reports to Congress on cost savings achieved and actions taken and recommendations made under this section, and any recommendations for further action.

(2) Final report

The Administrator shall issue a final report at the conclusion of the program, including findings, a summary of total cost savings achieved, and recommendations for further action.

(f) Termination

The program under this section shall terminate on September 30, 2012.

(g) Definitions

In this section, the terms "cost-effective technologies and practices" and "operating [1] cost savings" shall have the meanings defined in section 17061 of this title.

(July 14, 1955, ch. 360, title III, §329, as added Pub. L. 110–140, title IV, §493, Dec. 19, 2007, 121 Stat. 1652.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

[1] So in original. Probably should be "operational".

SUBCHAPTER IV—NOISE POLLUTION

EDITORIAL NOTES

CODIFICATION

Another title IV of act July 14, 1955, as added by Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2584, is classified to subchapter IV–A (§7651 et seq.) of this chapter.

§7641. Noise abatement

(a) Office of Noise Abatement and Control

The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

(A) effects at various levels;
(B) projected growth of noise levels in urban areas through the year 2000;
(C) the psychological and physiological effect on humans;
(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;
(E) effect on wildlife and property (including values);
(F) effect of sonic booms on property (including values); and
(G) such other matters as may be of interest in the public welfare.

(b) Investigation techniques; report and recommendations

In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after December 31, 1970.

(c) Abatement of noise from Federal activities

In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.

(July 14, 1955, ch. 360, title IV, §402, as added Pub. L. 91–604, §14, Dec. 31, 1970, 84 Stat. 1709.)

EDITORIAL NOTES

CODIFICATION

Another section 402 of act July 14, 1955, as added by Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2585, is classified to section 7651a of this title.

Section was formerly classified to section 1858 of this title.

§7642. Authorization of appropriations

There is authorized to be appropriated such amount, not to exceed $30,000,000, as may be necessary for the purposes of this subchapter.

(July 14, 1955, ch. 360, title IV, §403, as added Pub. L. 91–604, §14, Dec. 31, 1970, 84 Stat. 1710.)

EDITORIAL NOTES

CODIFICATION

Another section 403 of act July 14, 1955, as added by Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2589, is classified to section 7651b of this title.

Section was formerly classified to section 1858a of this title.

SUBCHAPTER IV–A—ACID DEPOSITION CONTROL

EDITORIAL NOTES

CODIFICATION

Another title IV of act July 14, 1955, as added by Pub. L. 91–604, §14, Dec. 31, 1970, 84 Stat. 1709, is classified principally to subchapter IV (§7641 et seq.) of this chapter.

§7651. Findings and purposes

(a) Findings

The Congress finds that—

(1) the presence of acidic compounds and their precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials, visibility, and public health;

(2) the principal sources of the acidic compounds and their precursors in the atmosphere are emissions of sulfur and nitrogen oxides from the combustion of fossil fuels;

(3) the problem of acid deposition is of national and international significance;

(4) strategies and technologies for the control of precursors to acid deposition exist now that are economically feasible, and improved methods are expected to become increasingly available over the next decade;

(5) current and future generations of Americans will be adversely affected by delaying measures to remedy the problem;

(6) reduction of total atmospheric loading of sulfur dioxide and nitrogen oxides will enhance protection of the public health and welfare and the environment; and

(7) control measures to reduce precursor emissions from steam-electric generating units should be initiated without delay.

(b) Purposes

The purpose of this subchapter is to reduce the adverse effects of acid deposition through reductions in annual emissions of sulfur dioxide of ten million tons from 1980 emission levels, and, in combination with other provisions of this chapter, of nitrogen oxides emissions of approximately two million tons from 1980 emission levels, in the forty-eight contiguous States and the District of Columbia. It is the intent of this subchapter to effectuate such reductions by requiring compliance by affected sources with prescribed emission limitations by specified deadlines, which limitations may be met through alternative methods of compliance provided by an emission allocation and transfer system. It is also the purpose of this subchapter to encourage energy conservation, use of renewable and clean alternative technologies, and pollution prevention as a long-range strategy, consistent with the provisions of this subchapter, for reducing air pollution and other adverse impacts of energy production and use.

(July 14, 1955, ch. 360, title IV, §401, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2584.)

EDITORIAL NOTES

CODIFICATION

Another section 401 of act July 14, 1955, as added by Pub. L. 91–604, §14, Dec. 31, 1970, 84 Stat. 1709, is set out as a Short Title note under section 7401 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ACID DEPOSITION STANDARDS

Pub. L. 101–549, title IV, §404, Nov. 15, 1990, 104 Stat. 2632, directed Administrator of Environmental Protection Agency, not later than 36 months after Nov. 15, 1990, to transmit to Congress a report on the feasibility and effectiveness of an acid deposition standard or standards to protect sensitive and critically sensitive aquatic and terrestrial resources.

INDUSTRIAL SO_2 EMISSIONS

Pub. L. 101–549, title IV, §406, Nov. 15, 1990, 104 Stat. 2632, provided that:

"(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator of the Environmental Protection Agency shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in title IV of the Act [42 U.S.C. 7651 et

seq.]), including units subject to section 405(g)(6) of the Clean Air Act [42 U.S.C. 7651d(g)(6)], for all years for which data are available, as well as the likely trend in such emissions over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214 [42 U.S.C. 7548].

"(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 405(g)(5) of the Clean Air Act [42 U.S.C. 7651d(g)(5)], may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator of the Environmental Protection Agency shall take such actions under the Clean Air Act [42 U.S.C. 7401 et seq.] as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 405(g)(5) of the Clean Air Act, under section 111(b) of the Clean Air Act [42 U.S.C. 7411(b)], as well as promulgation of standards of performance for existing sources, including units subject to section 405(g)(5) of the Clean Air Act, under authority of this section. For an existing source regulated under this section, 'standard of performance' means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

"(c) ELECTION.—Regulations promulgated under section 405(b) of the Clean Air Act [42 U.S.C. 7651d(b)] shall not prohibit a source from electing to become an affected unit under section 410 of the Clean Air Act [42 U.S.C. 7651i]."

[For termination, effective May 15, 2000, of reporting provisions in section 406(a) of Pub. L. 101–549, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 162 of House Document No. 103–7.]

SENSE OF CONGRESS ON EMISSION REDUCTIONS COSTS

Pub. L. 101–549, title IV, §407, Nov. 15, 1990, 104 Stat. 2633, provided that: "It is the sense of the Congress that the Clean Air Act Amendments of 1990 [Pub. L. 101–549, see Tables for classification], through the allowance program, allocates the costs of achieving the required reductions in emissions of sulfur dioxide and oxides of nitrogen among sources in the United States. Broad based taxes and emissions fees that would provide for payment of the costs of achieving required emissions reductions by any party or parties other than the sources required to achieve the reductions are undesirable."

MONITORING OF ACID RAIN PROGRAM IN CANADA

Pub. L. 101–549, title IV, §408, Nov. 15, 1990, 104 Stat. 2633, provided that the Administrator of the Environmental Protection Agency, in consultation with the Secretary of State, the Secretary of Energy, and other persons the Administrator deemed appropriate, would prepare and submit a report to Congress on January 1, 1994, January 1, 1999, and January 1, 2005, to analyze the emission levels of sulfur dioxide and nitrogen oxides in each of the provinces participating in Canada's acid rain control program, the amount of emission reductions of sulfur dioxide and oxides of nitrogen achieved by each province, the methods utilized by each province in making those reductions, and the costs and employment impacts in each province of making and maintaining those reductions.

§7651a. Definitions

As used in this subchapter:

(1) The term "affected source" means a source that includes one or more affected units.

(2) The term "affected unit" means a unit that is subject to emission reduction requirements or limitations under this subchapter.

(3) The term "allowance" means an authorization, allocated to an affected unit by the Administrator under this subchapter, to emit, during or after a specified calendar year, one ton of sulfur dioxide.

(4) The term "baseline" means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units ("mmBtu's"), calculated as follows:

(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar

years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3).[1] For nonutility units, the baseline is the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of four calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3),[1] the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the administrator shall prescribe by regulation to be promulgated not later than eighteen months after November 15, 1990.

(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subchapter and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under the [2] subchapter. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

(5) The term "capacity factor" means the ratio between the actual electric output from a unit and the potential electric output from that unit.

(6) The term "compliance plan" means, for purposes of the requirements of this subchapter, either—

(A) a statement that the source will comply with all applicable requirements under this subchapter, or

(B) where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the source is in compliance with the requirements of this subchapter.

(7) The term "continuous emission monitoring system" (CEMS) means the equipment as required by section 7651k of this title, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 7651k of this title).

(8) The term "existing unit" means a unit (including units subject to section 7411 of this title) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990, which is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an existing unit for the purposes of this subchapter. For the purposes of this subchapter, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25MWe or less.

(9) The term "generator" means a device that produces electricity and which is reported as a generating unit pursuant to Department of Energy Form 860.

(10) The term "new unit" means a unit that commences commercial operation on or after November 15, 1990.

(11) The term "permitting authority" means the Administrator, or the State or local air pollution control agency, with an approved permitting program under part B [3] of title III of the Act.

(12) The term "repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired

turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Notwithstanding the provisions of section 7651h(a) of this title, for the purpose of this subchapter, the term "repowering" shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(13) The term "reserve" means any bank of allowances established by the Administrator under this subchapter.

(14) The term "State" means one of the 48 contiguous States and the District of Columbia.

(15) The term "unit" means a fossil fuel-fired combustion device.

(16) The term "actual 1985 emission rate", for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emissions Inventory, Version 2, National Utility Reference File. For nonutility units, the term "actual 1985 emission rate" means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

(17)(A) The term "utility unit" means—

(i) a unit that serves a generator in any State that produces electricity for sale, or

(ii) a unit that, during 1985, served a generator in any State that produced electricity for sale.

(B) Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

(i) was in commercial operation during 1985, but

(ii) did not, during 1985, serve a generator in any State that produced electricity for sale shall not be a utility unit for purposes of this subchapter.

(C) A unit that cogenerates steam and electricity is not a "utility unit" for purposes of this subchapter unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale.

(18) The term "allowable 1985 emissions rate" means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation in pounds per million Btu to establish the allowable 1985 emissions rate.

(19) The term "qualifying phase I technology" means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

(20) The term "alternative method of compliance" means a method of compliance in accordance with one or more of the following authorities:

(A) a substitution plan submitted and approved in accordance with subsections [4] 7651c(b) and (c) of this title;

(B) a Phase I extension plan approved by the Administrator under section 7651c(d) of this title, using qualifying phase I technology as determined by the Administrator in accordance with that section; or

(C) repowering with a qualifying clean coal technology under section 7651h of this title.

(21) The term "commenced" as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable

time, a continuous program of construction.

(22) The term "commenced commercial operation" means to have begun to generate electricity for sale.

(23) The term "construction" means fabrication, erection, or installation of an affected unit.

(24) The term "industrial source" means a unit that does not serve a generator that produces electricity, a "nonutility unit" as defined in this section, or a process source as defined in section 7651i(e) [5] of this title.

(25) The term "nonutility unit" means a unit other than a utility unit.

(26) The term "designated representative" means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

(27) The term "life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

(A) for the life of the unit;

(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or re-lease some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

(28) The term "basic Phase II allowance allocations" means:

(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 7651b of this title and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i) and (j) of section 7651d of this title.

(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 7651b of this title and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i) and (j) of section 7651d of this title.

(29) The term "Phase II bonus allowance allocations" means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 7651b of this title, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 7651d of this title, and section 7651e of this title.

(July 14, 1955, ch. 360, title IV, §402, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2585.)

EDITORIAL NOTES

REFERENCES IN TEXT

Part B of title III of the Act, referred to in par. (11), means title III of the Clean Air Act, act July 14, 1955, ch. 360, as added, which is classified to subchapter III of this chapter, but title III does not contain parts. For provisions of the Clean Air Act relating to permits, see subchapter V (§7661 et seq.) of this chapter.

CODIFICATION

Another section 402 of act July 14, 1955, as added by Pub. L. 91–604, §14, Dec. 31, 1970, 84 Stat. 1709, is classified to section 7641 of this title.

[1] So in original. The reference to "paragraph (3)" probably should be to "subparagraph (C)".

[2] So in original. Probably should be "this".

[3] See References in Text note below.

[4] So in original. Probably should be "section".

[5] So in original. Probably should be section "7651i(d)".

§7651b. Sulfur dioxide allowance program for existing and new units

(a) Allocations of annual allowances for existing and new units

(1) [1] For the emission limitation programs under this subchapter, the Administrator shall allocate annual allowances for the unit, to be held or distributed by the designated representative of the owner or operator of each affected unit at an affected source in accordance with this subchapter, in an amount equal to the annual tonnage emission limitation calculated under section 7651c, 7651d, 7651e, 7651h, or 7651i of this title except as otherwise specifically provided elsewhere in this subchapter. Except as provided in sections 7651d(a)(2), 7651d(a)(3), 7651h and 7651i of this title, beginning January 1, 2000, the Administrator shall not allocate annual allowances to emit sulfur dioxide pursuant to section 7651d of this title in such an amount as would result in total annual emissions of sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting the restrictions imposed in the preceding sentence, the Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject to the requirements of section 7651d of this title. Subject to the provisions of section 7651o of this title, the Administrator shall allocate allowances for each affected unit at an affected source annually, as provided in paragraphs (2) and (3) [1] and section 7651g of this title. Except as provided in sections 7651h and 7651i of this title, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000) shall not terminate or otherwise affect the allocation of allowances pursuant to section 7651c or 7651d of this title to which the unit is entitled. Allowances shall be allocated by the Administrator without cost to the recipient, except for allowances sold by the Administrator pursuant to section 7651o of this title. Not later than December 31, 1991, the Administrator shall publish a proposed list of the basic Phase II allowance allocations, the Phase II bonus allowance allocations and, if applicable, allocations pursuant to section 7651d(a)(3) of this title for each unit subject to the emissions limitation requirements of section 7651d of this title for the year 2000 and the year 2010. After notice and opportunity for public comment, but not later than December 31, 1992, the Administrator shall publish a final list of such allocations, subject to the provisions of section 7651d(a)(2) of this title. Any owner or operator of an existing unit subject to the requirements of section 7651d(b) or (c) of this title who is considering applying for an extension of the emission limitation requirement compliance deadline for that unit from January 1, 2000, until not later than December 31, 2000, pursuant to section 7651h of this title, shall notify the Administrator no later than March 31, 1991. Such notification shall be used as the basis for estimating the basic Phase II allowances under this subsection. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 7651d(a)(2) of this title and taking into account the effect of any compliance date extensions granted pursuant to section 7651h of this title on such allocations. Any person who may make an election concerning the amount of allowances to be allocated to a unit or units shall make such election and so inform the Administrator not later than March 31, 1991, in the case of an election under section 7651d of this

title (or June 30, 1991, in the case of an election under section 7651e of this title). If such person fails to make such election, the Administrator shall set forth for each unit owned or operated by such person, the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for the owner or operator of the unit. If such person is a Governor who may make an election under section 7651e of this title and the Governor fails to make an election, the Administrator shall set forth for each unit in the State the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for units in the State.

(b) Allowance transfer system

Allowances allocated under this subchapter may be transferred among designated representatives of the owners or operators of affected sources under this subchapter and any other person who holds such allowances, as provided by the allowance system regulations to be promulgated by the Administrator not later than eighteen months after November 15, 1990. Such regulations shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this subchapter. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated, and shall provide, consistent with the purposes of this subchapter, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years, including allowances allocated to units subject to Phase I requirements (as described in section 7651c of this title) which are applied to emissions limitations requirements in Phase II (as described in section 7651d of this title). Transfers of allowances shall not be effective until written certification of the transfer, signed by a responsible official of each party to the transfer, is received and recorded by the Administrator. Such regulations shall permit the transfer of allowances prior to the issuance of such allowances. Recorded pre-allocation transfers shall be deducted by the Administrator from the number of allowances which would otherwise be allocated to the transferor, and added to those allowances allocated to the transferee. Pre-allocation transfers shall not affect the prohibition contained in this subsection against the use of allowances prior to the year for which they are allocated.

(c) Interpollutant trading

Not later than January 1, 1994, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this subchapter to permit trading sulfur dioxide allowances for nitrogen oxides allowances.

(d) Allowance tracking system

(1) The Administrator shall promulgate, not later than 18 months after November 15, 1990, a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. All allowance allocations and transfers shall, upon recordation by the Administrator, be deemed a part of each unit's permit requirements pursuant to section 7651g of this title, without any further permit review and revision.

(2) In order to insure electric reliability, such regulations shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned.

(e) New utility units

After January 1, 2000, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or

operator. Such new utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1), unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 7651d of this title. New utility units may obtain allowances from any person, in accordance with this subchapter. The owner or operator of any new utility unit in violation of this subsection shall be liable for fulfilling the obligations specified in section 7651j of this title.

(f) Nature of allowances

An allowance allocated under this subchapter is a limited authorization to emit sulfur dioxide in accordance with the provisions of this subchapter. Such allowance does not constitute a property right. Nothing in this subchapter or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this chapter to an affected unit or source, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act [16 U.S.C. 791a et seq.] or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this subchapter shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this subchapter and the regulations of the Administrator without regard to whether or not a permit is in effect under subchapter V or section 7651g of this title with respect to the unit for which such allowance was originally allocated and recorded. Each permit under this subchapter and each permit issued under subchapter V for any affected unit shall provide that the affected unit may not emit an annual tonnage of sulfur dioxide in excess of the allowances held for that unit.

(g) Prohibition

It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subchapter, except in accordance with regulations promulgated by the Administrator. It shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit. Upon the allocation of allowances under this subchapter, the prohibition contained in the preceding sentence shall supersede any other emission limitation applicable under this subchapter to the units for which such allowances are allocated. Allowances may not be used prior to the calendar year for which they are allocated. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this chapter, nor relieve affected sources of their requirements and liabilities under this chapter.

(h) Competitive bidding for power supply

Nothing in this subchapter shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

(i) Applicability of antitrust laws

(1) Nothing in this section affects—

(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances, or

(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

(2) As used in this section, "antitrust laws" means those Acts set forth in section 12 of title 15.

(j) Public Utility Holding Company Act

The acquisition or disposition of allowances pursuant to this subchapter including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances

shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.[2]

(July 14, 1955, ch. 360, title IV, §403, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2589.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (f), is act June 10, 1920, ch. 285, 41 Stat. 1063, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Public Utility Holding Company Act of 1935, referred to in subsec. (j), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, which was classified generally to chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 403 of act July 14, 1955, as added by Pub. L. 91–604, §14, Dec. 31, 1970, 84 Stat. 1710, is classified to section 7642 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

FOSSIL FUEL USE

Pub. L. 101–549, title IV, §402, Nov. 15, 1990, 104 Stat. 2631, provided that:

"(a) CONTRACTS FOR HYDROELECTRIC ENERGY.—Any person who, after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], enters into a contract under which such person receives hydroelectric energy in return for the provision of electric energy by such person shall use allowances held by such person as necessary to satisfy such person's obligations under such contract.

"(b) FEDERAL POWER MARKETING ADMINISTRATION.—A Federal Power Marketing Administration shall not be subject to the provisions and requirements of this title [enacting this subchapter, amending sections 7410, 7411, and 7479 of this title, and enacting provisions set out as notes under sections 7403, 7411, and 7651 of this title] with respect to electric energy generated by hydroelectric facilities and marketed by such Power Marketing Administration. Any person who sells or provides electric energy to a Federal Power Marketing Administration shall comply with the provisions and requirements of this title."

[1] *So in original. No pars. (2) and (3) have been enacted.*

[2] *See References in Text note below.*

§7651c. Phase I sulfur dioxide requirements

(a) Emission limitations

(1) After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit under subsection (d)(2)) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in table A for phase I, unless (A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d), or (B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 7651d of this title. The owner or operator of any unit in violation of this section shall be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 7651j of this title.

(2) Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will

occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between:

(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000, and

(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000,

and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this subchapter that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d), the Administrator shall allocate allowances from the reserve established hereinunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

(3) In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on Table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on Table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

(b) Substitutions

The owner or operator of an affected unit under subsection (a) may include in its section 7651g of this title permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 7651a(d) [1] of this title, multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

(6) such other information as the Administrator may require.

(c) Administrator's action on substitution proposals

(1) The Administrator shall take final action on such substitution proposal in accordance with section 7651g(c) of this title if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this subchapter. If a proposal does not meet the requirements of subsection (b), the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

(2) Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this subchapter, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and

section 7651g of this title. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 7651b of this title. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the units [2] total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 7651j of this title. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a).

(d) Eligible phase I extension units

(1) The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 7651g of this title for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 7651g of this title, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this subchapter.

(2) Such extension proposal shall—

(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

(C) specify the unit's or units' baseline, actual 1985 emissions rate, allowable 1985 emissions rate, and projected utilization for calendar years 1995 through 1999;

(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

(3) The Administrator shall review and take final action on each extension proposal in order of receipt, consistent with section 7651g of this title, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the [3] subchapter.

(4) In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) and the number of allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraphs (A), (B) and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to—

(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

(5) Each eligible Phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible Phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2) of this section, allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

(6) In addition to allowances specified in paragraph (5), the Administrator shall allocate for each eligible Phase I extension unit employing qualifying Phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2), following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

(7) After January 1, 1997, in addition to any liability under this chapter, including under section 7651j of this title, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (3) of this subsection, the Administrator shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

(e) Allocation of allowances

(1) In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements: (A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and (B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 7651d of this title (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 7651d of this title for reductions in the emissions of sulfur dioxide made during the period 1995–1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

(2) In the case of an affected unit under this section described in subparagraph (A),[4] the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs. per mmBtu), divided by 2,000, exceeds (B) the allowances specified for such unit in Table A. In the case of an affected unit under section 7651d of this title described in subparagraph (A),[4] the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which (i) the product of the quantity of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by the lesser of 2.50 or the most stringent emission rate (in lbs. per mmBtu) applicable to the unit under the applicable implementation plan, divided by 2,000, exceeds (ii) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned. Allowances allocated under this subsection for units referred to in subparagraph (A) [4] may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after November 15, 1990, including changes in the type or quality of fossil fuel consumed.

(3) In no event shall the provisions of this paragraph [5] be interpreted as an event of force majeur [6] or a commercial impractibility [7] or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before November 15, 1990.

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)

State	Plant Name	Generator	Phase I Allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950

		4	8,910	
		5	9,410	
		6	24,760	
		7	21,480	
Illinois	Baldwin	1		42,010
		2	44,420	
		3	42,550	
	Coffeen	1		11,790
		2	35,670	
	Grand Tower	4		5,910
	Hennepin	2		18,410
	Joppa Steam	1		12,590
		2	10,770	
		3	12,270	
		4	11,360	
		5	11,420	
		6	10,620	
	Kincaid	1		31,530
		2	33,810	
	Meredosia	3		13,890
	Vermilion	2		8,880
Indiana	Bailly	7		11,180
		8	15,630	
	Breed	1		18,500
	Cayuga	1		33,370
		2	34,130	
	Clifty Creek	1		20,150
		2	19,810	
		3	20,410	
		4	20,080	
		5	19,360	
		6	20,380	
	E. W. Stout	5		3,880
		6	4,770	
		7	23,610	
	F. B. Culley	2		4,290
		3	16,970	
	F. E. Ratts	1		8,330
		2	8,480	
	Gibson	1		40,400
		2	41,010	
		3	41,080	
		4	40,320	
	H. T. Pritchard	6		5,770
	Michigan City	12		23,310
	Petersburg	1		16,430
		2	32,380	
	R. Gallagher	1		6,490
		2	7,280	
		3	6,530	
		4	7,650	

	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C. P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J. H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200

		3	10,090	
	New Madrid	1		28,240
		2	32,480	
	Sibley	3		15,580
	Sioux	1		22,570
		2	23,690	
	Thomas Hill	1		10,250
		2	19,390	
New Hampshire	Merrimack	1		10,190
		2	22,000	
New Jersey	B.L. England	1		9,060
		2	11,720	
New York	Dunkirk	3		12,600
		4	14,060	
	Greenidge	4		7,540
	Milliken	1		11,170
		2	12,410	
	Northport	1		19,810
		2	24,110	
		3	26,480	
	Port Jefferson	3		10,470
		4	12,330	
Ohio	Ashtabula	5		16,740
	Avon Lake	8		11,650
		9	30,480	
	Cardinal	1		34,270
		2	38,320	
	Conesville	1		4,210
		2	4,890	
		3	5,500	
		4	48,770	
	Eastlake	1		7,800
		2	8,640	
		3	10,020	
		4	14,510	
		5	34,070	
	Edgewater	4		5,050
	Gen. J.M. Gavin	1		79,080
		2	80,560	
	Kyger Creek	1		19,280
		2	18,560	
		3	17,910	
		4	18,710	
		5	18,740	
	Miami Fort	5		760
		6	11,380	
		7	38,510	
	Muskingum River	1		14,880
		2	14,170	
		3	13,950	
		4	11,780	

		5	40,470	
	Niles	1		6,940
		2	9,100	
	Picway	5		4,930
	R.E. Burger	3		6,150
		4	10,780	
		5	12,430	
	W.H. Sammis	5		24,170
		6	39,930	
		7	43,220	
	W.C. Beckjord	5		8,950
		6	23,020	
Pennsylvania	Armstrong	1		14,410
		2	15,430	
	Brunner Island	1		27,760
		2	31,100	
		3	53,820	
	Cheswick	1		39,170
	Conemaugh	1		59,790
		2	66,450	
	Hatfield's Ferry	1		37,830
		2	37,320	
		3	40,270	
	Martins Creek	1		12,660
		2	12,820	
	Portland	1		5,940
		2	10,230	
	Shawville	1		10,320
		2	10,320	
		3	14,220	
		4	14,070	
	Sunbury	3		8,760
		4	11,450	
Tennessee	Allen	1		15,320
		2	16,770	
		3	15,670	
	Cumberland	1		86,700
		2	94,840	
	Gallatin	1		17,870
		2	17,310	
		3	20,020	
		4	21,260	
	Johnsonville	1		7,790
		2	8,040	
		3	8,410	
		4	7,990	
		5	8,240	
		6	7,890	
		7	8,980	
		8	8,700	
		9	7,080	

		10	7,550	
West Virginia	Albright	3		12,000
	Fort Martin	1		41,590
		2	41,200	
	Harrison	1		48,620
		2	46,150	
		3	41,500	
	Kammer	1		18,740
		2	19,460	
		3	17,390	
	Mitchell	1		43,980
		2	45,510	
	Mount Storm	1		43,720
		2	35,580	
		3	42,430	
Wisconsin	Edgewater	4		24,750
	La Crosse/Genoa	3		22,700
	Nelson Dewey	1		6,010
		2	6,680	
	N. Oak Creek	1		5,220
		2	5,140	
		3	5,370	
		4	6,320	
	Pulliam	8		7,510
	S. Oak Creek	5		9,670
		6	12,040	
		7	16,180	
		8	15,790	

(f) Energy conservation and renewable energy

(1) Definitions

As used in this subsection:

(A) Qualified energy conservation measure

The term "qualified energy conservation measure" means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

(B) Qualified renewable energy

The term "qualified renewable energy" means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

(C) Electric utility

The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

(2) Allowances for emissions avoided through energy conservation and renewable energy

(A) In general

The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall

allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g), up to a total of 300,000 allowances for allocation from such Reserve.

(B) Requirements for issuance

The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

(i) Such electric utility is paying for the qualified energy conservation measures or qualified renewable energy directly or through purchase from another person.

(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

(III) Electric utilities subject to the jurisdiction of a State regulatory authority must have such plan approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall be approved by the entity with rate-making authority for such utility.

(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy certifies that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (A) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

(C) Period of applicability

Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992 and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subchapter (including those sources that elect to become affected by this subchapter, pursuant to section 7651i of this title).

(D) Determination of avoided emissions

(i) [8] Application

In order to receive allowances under this subsection, an electric utility shall make an application which—

(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions,[9]

(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

(III) demonstrates that the requirements of subparagraph (B) have been met.

Such application for allowances by a State-regulated electric utility shall require approval by

the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

(E) Avoided emissions from qualified energy conservation measures

For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures, by

(ii) 0.004,

and dividing by 2,000.

(F) Avoided emissions from the use of qualified renewable energy

The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy, by

(ii) 0.004,

and dividing by 2,000.

(G) Prohibitions

(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

(3) Savings provision

Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

(4) Regulations

Not later than 18 months after November 15, 1990, and in conjunction with the regulations required to be promulgated under subsections (b) and (c), the Administrator shall, in consultation with the Secretary of Energy, promulgate regulations under this subsection. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility to electric utility and from State to State in accordance with the Administrator's rules. The Administrator shall publish the findings of this review no less than annually.

(g) Conservation and Renewable Energy Reserve

The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 7651b of this title. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. If allowances remain in the reserve after January 2, 2010, the

Administrator shall allocate such allowances for affected units under section 7651d of this title on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 7651d of this title, the term "pro rata basis" refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

(h) Alternative allowance allocation for units in certain utility systems with optional baseline

(1) Optional baseline for units in certain systems

In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

(A) has an emission rate below 1.0 lbs/mmBtu,

(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu,

at the election of the owner or operator of such unit, the unit's baseline may be calculated (i) as provided under section 7651a(d) [1] of this title, or (ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

(2) Allowance allocation

Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 7651b(a)(1) of this title, this section, and section 7651d of this title (as basic Phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs./mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 7651d of this title.

(July 14, 1955, ch. 360, title IV, §404, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2592.)

[1] So in original. Probably should be section "7651a(4)".

[2] So in original. Probably should be "unit's".

[3] So in original. Probably should be "this".

[4] So in original. Probably should be "paragraph (1)".

[5] So in original. Probably should be "subsection".

[6] So in original. Probably should be "majeure".

[7] So in original. Probably should be "impracticability".

[8] So in original. There is no cl. (ii).

[9] So in original. The comma probably should be a semicolon.

§7651d. Phase II sulfur dioxide requirements

(a) Applicability

(1) After January 1, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subchapter. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate. The owner or operator of any unit operated in violation of this section shall be fully liable under this chapter for fulfilling the obligations specified in section 7651j of this title.

(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2), (c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 7651e of this title. Not later than June 1, 1998, the Administrator shall calculate, for each unit granted an extension pursuant to section 7651h of this title the difference between (A) the number of allowances allocated for the unit in calendar year 2000, and (B) the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2000, and sum the computations. In each year, beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall deduct from each unit's basic Phase II allowance allocation its pro rata share of 10 percent of the sum calculated pursuant to the preceding sentence.

(3) In addition to basic Phase II allowance allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 7651c of this title (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Steam). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 7651b(a) of this title.

(b) Units equal to, or above, 75 MWe and 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 7407 of this title for any pollutant subject to the requirements of section 7409 of this title to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a

prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

(c) Coal or oil-fired units below 75 MWe and above 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 7411 of this title or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units [1] total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions.

(4) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990, (A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices, (B) has more than 10

percent of its fossil-fuel capacity consisting of coal-fired units of less than 75 MWe, and (C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions.

(d) Coal-fired units below 1.20 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which (i) the product of the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(B) In addition to allowances allocated pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which (i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1),

(2), (3), (5), or (6),[2] allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 7411 of this title in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

(5) For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2000, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(e) Oil and gas-fired units equal to or greater than 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu

After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(f) Oil and gas-fired units less than 0.60 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowable 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 7651b(a)(1) of this title, beginning January 1, 2000, the Administrator shall,[3] in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

(g) Units that commence operation between 1986 and December 31, 1995

(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 7651b of this title to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

TABLE B

Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197

TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, Provided [4] that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b) [5] of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq,[6] repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions.

(6)(A) [7] Unless the Administrator has approved a designation of such facility under section 7651i of this title, the provisions of this subchapter shall not apply to a "qualifying small power production facility" or "qualifying cogeneration facility" (within the meaning of section 796(17)(C) or 796(18)(B) of title 16) or to a "new independent power production facility" as defined in section 7651o of this title except [8] that clause (iii) [9] of such definition in section 7651o of this title shall not apply for purposes of this paragraph if, as of November 15, 1990,

(i) an applicable power sales agreement has been executed;

(ii) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

(iii) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

(iv) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

(h) Oil and gas-fired units less than 10 percent oil consumed

(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(3) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title, beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(i) Units in high growth States

(1) In addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988,

in an amount equal to the difference between (A) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and (B) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section: *Provided*, That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1), (A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990, (B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000, (C) which commenced operation after January 1, 1970, (D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990, and (E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 per centum or more from 1980 to 1988, allowances in an amount equal to the difference between (i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator and (ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) of this section: *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000-allowance restriction

imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

(j) Certain municipally owned power plants

Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

(July 14, 1955, ch. 360, title IV, §405, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2605.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978, referred to in subsec. (g)(5), is section 301(b) of Pub. L. 95–620, which is classified to section 8341(b) of this title. A prior section 301(b) of Pub. L. 95–620, title III, Nov. 9, 1978, 92 Stat. 3305, which was formerly classified to section 8341(b) of this title, was repealed by Pub. L. 97–35, title X, §1021(a), Aug. 13, 1981, 95 Stat. 614.

[1] So in original. Probably should be "unit's".

[2] So in original. This subsection does not contain a paragraph (6).

[3] So in original. The words "the Administrator shall," probably should not appear.

[4] So in original. Probably should not be capitalized.

[5] See References in Text note below.

[6] So in original. Probably should be "seq.,".

[7] So in original. No subpar. (B) has been enacted.

[8] So in original. Probably should be preceded by a comma.

[9] So in original. Probably means clause "(C)".

§7651e. Allowances for States with emissions rates at or below 0.80 lbs/mmBtu

(a) Election of Governor

In addition to basic Phase II allowance allocations, upon the election of the Governor of any State, with a 1985 state-wide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other Phase II bonus allowance allocations, allowances from the reserve created pursuant to section 7651d(a)(2) of this title to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

(b) Notification of Administrator

Pursuant to section 7651b(a)(1) of this title, each Governor of a State eligible to make an election under paragraph [1] (a) shall notify the Administrator of such election. In the event that the Governor of any such State fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 7651d of this title.

(c) Allowances after January 1, 2010

After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 7651d of this title.

(July 14, 1955, ch. 360, title IV, §406, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2613.)

[1] *So in original. Probably should be "subsection".*

§7651f. Nitrogen oxides emission reduction program

(a) Applicability

On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 7651c, 7651d,[1] 7651h of this title, or on the date a unit subject to the provisions of section 7651c(d) or 7651h(b) of this title, must meet the SO_2 reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

(b) Emission limitations

(1) Not later than eighteen months after November 15, 1990, the Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: *Provided*, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_x burner technology. The maximum allowable emission rates are as follows:

(A) for tangentially fired boilers, 0.45 lb/mmBtu;

(B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu.

After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

(2) Not later than January 1, 1997, the Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

(A) wet bottom wall-fired boilers;

(B) cyclones;

(C) units applying cell burner technology;

(D) all other types of utility boilers.

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1). Not later than January 1, 1997, the Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that

more effective low NO_x burner technology is available: *Provided*, That, no unit that is an affected unit pursuant to section 7651c of this title and that is subject to the requirements of subsection (b)(1), shall be subject to the revised emission limitations, if any.

(c) Revised performance standards

(1) [2] Not later than January 1, 1993, the Administrator shall propose revised standards of performance to section 7411 of this title for nitrogen oxides emissions from fossil-fuel fired steam generating units, including both electric utility and nonutility units. Not later than January 1, 1994, the Administrator shall promulgate such revised standards of performance. Such revised standards of performance shall reflect improvements in methods for the reduction of emissions of oxides of nitrogen.

(d) Alternative emission limitations

The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) upon a determination that—

(1) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low NO_x burner technology; or

(2) a unit subject to subsection (b)(2) cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator not later than eighteen months after November 15, 1990, that the owner or operator—

(1) has properly installed appropriate control equipment designed to meet the applicable emission rate;

(2) has properly operated such equipment for a period of fifteen months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

(3) has specified an emission rate that such unit can meet on an annual average basis.

The permitting authority shall issue an operating permit for the unit in question, in accordance with section 7651g of this title and part B [3] of title III—

(i) that permits the unit during the demonstration period referred to in subparagraph (2) above, to emit at a rate in excess of the applicable emission rate;

(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in paragraphs (2) and (3) above.

Units subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO_x burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NO_x control technology capable of achieving the applicable emission limitation. If the owner or operator of a unit subject to the emissions limitation requirements of subsection (b)(1) demonstrates to the satisfaction of the Administrator that the technology necessary to meet such requirements is not in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by January 1, 1995, then the Administrator shall extend the deadline for compliance for the unit by a period of 15 months. Any owner or operator may petition the Administrator to make a determination under the previous sentence. The Administrator shall grant or deny such petition within 3 months of submittal.

(e) Emissions averaging

In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (d),

the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections,[4] may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that (1) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b)(1) and (2).

If the permitting authority determines, in accordance with regulations issued by the Administrator not later than eighteen months after November 15, 1990; [5] that the conditions in the paragraph above can be met, the permitting authority shall issue operating permits for such units, in accordance with section 7651g of this title and part B [3] of title III, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits.

(July 14, 1955, ch. 360, title IV, §407, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2613.)

EDITORIAL NOTES

REFERENCES IN TEXT

Part B of title III, referred to in subsecs. (d) and (e), means title III of the Clean Air Act, act July 14, 1955, ch. 360, as added, which is classified to subchapter III of this chapter, but title III does not contain parts. For provisions of the Clean Air Act relating to permits, see subchapter V (§7661 et seq.) of this chapter.

[1] So in original. Probably should be followed by "or".

[2] So in original. No par. (2) has been enacted.

[3] See References in Text note below.

[4] So in original. Probably should be "subsections,".

[5] So in original. The semicolon probably should be a comma.

§7651g. Permits and compliance plans

(a) Permit program

The provisions of this subchapter shall be implemented, subject to section 7651b of this title, by permits issued to units subject to this subchapter (and enforced) in accordance with the provisions of subchapter V, as modified by this subchapter. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

(1) annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide the owner or operator, or the designated representative of the owners or operators, of the unit hold for the unit,

(2) exceedances of applicable emissions rates,

(3) the use of any allowance prior to the year for which it was allocated, and

(4) contravention of any other provision of the permit.

Permits issued to implement this subchapter shall be issued for a period of 5 years, notwithstanding subchapter V. No permit shall be issued that is inconsistent with the requirements of this subchapter, and subchapter V as applicable.

(b) Compliance plan

Each initial permit application shall be accompanied by a compliance plan for the source to comply with its requirements under this subchapter. Where an affected source consists of more than one affected unit, such plan shall cover all such units, and for purposes of section 7661a(c) of this title, such source shall be considered a "facility". Nothing in this section regarding compliance plans or in subchapter V shall be construed as affecting allowances. Except as provided under subsection (c)(1)(B), submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 7651c, 7651d, and 7651f of this title, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 7651c and 7651d of this title, the owners and operators will hold allowances to emit not less than the total annual emissions of the unit, shall be deemed to meet the proposed and approved compliance planning requirements of this section and subchapter V, except that, for any unit that will meet the requirements of this subchapter by means of an alternative method of compliance authorized under section 7651c(b), (c), (d), or (f) of this title [1] section 7651f(d) or (e) of this title, section 7651h of this title and section 7651i of this title, the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under this subchapter. Recordation by the Administrator of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits. The Administrator may also require—

(1) for a source, a demonstration of attainment of national ambient air quality standards, and

(2) from the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

(c) First phase permits

The Administrator shall issue permits to affected sources under sections 7651c and 7651f of this title.

(1) Permit application and compliance plan

(A) Not later than 27 months after November 15, 1990, the designated representative of the owners or operators, or the owner and operator, of each affected source under sections 7651c and 7651f of this title shall submit a permit application and compliance plan for that source in accordance with regulations issued by the Administrator under paragraph (3). The permit application and the compliance plan shall be binding on the owner or operator or the designated representative of owners and operators for purposes of this subchapter and section 7651a(a) [2] of this title, and shall be enforceable in lieu of a permit until a permit is issued by the Administrator for the source.

(B) In the case of a compliance plan for an affected source under sections 7651c and 7651f of this title for which the owner or operator proposes to meet the requirements of that section by reducing utilization of the unit as compared with its baseline or by shutting down the unit, the owner or operator shall include in the proposed compliance plan a specification of the unit or units that will provide electrical generation to compensate for the reduced output at the affected source, or a demonstration that such reduced utilization will be accomplished through energy conservation or improved unit efficiency. The unit to be used for such compensating generation, which is not otherwise an affected unit under sections 7651c and 7651f of this title, shall be deemed an affected unit under section 7651c of this title, subject to all of the requirements for such units under this subchapter, except that allowances shall be allocated to such compensating unit in the amount of an annual limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000.

(2) EPA action on compliance plans

The Administrator shall review each proposed compliance plan to determine whether it satisfies

the requirements of this subchapter, and shall approve or disapprove such plan within 6 months after receipt of a complete submission. If a plan is disapproved, it may be resubmitted for approval with such changes as the Administrator shall require consistent with the requirements of this subchapter and within such period as the Administrator prescribes as part of such disapproval.

(3) Regulations; issuance of permits

Not later than 18 months after November 15, 1990, the Administrator shall promulgate regulations, in accordance with subchapter V, to implement a Federal permit program to issue permits for affected sources under this subchapter. Following promulgation, the Administrator shall issue a permit to implement the requirements of section 7651c of this title and the allowances provided under section 7651b of this title to the owner or operator of each affected source under section 7651c of this title. Such a permit shall supersede any permit application and compliance plan submitted under paragraph (1).

(4) Fees

During the years 1995 through 1999 inclusive, no fee shall be required to be paid under section 7661a(b)(3) of this title or under section 7410(a)(2)(L) of this title with respect to emissions from any unit which is an affected unit under section 7651c of this title.

(d) Second phase permits

(1) To provide for permits for (A) new electric utility steam generating units required under section 7651b(e) of this title to have allowances, (B) affected units or sources under section 7651d of this title, and (C) existing units subject to nitrogen oxide emission reductions under section 7651f of this title, each State in which one or more such units or sources are located shall submit in accordance with subchapter V, a permit program for approval as provided by that subchapter. Upon approval of such program, for the units or sources subject to such approved program the Administrator shall suspend the issuance of permits as provided in subchapter V.

(2) The owner or operator or the designated representative of each affected source under section 7651d of this title shall submit a permit application and compliance plan for that source to the permitting authority, not later than January 1, 1996.

(3) Not later than December 31, 1997, each State with an approved permit program shall issue permits to the owner or operator, or the designated representative of the owners and operators, of affected sources under section 7651d of this title that satisfy the requirements of subchapter V and this subchapter and that submitted to such State a permit application and compliance plan pursuant to paragraph (2). In the case of a State without an approved permit program by July 1, 1996, the Administrator shall, not later than January 1, 1998, issue a permit to the owner or operator or the designated representative of each such affected source. In the case of affected sources for which applications and plans are timely received under paragraph (2), the permit application and the compliance plan, including amendments thereto, shall be binding on the owner or operator or the designated representative of the owners or operators and shall be enforceable as a permit for purposes of this subchapter and subchapter V until a permit is issued by the permitting authority for the affected source. The provisions of section 558(c) of title 5 (relating to renewals) shall apply to permits issued by a permitting authority under this subchapter and subchapter V.

(4) The permit issued in accordance with this subsection for an affected source shall provide that the affected units at the affected source may not emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide the owner or operator or designated representative hold for the unit.

(e) New units

The owner or operator of each source that includes a new electric utility steam generating unit shall submit a permit application and compliance plan to the permitting authority not later than 24 months before the later of (1) January 1, 2000, or (2) the date on which the unit commences operation. The permitting authority shall issue a permit to the owner or operator, or the designated representative thereof, of the unit that satisfies the requirements of subchapter V and this subchapter.

(f) Units subject to certain other limits

The owner or operator, or designated representative thereof, of any unit subject to an emission rate requirement under section 7651f of this title shall submit a permit application and compliance plan for such unit to the permitting authority, not later than January 1, 1998. The permitting authority shall issue a permit to the owner or operator that satisfies the requirements of subchapter V and this subchapter, including any appropriate monitoring and reporting requirements.

(g) Amendment of application and compliance plan

At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section. In considering any permit application and compliance plan under this subchapter, the permitting authority shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

(h) Prohibition

(1) It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this subchapter to fail to submit such application or plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

(2) It shall be unlawful for any person to operate any source subject to this subchapter except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 7661c(f) of this title, with a permit issued under subchapter V which complies with this subchapter for sources subject to this subchapter shall be deemed compliance with this subsection as well as section 7661a(a) of this title.

(3) In order to ensure reliability of electric power, nothing in this subchapter or subchapter V shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of section 7413 of this title.

(i) Multiple owners

No permit shall be issued under this section to an affected unit until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this subchapter, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate shall state (1) that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or (2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract. A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

(July 14, 1955, ch. 360, title IV, §408, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2616.)

[1] *So in original. Probably should be followed by a comma.*

[2] *So in original. Section 7651a of this title does not contain subsections.*

§7651h. Repowered sources

(a) Availability

Not later than December 31, 1997, the owner or operator of an existing unit subject to the emissions limitation requirements of section 7651d(b) and (c) of this title may demonstrate to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to comply with the requirements under section 7651d of this title. The owner or operator shall, as part of any such demonstration, provide, not later than January 1, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed and binding contract for the majority of the equipment to repower such unit and such other information as the Administrator may require by regulation. The replacement of an existing utility unit with a new utility unit using a repowering technology referred to in section 7651a(2) [1] of this title which is located at a different site, shall be treated as repowering of the existing unit for purposes of this subchapter, if—

(1) the replacement unit is designated by the owner or operator to replace such existing unit, and

(2) the existing unit is retired from service on or before the date on which the designated replacement unit enters commercial operation.

(b) Extension

(1) An owner or operator satisfying the requirements of subsection (a) shall be granted an extension of the emission limitation requirement compliance date for that unit from January 1, 2000, to December 31, 2003. The extension shall be specified in the permit issued to the source under section 7651g of this title, together with any compliance schedule and other requirements necessary to meet second phase requirements by the extended date. Any unit that is granted an extension under this section shall not be eligible for a waiver under section 7411(j) of this title, and shall continue to be subject to requirements under this subchapter as if it were a unit subject to section 7651d of this title.

(2) If (A) the owner or operator of an existing unit has been granted an extension under paragraph (1) in order to repower such unit with a clean coal unit, and (B) such owner or operator demonstrates to the satisfaction of the Administrator that the repowering technology to be utilized by such unit has been properly constructed and tested on such unit, but nevertheless has been unable to achieve the emission reduction limitations and is economically or technologically infeasible, such existing unit may be retrofitted or repowered with equipment or facilities utilizing another clean coal technology or other available control technology.

(c) Allowances

(1) For the period of the extension under this section, the Administrator shall allocate to the owner or operator of the affected unit, annual allowances for sulfur dioxide equal to the affected unit's baseline multiplied by the lesser of the unit's federally approved State Implementation Plan emissions limitation or its actual emission rate for 1995 in lieu of any other allocation. Such allowances may not be transferred or used by any other source to meet emission requirements under this subchapter. The source owner or operator shall notify the Administrator sixty days in advance of the date on which the affected unit for which the extension has been granted is to be removed from operation to install the repowering technology.

(2) Effective on that date, the unit shall be subject to the requirements of section 7651d of this title. Allowances for the year in which the unit is removed from operation to install the repowering technology shall be calculated as the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000, and prorated accordingly, and are transferable.

(3) Allowances for such existing utility units for calendar years after the year the repowering is complete shall be calculated as the product of the existing unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(4) Notwithstanding the provisions of section 7651b(a) and (e) of this title, allowances shall be allocated under this section for a designated replacement unit which replaces an existing unit (as provided in the last sentence of subsection (a)) in lieu of any further allocations of allowances for the existing unit.

(5) For the purpose of meeting the aggregate emissions limitation requirement set forth in section 7651b(a)(1) of this title, the units with an extension under this subsection shall be treated in each calendar year during the extension period as holding allowances allocated under paragraph (3).

(d) Control requirements

Any unit qualifying for an extension under this section that does not increase actual hourly emissions for any pollutant regulated under the [2] chapter shall not be subject to any standard of performance under section 7411 of this title. Notwithstanding the provisions of this subsection, no new unit (1) designated as a replacement for an existing unit, (2) qualifying for the extension under subsection (b), and (3) located at a different site than the existing unit shall receive an exemption from the requirements imposed under section 7411 of this title.

(e) Expedited permitting

State permitting authorities and, where applicable, the Administrator, are encouraged to give expedited consideration to permit applications under parts C and D of subchapter I of this chapter for any source qualifying for an extension under this section.

(f) Prohibition

It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirement of this section, or any regulations of permit requirements to implement this section, including the prohibition against emitting sulfur dioxide in excess of allowances held.

(July 14, 1955, ch. 360, title IV, §409, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2619.)

[1] So in original. Probably should be section "7651a(12)".

[2] So in original. Probably should be "this".

§7651i. Election for additional sources

(a) Applicability

The owner or operator of any unit that is not, nor will become, an affected unit under section 7651b(e), 7651c, or 7651d of this title, or that is a process source under subsection (d), that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subchapter. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 7651g of this title. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit, or source, shall be allocated allowances, and be an affected unit for purposes of this subchapter.

(b) Establishment of baseline

The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

(c) Emission limitations

Annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2,000.

(d) Process sources

Not later than 18 months after November 15, 1990, the Administrator shall establish a program under which the owner or operator of a process source that emits sulfur dioxide may elect to designate that source as an affected unit for the purpose of receiving allowances under this subchapter. The Administrator shall, by regulation, define the sources that may be designated; specify the emissions limitation; specify the operating, emission baseline, and other data requirements; prescribe CEMS or other monitoring requirements; and promulgate permit, reporting, and any other requirements necessary to implement such a program.

(e) Allowances and permits

The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c) or (d), in accordance with section 7651b of this title. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 7651b of this title. Affected sources under this section shall be subject to the requirements of sections 7651b, 7651g, 7651j, 7651k, 7651l, and 7651m of this title.

(f) Limitation

Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subchapter, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this chapter. No such allowances shall authorize operation of a unit in violation of any other requirements of this chapter.

(g) Implementation

The Administrator shall issue regulations to implement this section not later than eighteen months after November 15, 1990.

(h) Small diesel refineries

The Administrator shall issue allowances to owners or operators of small diesel refineries who produce diesel fuel after October 1, 1993, meeting the requirements of subsection [1] 7545(i) of this title.

(1) Allowance period

Allowances may be allocated under this subsection only for the period from October 1, 1993, through December 31, 1999.

(2) Allowance determination

The number of allowances allocated pursuant to this paragraph shall equal the annual number of pounds of sulfur dioxide reduction attributable to desulfurization by a small refinery divided by 2,000. For the purposes of this calculation, the concentration of sulfur removed from diesel fuel shall be the difference between 0.274 percent (by weight) and 0.050 percent (by weight).

(3) Refinery eligibility

As used in this subsection, the term "small refinery" shall mean a refinery or portion of a refinery—

(A) which, as of November 15, 1990, has bona fide crude oil throughput of less than

18,250,000 barrels per year, as reported to the Department of Energy, and

(B) which, as of November 15, 1990, is owned or controlled by a refiner with a total combined bona fide crude oil throughput of less than 50,187,500 barrels per year, as reported to the Department of Energy.

(4) Limitation per refinery

The maximum number of allowances that can be annually allocated to a small refinery pursuant to this subsection is one thousand and five hundred.

(5) Limitation on total

In any given year, the total number of allowances allocated pursuant to this subsection shall not exceed thirty-five thousand.

(6) Required certification

The Administrator shall not allocate any allowances pursuant to this subsection unless the owner or operator of a small diesel refinery shall have certified, at a time and in a manner prescribed by the Administrator, that all motor diesel fuel produced by the refinery for which allowances are claimed, including motor diesel fuel for off-highway use, shall have met the requirements of subsection [1] 7545(i) of this title.

(July 14, 1955, ch. 360, title IV, §410, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2621.)

[1] So in original. Probably should be "section".

§7651j. Excess emissions penalty

(a) Excess emissions penalty

The owner or operator of any unit or process source subject to the requirements of sections [1] 7651b, 7651c, 7651d, 7651e, 7651f or 7651h of this title, or designated under section 7651i of this title, that emits sulfur dioxide or nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 7410(f) of this title. That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the operator holds for use for the unit for that year, multiplied by $2,000. Any such penalty shall be due and payable without demand to the Administrator as provided in regulations to be issued by the Administrator by no later than eighteen months after November 15, 1990. Any such payment shall be deposited in the United States Treasury pursuant to the Miscellaneous Receipts Act.[2] Any penalty due and payable under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty or assessment against the unit for the same violation under any other section of this chapter.

(b) Excess emissions offset

The owner or operator of any affected source that emits sulfur dioxide during any calendar year in excess of the unit's emissions limitation requirement or of the allowances held for the unit for the calendar year, shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The owner or operator of the source shall, within sixty days after the end of the year in which the excess emissions occured,[3] submit to the Administrator, and to the State in which the source is located, a proposed plan to achieve the required offsets. Upon approval of the proposed plan by the Administrator, as submitted, modified or conditioned, the plan shall be deemed at [4] a condition of the operating permit

for the unit without further review or revision of the permit. The Administrator shall also deduct allowances equal to the excess tonnage from those allocated for the source for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(c) Penalty adjustment

The Administrator shall, by regulation, adjust the penalty specified in subsection (a) for inflation, based on the Consumer Price Index, on November 15, 1990, and annually thereafter.

(d) Prohibition

It shall be unlawful for the owner or operator of any source liable for a penalty and offset under this section to fail (1) to pay the penalty under subsection (a), (2) to provide, and thereafter comply with, a compliance plan as required by subsection (b), or (3) to offset excess emissions as required by subsection (b).

(e) Savings provision

Nothing in this subchapter shall limit or otherwise affect the application of section 7413, 7414, 7420, or 7604 of this title except as otherwise explicitly provided in this subchapter.

(July 14, 1955, ch. 360, title IV, §411, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2623.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Miscellaneous Receipts Act, referred to in subsec. (a), is not a recognized popular name for an act. For provisions relating to deposit of monies, see section 3302 of Title 31, Money and Finance.

[1] So in original. Probably should be "section".

[2] See References in Text note below.

[3] So in original. Probably should be "occurred,".

[4] So in original.

§7651k. Monitoring, reporting, and recordkeeping requirements

(a) Applicability

The owner and operator of any source subject to this subchapter shall be required to install and operate CEMS on each affected unit at the source, and to quality assure the data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow at each such unit. The Administrator shall, by regulations issued not later than eighteen months after November 15, 1990, specify the requirements for CEMS, for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations or the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this subchapter. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

(b) First phase requirements

Not later than thirty-six months after November 15, 1990, the owner or operator of each affected unit under section 7651c of this title, including, but not limited to, units that become affected units pursuant to subsections (b) and (c) and eligible units under subsection (d), shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a).

(c) Second phase requirements

Not later than January 1, 1995, the owner or operator of each affected unit that has not previously met the requirements of subsections (a) and (b) shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a). Upon commencement of commercial operation of each new utility unit, the unit shall comply with the requirements of subsection (a).

(d) Unavailability of emissions data

If CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this subchapter, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data was not available and shall, by regulation which shall be issued not later than eighteen months after November 15, 1990, prescribe means to calculate emissions for that period. The owner or operator shall be liable for excess emissions fees and offsets under section 7651j of this title in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee or assessment against the unit for the same violation under any other section of this chapter.

(e) Prohibition

It shall be unlawful for the owner or operator of any source subject to this subchapter to operate a source without complying with the requirements of this section, and any regulations implementing this section.

(July 14, 1955, ch. 360, title IV, §412, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2624.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

INFORMATION GATHERING ON GREENHOUSE GASES CONTRIBUTING TO GLOBAL CLIMATE CHANGE

Pub. L. 101–549, title VIII, §821, Nov. 15, 1990, 104 Stat. 2699, provided that:

"(a) MONITORING.—The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] to require that all affected sources subject to title V of the Clean Air Act [probably means title IV of the Clean Air Act as added by Pub. L. 101–549, which is classified to section 7651 et seq. of this title] shall also monitor carbon dioxide emissions according to the same timetable as in section 511(b) and (c) [probably means section 412(b) and (c) of the Clean Air Act, which is classified to section 7651k(b) and (c) of this title]. The regulations shall require that such data be reported to the Administrator. The provisions of section 511(e) of title V of the Clean Air Act [probably means section 412(e) of title IV of the Clean Air Act, which is classified to section 7651k(e) of this title] shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 511 [probably means section 412 of the Clean Air Act, which is classified to section 7651k of this title].

"(b) PUBLIC AVAILABILITY OF CARBON DIOXIDE INFORMATION.—For each unit required to monitor and provide carbon dioxide data under subsection (a), the Administrator shall compute the unit's aggregate annual total carbon dioxide emissions, incorporate such data into a computer data base, and make such aggregate annual data available to the public."

§7651*l*. General compliance with other provisions

Except as expressly provided, compliance with the requirements of this subchapter shall not exempt or exclude the owner or operator of any source subject to this subchapter from compliance with any other applicable requirements of this chapter.

(July 14, 1955, ch. 360, title IV, §413, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2625.)

§7651m. Enforcement

It shall be unlawful for any person subject to this subchapter to violate any prohibition of, requirement of, or regulation promulgated pursuant to this subchapter shall be a violation of this chapter.[1] In addition to the other requirements and prohibitions provided for in this subchapter, the operation of any affected unit to emit sulfur dioxide in excess of allowances held for such unit shall be deemed a violation, with each ton emitted in excess of allowances held constituting a separate violation.

(July 14, 1955, ch. 360, title IV, §414, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2625.)

[1] *So in original.*

§7651n. Clean coal technology regulatory incentives

(a) "Clean coal technology" defined

For purposes of this section, "clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of November 15, 1990.

(b) Revised regulations for clean coal technology demonstrations

(1) Applicability

This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(2) Temporary projects

Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 7411 of this title or part C or D of subchapter I.

(3) Permanent projects

For permanent clean coal technology demonstration projects that constitute repowering as defined in section 7651a(l) [1] of this title, any qualifying project shall not be subject to standards of

performance under section 7411 of this title or to the review and permitting requirements of part C [2] for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

(4) EPA regulations

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 7411 of this title and parts C and D,[2] as appropriate, to facilitate projects consistent in [3] this subsection. With respect to parts C and D,[2] such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D,[2] any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

(c) Exemption for reactivation of very clean units

Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 7411 of this title or part C of the Act [2] where the unit (1) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment, (2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent, (3) is equipped with low-NO_x burners prior to the time of commencement, and (4) is otherwise in compliance with the requirements of this chapter.

(July 14, 1955, ch. 360, title IV, §415, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2625.)

EDITORIAL NOTES

REFERENCES IN TEXT

Parts C and D and part C of the Act, referred to in subsecs. (b)(3), (4) and (c), probably mean parts C and D of subchapter I of this chapter.

[1] So in original. Probably should be section "7651a(12)".

[2] See References in Text note below.

[3] So in original. Probably should be "with".

§7651*o*. Contingency guarantee, auctions, reserve

(a) Definitions

For purposes of this section—

(1) The term "independent power producer" means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

(2) The term "new independent power production facility" means a facility that—

(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) is nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of November 15, 1990);

(C) does not generate electric energy sold to any affiliate (as defined in section 79b(a)(11) [1]

of title 15) of the facility's owner or operator unless the owner or operator of the facility demonstrates that it cannot obtain allowances from the affiliate; and

(D) is a new unit required to hold allowances under this subchapter.

(3) The term "required allowances" means the allowances required to operate such unit for so much of the unit's useful life as occurs after January 1, 2000.

(b) Special reserve of allowances

Within 36 months after November 15, 1990, the Administrator shall promulgate regulations establishing a Special Allowance Reserve containing allowances to be sold under this section. For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

(2) 2.8 percent of the basic Phase II allowance allocation of allowances for each year beginning in the year 2000

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

(c) Direct sale at $1,500 per ton

(1) Subaccount for direct sales

In accordance with regulations under this section, the Administrator shall establish a Direct Sale Subaccount in the Special Allowance Reserve established under this section. The Direct Sale Subaccount shall contain allowances in the amount of 50,000 tons per year for each year beginning in the year 2000.

(2) Sales

Allowances in the subaccount shall be offered for direct sale to any person at the times and in the amounts specified in table 1 at a price of $1,500 per allowance, adjusted by the Consumer Price Index in the same manner as provided in paragraph (3). Requests to purchase allowances from the Direct Sale Subaccount established under paragraph (1) shall be approved in the order of receipt until no allowances remain in such subaccount, except that an opportunity to purchase such allowances shall be provided to the independent power producers referred to in this subsection before such allowances are offered to any other person. Each applicant shall be required to pay 50 percent of the total purchase price of the allowances within 6 months after the approval of the request to purchase. The remainder shall be paid on or before the transfer of the allowances.

TABLE 1—NUMBER OF ALLOWANCES AVAILABLE FOR SALE AT $1,500 PER TON

Year of Sale	Spot Sale (same year)	Advance Sale
1993–1999		25,000
2000 and after	25,000	25,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year). Allowances sold in the advance sale in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

(3) Entitlement to written guarantee

Any independent power producer that submits an application to the Administrator establishing that such independent power producer—

(A) proposes to construct a new independent power production facility for which allowances

are required under this subchapter;

(B) will apply for financing to construct such facility after January 1, 1990, and before the date of the first auction under this section;

(C) has submitted to each owner or operator of an affected unit listed in table A (in section 7651c of this title) a written offer to purchase the required allowances for $750 per ton; and

(D) has not received (within 180 days after submitting offers to purchase under subparagraph (C)) an acceptance of the offer to purchase the required allowances,

shall, within 30 days after submission of such application, be entitled to receive the Administrator's written guarantee (subject to the eligibility requirements set forth in paragraph (4)) that such required allowances will be made available for purchase from the Direct Sale Subaccount established under this subsection and at a guaranteed price. The guaranteed price at which such allowances shall be made available for purchase shall be $1,500 per ton, adjusted by the percentage, if any, by which the Consumer Price Index (as determined under section 7661a(b)(3)(B)(v) of this title) for the year in which the allowance is purchased exceeds the Consumer Price Index for the calendar year 1990.

(4) Eligibility requirements

The guarantee issued by the Administrator under paragraph (3) shall be subject to a demonstration by the independent power producer, satisfactory to the Administrator, that—

(A) the independent power producer has—

(i) made good faith efforts to purchase the required allowances from the owners or operators of affected units to which allowances will be allocated, including efforts to purchase at annual auctions under this section, and from industrial sources that have elected to become affected units pursuant to section 7651i of this title; and

(ii) such bids and efforts were unsuccessful in obtaining the required allowances; and

(B) the independent power producer will continue to make good faith efforts to purchase the required allowances from the owners or operators of affected units and from industrial sources.

(5) Issuance of guaranteed allowances from Direct Sale Subaccount under this section

From the allowances available in the Direct Sale Subaccount established under this subsection, upon payment of the guaranteed price, the Administrator shall issue to any person exercising the right to purchase allowances pursuant to a guarantee under this subsection the allowances covered by such guarantee. Persons to which guarantees under this subsection have been issued shall have the opportunity to purchase allowances pursuant to such guarantee from such subaccount before the allowances in such reserve are offered for sale to any other person.

(6) Proceeds

Notwithstanding section 3302 of title 31 or any other provision of law, the Administrator shall require that the proceeds of any sale under this subsection be transferred, within 90 days after the sale, without charge, on a pro rata basis to the owners or operators of the affected units from whom the allowances were withheld under subsection (b) and that any unsold allowances be transferred to the Subaccount for Auction Sales established under subsection (d). No proceeds of any sale under this subsection shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or to the Administrator.

(7) Termination of subaccount

If the Administrator determines that, during any period of 2 consecutive calendar years, less than 20 percent of the allowances available in the subaccount for direct sales established under this subsection have been purchased under this paragraph, the Administrator shall terminate the subaccount and transfer such allowances to the Auction Subaccount under subsection (d).

(d) Auction sales

(1) Subaccount for auctions

The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year beginning in the calendar year 2000.

(2) Annual auctions

Commencing in 1993 and in each year thereafter, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator, in consultation with the Secretary of the Treasury, within 12 months of November 15, 1990. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table 2. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowances at specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subchapter.

TABLE 2—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of Sale	Spot Auction (same year)	Advance Auction
1993	50,000*	100,000
1994	50,000*	100,000
1995	50,000*	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000 and after	100,000	100,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

*Available for use only in 1995 (unless banked for use in a later year).

(3) Proceeds

(A) Notwithstanding section 3302 of title 31 or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b). No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(B) At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

(4) Additional auction participants

Any person holding allowances or to whom allowances are allocated by the Administrator may submit those allowances to the Administrator to be offered for sale at auction under this

subsection. The proceeds of any such sale shall be transferred at the time of sale by the purchaser to the person submitting such allowances for sale. The holder of allowances offered for sale under this paragraph may specify a minimum sale price. Any person may purchase allowances offered for auction under this paragraph. Such allowances shall be allocated and sold to purchasers on the basis of bid price after the auction under paragraph (2) is complete. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(5) Recording by EPA

The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subchapter.

(e) Changes in sales, auctions, and withholding

Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance sales or advance auctions) and 2005 (in the case of spot sales or spot auctions) decrease the number of allowances withheld and sold under this section.

(f) Termination of auctions

The Administrator may terminate the withholding of allowances and the auction sales under this section if the Administrator determines that, during any period of 3 consecutive calendar years after 2002, less than 20 percent of the allowances available in the auction subaccount have been purchased. Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(July 14, 1955, ch. 360, title IV, §416, as added Pub. L. 101–549, title IV, §401, Nov. 15, 1990, 104 Stat. 2626.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 79b of title 15, referred to in subsec. (a)(2)(C), was repealed by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974. See section 16451(1) of this title.

[1] *See References in Text note below.*

SUBCHAPTER V—PERMITS

§7661. Definitions

As used in this subchapter—

(1) Affected source

The term "affected source" shall have the meaning given such term in subchapter IV–A.

(2) Major source

The term "major source" means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

(A) A major source as defined in section 7412 of this title.
(B) A major stationary source as defined in section 7602 of this title or part D of subchapter I.

(3) Schedule of compliance

The term "schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

(4) Permitting authority

The term "permitting authority" means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.

(July 14, 1955, ch. 360, title V, §501, as added Pub. L. 101–549, title V, §501, Nov. 15, 1990, 104 Stat. 2635.)

§7661a. Permit programs

(a) Violations

After the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate an affected source (as provided in subchapter IV–A), a major source, any other source (including an area source) subject to standards or regulations under section 7411 or 7412 of this title, any other source required to have a permit under parts [1] C or D of subchapter I, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this subchapter. (Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

(b) Regulations

The Administrator shall promulgate within 12 months after November 15, 1990, regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(2) Monitoring and reporting requirements.

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this subchapter pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter, including section 7661f of this title, including the reasonable costs of—

(i) reviewing and acting upon any application for such a permit,

(ii) if the owner or operator receives a permit for such source, whether before or after November 15, 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

(iii) emissions and ambient monitoring,

(iv) preparing generally applicable regulations, or guidance,

(v) modeling, analyses, and demonstrations, and

(vi) preparing inventories and tracking emissions.

(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs [2] (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) As used in this subparagraph, the term "regulated pollutant" shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 7411 or 7412 of this title; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after 1990, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause—

(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(C)(i) If the Administrator determines, under subsection (d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i), that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this subchapter, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of title 26 (relating to computation of interest on underpayment of Federal taxes).

(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

(4) Requirements for adequate personnel and funding to administer the program.

(5) A requirement that the permitting authority have adequate authority to:

(A) issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter;

(B) issue permits for a fixed term, not to exceed 5 years;

(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

(D) terminate, modify, or revoke and reissue permits for cause;

(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties; and

(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this subchapter.

(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 7661b of this title or, as appropriate, subchapter IV–A) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 7661b(e) of this title, subject to the provisions of section 7414(c) of this title.

(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this chapter after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this subchapter regarding renewals.

(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 7661b(d) of this title) without requiring a permit revision, if the changes are not modifications under any provision of subchapter I and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions: [3] *Provided*, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

(c) Single permit

A single permit may be issued for a facility with multiple sources.

(d) Submission and approval

(1) Not later than 3 years after November 15, 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this subchapter. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the

Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this chapter, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(C) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of subchapter I).

(3) If a program meeting the requirements of this subchapter has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this subchapter for that State.

(e) Suspension

The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this subchapter until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

(f) Prohibition

No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this subchapter and each of the following:

(1) All requirements established under subchapter IV–A applicable to "affected sources".

(2) All requirements established under section 7412 of this title applicable to "major sources", "area sources," and "new sources".

(3) All requirements of subchapter I (other than section 7412 of this title) applicable to sources required to have a permit under this subchapter.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this chapter for failure to submit an approvable permit program.

(g) Interim approval

If a program (including a partial permit program) submitted under this subchapter substantially meets the requirements of this subchapter, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such

approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2), and the obligation of the Administrator to promulgate a program under this subchapter for the State pursuant to subsection (d)(3), shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

(h) Effective date

The effective date of a permit program, or partial or interim program, approved under this subchapter, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

(i) Administration and enforcement

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(3) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this subchapter for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this subchapter or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

(July 14, 1955, ch. 360, title V, §502, as added Pub. L. 101–549, title V, §501, Nov. 15, 1990, 104 Stat. 2635.)

[1] So in original. Probably should be "part".

[2] So in original. Probably should be "clauses".

[3] So in original. A closing parenthesis probably should precede the colon.

§7661b. Permit applications

(a) Applicable date

Any source specified in section 7661a(a) of this title shall become subject to a permit program, and required to have a permit, on the later of the following dates—

(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

(2) the date such source becomes subject to section 7661a(a) of this title.

(b) Compliance plan

(1) The regulations required by section 7661a(b) of this title shall include a requirement that the

applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this chapter. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

(c) Deadline

Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this subchapter, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application (consistent with the procedures established under this subchapter for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this chapter.

(d) Timely and complete applications

Except for sources required to have a permit before construction or modification under the applicable requirements of this chapter, if an applicant has submitted a timely and complete application for a permit required by this subchapter (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this chapter, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this subchapter shall be in violation of section 7661a(a) of this title before the date on which the source is required to submit an application under subsection (c).

(e) Copies; availability

A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this subchapter, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 7414(c) of this title, the applicant or permittee may submit such information separately. The requirements of section 7414(c) of this title shall apply to such information. The contents of a permit shall not be entitled to protection under section 7414(c) of this title.

(July 14, 1955, ch. 360, title V, §503, as added Pub. L. 101–549, title V, §501, Nov. 15, 1990, 104 Stat. 2641.)

§7661c. Permit requirements and conditions

(a) Conditions

Each permit issued under this subchapter shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.

(b) Monitoring and analysis

The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this chapter, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of subchapter IV–A, or where required elsewhere in this chapter.

(c) Inspection, entry, monitoring, certification, and reporting

Each permit issued under this subchapter shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation under this subchapter shall be signed by a responsible corporate official, who shall certify its accuracy.

(d) General permits

The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this subchapter. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 7661b of this title.

(e) Temporary sources

The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this chapter at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of subchapter I. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

(f) Permit shield

Compliance with a permit issued in accordance with this subchapter shall be deemed compliance with section 7661a of this title. Except as otherwise provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this chapter that relate to the permittee if—

(1) the permit includes the applicable requirements of such provisions, or

(2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Nothing in the preceding sentence shall alter or affect the provisions of section 7603 of this title, including the authority of the Administrator under that section.

(July 14, 1955, ch. 360, title V, §504, as added Pub. L. 101–549, title V, §501, Nov. 15, 1990, 104 Stat. 2642.)

§7661d. Notification to Administrator and contiguous States

(a) Transmission and notice

(1) Each permitting authority—

(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this chapter, and

(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

(2) The permitting authority shall notify all States—

(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

(B) that are within 50 miles of the source,

of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

(b) Objection by EPA

(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1), or (B) within 45 days after receiving notification under subsection (a)(2), objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

(2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. A copy of such petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within 60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan. Any denial of such petition shall be subject to judicial review under section 7607 of this title. The Administrator shall include in regulations under this subchapter provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c). If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c).

(c) Issuance or denial

If the permitting authority fails, within 90 days after the date of an objection under subsection (b), to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this subchapter. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

(d) Waiver of notification requirements

(1) The Administrator may waive the requirements of subsections (a) and (b) at the time of approval of a permit program under this subchapter for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) shall not apply. The preceding sentence shall not apply to major sources.

(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2). Any waiver granted under this subsection may be revoked or modified by the Administrator by rule.

(e) Refusal of permitting authority to terminate, modify, or revoke and reissue

If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this subchapter, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b). If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

(July 14, 1955, ch. 360, title V, §505, as added Pub. L. 101–549, title V, §501, Nov. 15, 1990, 104 Stat. 2643.)

§7661e. Other authorities

(a) In general

Nothing in this subchapter shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this chapter.

(b) Permits implementing acid rain provisions

The provisions of this subchapter, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of subchapter IV–A except as modified by that subchapter.

(July 14, 1955, ch. 360, title V, §506, as added Pub. L. 101–549, title V, §501, Nov. 15, 1990, 104 Stat. 2645.)

§7661f. Small business stationary source technical and environmental compliance assistance program

(a) Plan revisions

Consistent with sections 7410 and 7412 of this title, each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator as part of the State implementation plan for such State or as a revision to such State implementation plan under section 7410 of this title, plans for establishing a small business stationary source technical and environmental compliance assistance program. Such submission shall be made within 24 months after November 15, 1990. The Administrator shall approve such program if it includes each of the following:

(1) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to

encourage lawful cooperation among such sources and other persons to further compliance with this chapter.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

(3) A designated State office within the relevant State agency to serve as ombudsman for small business stationary sources in connection with the implementation of this chapter.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this chapter in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this chapter in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this chapter.

(6) Adequate mechanisms for informing small business stationary sources of their obligations under this chapter, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this chapter.

(7) Procedures for consideration of requests from a small business stationary source for modification of—

(A) any work practice or technological method of compliance, or

(B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date,

based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of this chapter, including the requirements of the applicable implementation plan. Where such applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

(b) Program

The Administrator shall establish within 9 months after November 15, 1990, a small business stationary source technical and environmental compliance assistance program. Such program shall—

(1) assist the States in the development of the program required under subsection (a) (relating to assistance for small business stationary sources);

(2) issue guidance for the use of the States in the implementation of these programs that includes alternative control technologies and pollution prevention methods applicable to small business stationary sources; and

(3) provide for implementation of the program provisions required under subsection (a)(4) in any State that fails to submit such a program under that subsection.

(c) Eligibility

(1) Except as provided in paragraphs (2) and (3), for purposes of this section, the term "small business stationary source" means a stationary source that—

(A) is owned or operated by a person that employs 100 or fewer individuals,[1]

(B) is a small business concern as defined in the Small Business Act [15 U.S.C. 631 et seq.];

(C) is not a major stationary source;

(D) does not emit 50 tons or more per year of any regulated pollutant; and

(E) emits less than 75 tons per year of all regulated pollutants.

(2) Upon petition by a source, the State may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subparagraphs [2] (C), (D), or (E) of paragraph (1) but which does not

emit more than 100 tons per year of all regulated pollutants.

(3)(A) The Administrator, in consultation with the Administrator of the Small Business Administration and after providing notice and opportunity for public comment, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the Administrator determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

(B) The State, in consultation with the Administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

(d) Monitoring

The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman (hereinafter in this section referred to as the "Ombudsman") to monitor the small business stationary source technical and environmental compliance assistance program under this section. In carrying out such monitoring activities, the Ombudsman shall—

(1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

(2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,[3] the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and

(4) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(e) Compliance Advisory Panel

(1) There shall be created a Compliance Advisory Panel (hereinafter referred to as the "Panel") on the State level of not less than 7 individuals. This Panel shall—

(A) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

(B) make periodic reports to the Administrator concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,[3] the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(C) review information for small business stationary sources to assure such information is understandable by the layperson; and

(D) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(2) The Panel shall consist of—

(A) 2 members, who are not owners, or representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(B) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the lower house, or in the case of a unicameral State legislature, 2 members each shall be selected by

the majority leadership and the minority leadership, respectively, of such legislature, and subparagraph (C) shall not apply);

(C) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the upper house, or the equivalent State entity); and

(D) 1 member selected by the head of the department or agency of the State responsible for air pollution permit programs to represent that agency.

(f) Fees

The State (or the Administrator) may reduce any fee required under this chapter to take into account the financial resources of small business stationary sources.

(g) Continuous emission monitors

In developing regulations and CTGs under this chapter that contain continuous emission monitoring requirements, the Administrator, consistent with the requirements of this chapter, before applying such requirements to small business stationary sources, shall consider the necessity and appropriateness of such requirements for such sources. Nothing in this subsection shall affect the applicability of subchapter IV–A provisions relating to continuous emissions monitoring.

(h) Control technique guidelines

The Administrator shall consider, consistent with the requirements of this chapter, the size, type, and technical capabilities of small business stationary sources (and sources which are eligible under subsection (c)(2) to be treated as small business stationary sources) in developing CTGs applicable to such sources under this chapter.

(July 14, 1955, ch. 360, title V, §507, as added Pub. L. 101–549, title V, §501, Nov. 15, 1990, 104 Stat. 2645.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (c)(1)(B), is Pub. L. 85–536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Paperwork Reduction Act, referred to in subsecs. (d)(2) and (e)(1)(B), probably means the Paperwork Reduction Act of 1980, Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Regulatory Flexibility Act, referred to in subsecs. (d)(2) and (e)(1)(B), is Pub. L. 96–354, Sept. 19, 1980, 94 Stat. 1164, which is classified generally to chapter 6 (§601 et seq.) of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 5 and Tables.

The Equal Access to Justice Act, referred to in subsecs. (d)(2) and (e)(1)(B), is title II of Pub. L. 96–481, Oct. 21, 1980, 94 Stat. 2325. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5.

[1] So in original. The comma probably should be a semicolon.

[2] So in original. Probably should be "subparagraph".

[3] See References in Text note below.

SUBCHAPTER VI—STRATOSPHERIC OZONE PROTECTION

§7671. Definitions

As used in this subchapter—

(1) Appliance

The term "appliance" means any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(2) Baseline year

The term "baseline year" means—

(A) the calendar year 1986, in the case of any class I substance listed in Group I or II under section 7671a(a) of this title,

(B) the calendar year 1989, in the case of any class I substance listed in Group III, IV, or V under section 7671a(a) of this title, and

(C) a representative calendar year selected by the Administrator, in the case of—

(i) any substance added to the list of class I substances after the publication of the initial list under section 7671a(a) of this title, and

(ii) any class II substance.

(3) Class I substance

The term "class I substance" means each of the substances listed as provided in section 7671a(a) of this title.

(4) Class II substance

The term "class II substance" means each of the substances listed as provided in section 7671a(b) of this title.

(5) Commissioner

The term "Commissioner" means the Commissioner of the Food and Drug Administration.

(6) Consumption

The term "consumption" means, with respect to any substance, the amount of that substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol. Such term shall be construed in a manner consistent with the Montreal Protocol.

(7) Import

The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) Medical device

The term "medical device" means any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—

(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner; and

(B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.

(9) Montreal Protocol

The terms "Montreal Protocol" and "the Protocol" mean the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by Parties thereto and amendments that have entered into force.

(10) Ozone-depletion potential

The term "ozone-depletion potential" means a factor established by the Administrator to reflect the ozone-depletion potential of a substance, on a mass per kilogram basis, as compared to chlorofluorocarbon-11 (CFC–11). Such factor shall be based upon the substance's atmospheric lifetime, the molecular weight of bromine and chlorine, and the substance's ability to be photolytically disassociated, and upon other factors determined to be an accurate measure of relative ozone-depletion potential.

(11) Produce, produced, and production

The terms "produce", "produced", and "production", refer to the manufacture of a substance from any raw material or feedstock chemical, but such terms do not include—

(A) the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or

(B) the reuse or recycling of a substance.

(July 14, 1955, ch. 360, title VI, §601, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2649.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in par. (8), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

§7671a. Listing of class I and class II substances

(a) List of class I substances

Within 60 days after November 15, 1990, the Administrator shall publish an initial list of class I substances, which list shall contain the following substances:

Group I
chlorofluorocarbon-11 (CFC–11)
chlorofluorocarbon-12 (CFC–12)
chlorofluorocarbon-113 (CFC–113)
chlorofluorocarbon-114 (CFC–114)
chlorofluorocarbon-115 (CFC–115)

Group II
halon-1211
halon-1301
halon-2402

Group III
chlorofluorocarbon-13 (CFC–13)
chlorofluorocarbon-111 (CFC–111)
chlorofluorocarbon-112 (CFC–112)
chlorofluorocarbon-211 (CFC–211)

chlorofluorocarbon-212 (CFC–212)
chlorofluorocarbon-213 (CFC–213)
chlorofluorocarbon-214 (CFC–214)
chlorofluorocarbon-215 (CFC–215)
chlorofluorocarbon-216 (CFC–216)
chlorofluorocarbon-217 (CFC–217)

Group IV
carbon tetrachloride

Group V
methyl chloroform

The initial list under this subsection shall also include the isomers of the substances listed above, other than 1,1,2-trichloroethane (an isomer of methyl chloroform). Pursuant to subsection (c), the Administrator shall add to the list of class I substances any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer. The Administrator shall, pursuant to subsection (c), add to such list all substances that the Administrator determines have an ozone depletion potential of 0.2 or greater.

(b) List of class II substances

Simultaneously with publication of the initial list of class I substances, the Administrator shall publish an initial list of class II substances, which shall contain the following substances:

hydrochlorofluorocarbon-21 (HCFC–21)
hydrochlorofluorocarbon-22 (HCFC–22)
hydrochlorofluorocarbon-31 (HCFC–31)
hydrochlorofluorocarbon-121 (HCFC–121)
hydrochlorofluorocarbon-122 (HCFC–122)
hydrochlorofluorocarbon-123 (HCFC–123)
hydrochlorofluorocarbon-124 (HCFC–124)
hydrochlorofluorocarbon-131 (HCFC–131)
hydrochlorofluorocarbon-132 (HCFC–132)
hydrochlorofluorocarbon-133 (HCFC–133)
hydrochlorofluorocarbon-141 (HCFC–141)
hydrochlorofluorocarbon-142 (HCFC–142)
hydrochlorofluorocarbon-221 (HCFC–221)
hydrochlorofluorocarbon-222 (HCFC–222)
hydrochlorofluorocarbon-223 (HCFC–223)
hydrochlorofluorocarbon-224 (HCFC–224)
hydrochlorofluorocarbon-225 (HCFC–225)
hydrochlorofluorocarbon-226 (HCFC–226)
hydrochlorofluorocarbon-231 (HCFC–231)
hydrochlorofluorocarbon-232 (HCFC–232)
hydrochlorofluorocarbon-233 (HCFC–233)
hydrochlorofluorocarbon-234 (HCFC–234)
hydrochlorofluorocarbon-235 (HCFC–235)
hydrochlorofluorocarbon-241 (HCFC–241)
hydrochlorofluorocarbon-242 (HCFC–242)
hydrochlorofluorocarbon-243 (HCFC–243)
hydrochlorofluorocarbon-244 (HCFC–244)
hydrochlorofluorocarbon-251 (HCFC–251)
hydrochlorofluorocarbon-252 (HCFC–252)
hydrochlorofluorocarbon-253 (HCFC–253)
hydrochlorofluorocarbon-261 (HCFC–261)
hydrochlorofluorocarbon-262 (HCFC–262)

hydrochlorofluorocarbon-271 (HCFC–271)

The initial list under this subsection shall also include the isomers of the substances listed above. Pursuant to subsection (c), the Administrator shall add to the list of class II substances any other substance that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

(c) Additions to the lists

(1) The Administrator may add, by rule, in accordance with the criteria set forth in subsection (a) or (b), as the case may be, any substance to the list of class I or class II substances under subsection (a) or (b). For purposes of exchanges under section 7661f [1] of this title, whenever a substance is added to the list of class I substances the Administrator shall, to the extent consistent with the Montreal Protocol, assign such substance to existing Group I, II, III, IV, or V or place such substance in a new Group.

(2) Periodically, but not less frequently than every 3 years after November 15, 1990, the Administrator shall list, by rule, as additional class I or class II substances those substances which the Administrator finds meet the criteria of subsection (a) or (b), as the case may be.

(3) At any time, any person may petition the Administrator to add a substance to the list of class I or class II substances. Pursuant to the criteria set forth in subsection (a) or (b) as the case may be, within 180 days after receiving such a petition, the Administrator shall either propose to add the substance to such list or publish an explanation of the petition denial. In any case where the Administrator proposes to add a substance to such list, the Administrator shall add, by rule, (or make a final determination not to add) such substance to such list within 1 year after receiving such petition. Any petition under this paragraph shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this paragraph, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(4) Only a class II substance which is added to the list of class I substances may be removed from the list of class II substances. No substance referred to in subsection (a), including methyl chloroform, may be removed from the list of class I substances.

(d) New listed substances

In the case of any substance added to the list of class I or class II substances after publication of the initial list of such substances under this section, the Administrator may extend any schedule or compliance deadline contained in section 7671c or 7671d of this title to a later date than specified in such sections if such schedule or deadline is unattainable, considering when such substance is added to the list. No extension under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances. No extension under this subsection may extend the date for termination of production of any class II substance to a date more than 10 years after January 1 of the year after the year in which the substance is added to the list of class II substances.

(e) Ozone-depletion and global warming potential

Simultaneously with publication of the lists under this section and simultaneously with any addition to either of such lists, the Administrator shall assign to each listed substance a numerical value representing the substance's ozone-depletion potential. In addition, the Administrator shall publish the chlorine and bromine loading potential and the atmospheric lifetime of each listed substance. One year after November 15, 1990 (one year after the addition of a substance to either of such lists in the case of a substance added after the publication of the initial lists of such substances), and after notice and opportunity for public comment, the Administrator shall publish the global warming potential of each listed substance. The preceding sentence shall not be construed to be the basis of any additional regulation under this chapter. In the case of the substances referred to in table

1, the ozone-depletion potential shall be as specified in table 1, unless the Administrator adjusts the substance's ozone-depletion potential based on criteria referred to in section 7671(10) of this title:

TABLE 1

Substance	Ozone- depletion potential
chlorofluorocarbon-11 (CFC–11)	1.0
chlorofluorocarbon-12 (CFC–12)	1.0
chlorofluorocarbon-13 (CFC–13)	1.0
chlorofluorocarbon-111 (CFC–111)	1.0
chlorofluorocarbon-112 (CFC–112)	1.0
chlorofluorocarbon-113 (CFC–113)	0.8
chlorofluorocarbon-114 (CFC–114)	1.0
chlorofluorocarbon-115 (CFC–115)	0.6
chlorofluorocarbon-211 (CFC–211)	1.0
chlorofluorocarbon-212 (CFC–212)	1.0
chlorofluorocarbon-213 (CFC–213)	1.0
chlorofluorocarbon-214 (CFC–214)	1.0
chlorofluorocarbon-215 (CFC–215)	1.0
chlorofluorocarbon-216 (CFC–216)	1.0
chlorofluorocarbon-217 (CFC–217)	1.0
halon-1211	3.0
halon-1301	10.0
halon-2402	6.0
carbon tetrachloride	1.1
methyl chloroform	0.1
hydrochlorofluorocarbon-22 (HCFC–22)	0.05
hydrochlorofluorocarbon-123 (HCFC–123)	0.02
hydrochlorofluorocarbon-124 (HCFC–124)	0.02
hydrochlorofluorocarbon-141(b) (HCFC–141(b))	0.1
hydrochlorofluorocarbon-142(b) (HCFC–142(b))	0.06

Where the ozone-depletion potential of a substance is specified in the Montreal Protocol, the ozone-depletion potential specified for that substance under this section shall be consistent with the Montreal Protocol.

(July 14, 1955, ch. 360, title VI, §602, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2650.)

[1] *So in original. Probably should be section "7671f".*

§7671b. Monitoring and reporting requirements

(a) Regulations

Within 270 days after November 15, 1990, the Administrator shall amend the regulations of the Administrator in effect on such date regarding monitoring and reporting of class I and class II substances. Such amendments shall conform to the requirements of this section. The amended regulations shall include requirements with respect to the time and manner of monitoring and reporting as required under this section.

(b) Production, import, and export level reports

On a quarterly basis, or such other basis (not less than annually) as determined by the Administrator, each person who produced, imported, or exported a class I or class II substance shall file a report with the Administrator setting forth the amount of the substance that such person produced, imported, and exported during the preceding reporting period. Each such report shall be signed and attested by a responsible officer. No such report shall be required from a person after April 1 of the calendar year after such person permanently ceases production, importation, and exportation of the substance and so notifies the Administrator in writing.

(c) Baseline reports for class I substances

Unless such information has previously been reported to the Administrator, on the date on which the first report under subsection (b) is required to be filed, each person who produced, imported, or exported a class I substance (other than a substance added to the list of class I substances after the publication of the initial list of such substances under this section) shall file a report with the Administrator setting forth the amount of such substance that such person produced, imported, and exported during the baseline year. In the case of a substance added to the list of class I substances after publication of the initial list of such substances under this section, the regulations shall require that each person who produced, imported, or exported such substance shall file a report with the Administrator within 180 days after the date on which such substance is added to the list, setting forth the amount of the substance that such person produced, imported, and exported in the baseline year.

(d) Monitoring and reports to Congress

(1) The Administrator shall monitor and, not less often than every 3 years following November 15, 1990, submit a report to Congress on the production, use and consumption of class I and class II substances. Such report shall include data on domestic production, use and consumption, and an estimate of worldwide production, use and consumption of such substances. Not less frequently than every 6 years the Administrator shall report to Congress on the environmental and economic effects of any stratospheric ozone depletion.

(2) The Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration shall monitor, and not less often than every 3 years following November 15, 1990, submit a report to Congress on the current average tropospheric concentration of chlorine and bromine and on the level of stratospheric ozone depletion. Such reports shall include updated projections of—

(A) peak chlorine loading;

(B) the rate at which the atmospheric abundance of chlorine is projected to decrease after the year 2000; and

(C) the date by which the atmospheric abundance of chlorine is projected to return to a level of two parts per billion.

Such updated projections shall be made on the basis of current international and domestic controls on substances covered by this subchapter as well as on the basis of such controls supplemented by a year 2000 global phase out of all halocarbon emissions (the base case). It is the purpose of the Congress through the provisions of this section to monitor closely the production and consumption of class II substances to assure that the production and consumption of such substances will not:

(i) increase significantly the peak chlorine loading that is projected to occur under the base case established for purposes of this section;

(ii) reduce significantly the rate at which the atmospheric abundance of chlorine is projected to decrease under the base case; or

(iii) delay the date by which the average atmospheric concentration of chlorine is projected under the base case to return to a level of two parts per billion.

(e) Technology status report in 2015

The Administrator shall review, on a periodic basis, the progress being made in the development of alternative systems or products necessary to manufacture and operate appliances without class II

substances. If the Administrator finds, after notice and opportunity for public comment, that as a result of technological development problems, the development of such alternative systems or products will not occur within the time necessary to provide for the manufacture of such equipment without such substances prior to the applicable deadlines under section 7671d of this title, the Administrator shall, not later than January 1, 2015, so inform the Congress.

(f) Emergency report

If, in consultation with the Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, and after notice and opportunity for public comment, the Administrator determines that the global production, consumption, and use of class II substances are projected to contribute to an atmospheric chlorine loading in excess of the base case projections by more than 5/10ths parts per billion, the Administrator shall so inform the Congress immediately. The determination referred to in the preceding sentence shall be based on the monitoring under subsection (d) and updated not less often than every 3 years.

(July 14, 1955, ch. 360, title VI, §603, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2653.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d)(1) of this section relating to submittal of triennial report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 162 of House Document No. 103–7.

METHANE STUDIES

Pub. L. 101–549, title VI, §603, Nov. 15, 1990, 104 Stat. 2670, provided that:

"(a) ECONOMICALLY JUSTIFIED ACTIONS.—Not later than 2 years after enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit a report to the Congress that identifies activities, substances, processes, or combinations thereof that could reduce methane emissions and that are economically and technologically justified with and without consideration of environmental benefit.

"(b) DOMESTIC METHANE SOURCE INVENTORY AND CONTROL.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator, in consultation and coordination with the Secretary of Energy and the Secretary of Agriculture, shall prepare and submit to the Congress reports on each of the following:

"(1) Methane emissions associated with natural gas extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from natural gas and oil wells, pipelines, processing facilities, and gas burners. The report shall also include an inventory of methane generation with such activities.

"(2) Methane emissions associated with coal extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from mining shafts, degasification wells, gas recovery wells and equipment, and from the processing and use of coal. The report shall also include an inventory of methane generation with such activities.

"(3) Methane emissions associated with management of solid waste. Such report shall include an inventory of methane emissions associated with all forms of waste management in the United States, including storage, treatment, and disposal.

"(4) Methane emissions associated with agriculture. Such report shall include an inventory of methane emissions associated with rice and livestock production in the United States.

"(5) Methane emissions associated with biomass burning. Such report shall include an inventory of methane emissions associated with the intentional burning of agricultural wastes, wood, grasslands, and forests.

"(6) Other methane emissions associated with human activities. Such report shall identify and inventory other domestic sources of methane emissions that are deemed by the Administrator and other such agencies to be significant.

"(c) INTERNATIONAL STUDIES.—

"(1) METHANE EMISSIONS.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report on methane emissions from countries other than the United States. Such report shall include inventories of methane emissions associated with the activities listed in subsection (b).

"(2) PREVENTING INCREASES IN METHANE CONCENTRATIONS.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report that analyzes the potential for preventing an increase in atmospheric concentrations of methane from activities and sources in other countries. Such report shall identify and evaluate the technical options for reducing methane emission from each of the activities listed in subsection (b), as well as other activities or sources that are deemed by the Administrator in consultation with other relevant Federal agencies and departments to be significant and shall include an evaluation of costs. The report shall identify the emissions reductions that would need to be achieved to prevent increasing atmospheric concentrations of methane. The report shall also identify technology transfer programs that could promote methane emissions reductions in lesser developed countries.

"(d) NATURAL SOURCES.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report on—

"(1) methane emissions from biogenic sources such as (A) tropical, temperate, and subarctic forests, (B) tundra, and (C) freshwater and saltwater wetlands; and

"(2) the changes in methane emissions from biogenic sources that may occur as a result of potential increases in temperatures and atmospheric concentrations of carbon dioxide.

"(e) STUDY OF MEASURES TO LIMIT GROWTH IN METHANE CONCENTRATIONS.—Not later than 2 years after the completion of the studies in subsections (b), (c), and (d), the Administrator shall prepare and submit to the Congress a report that presents options outlining measures that could be implemented to stop or reduce the growth in atmospheric concentrations of methane from sources within the United States referred to in paragraphs (1) through (6) of subsection (b). This study shall identify and evaluate the technical options for reducing methane emissions from each of the activities listed in subsection (b), as well as other activities or sources deemed by such agencies to be significant, and shall include an evaluation of costs, technology, safety, energy, and other factors. The study shall be based on the other studies under this section. The study shall also identify programs of the United States and international lending agencies that could be used to induce lesser developed countries to undertake measures that will reduce methane emissions and the resource needs of such programs.

"(f) INFORMATION GATHERING.—In carrying out the studies under this section, the provisions and requirements of section 114 of the Clean Air Act [42 U.S.C. 7414] shall be available for purposes of obtaining information to carry out such studies.

"(g) CONSULTATION AND COORDINATION.—In preparing the studies under this section the Administrator shall consult and coordinate with the Secretary of Energy, the Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, and the heads of other relevant Federal agencies and departments. In the case of the studies under subsections (a), (b), and (e), such consultation and coordination shall include the Secretary of Agriculture."

§7671c. Phase-out of production and consumption of class I substances

(a) Production phase-out

Effective on January 1 of each year specified in Table 2, it shall be unlawful for any person to produce any class I substance in an annual quantity greater than the relevant percentage specified in Table 2. The percentages in Table 2 refer to a maximum allowable production as a percentage of the quantity of the substance produced by the person concerned in the baseline year.

TABLE 2

Date	Carbon tetrachloride	Methyl chloroform	Other class I substances
1991	100%	100%	85%
1992	90%	100%	80%
1993	80%	90%	75%
1994	70%	85%	65%
1995	15%	70%	50%

1996	15%	50%	40%
1997	15%	50%	15%
1998	15%	50%	15%
1999	15%	50%	15%
2000		20%	
2001		20%	

(b) Termination of production of class I substances

Effective January 1, 2000 (January 1, 2002 in the case of methyl chloroform), it shall be unlawful for any person to produce any amount of a class I substance.

(c) Regulations regarding production and consumption of class I substances

The Administrator shall promulgate regulations within 10 months after November 15, 1990, phasing out the production of class I substances in accordance with this section and other applicable provisions of this subchapter. The Administrator shall also promulgate regulations to insure that the consumption of class I substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class I substances under this subchapter.

(d) Exceptions for essential uses of methyl chloroform, medical devices, and aviation safety

(1) Essential uses of methyl chloroform

Notwithstanding the termination of production required by subsection (b), during the period beginning on January 1, 2002, and ending on January 1, 2005, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available. Notwithstanding this paragraph, the authority to produce methyl chloroform for use in medical devices shall be provided in accordance with paragraph (2).

(2) Medical devices

Notwithstanding the termination of production required by subsection (b), the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of class I substances solely for use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(3) Aviation safety

(A) Notwithstanding the termination of production required by subsection (b), the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211 (bromochlorodifluoromethane), halon-1301 (bromotrifluoromethane), and halon-2402 (dibromotetrafluoroethane) solely for purposes of aviation safety if the Administrator of the Federal Aviation Administration, in consultation with the Administrator, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.

(B) The Administrator of the Federal Aviation Administration shall, in consultation with the Administrator, examine whether safe and effective substitutes for methyl chloroform or alternative techniques will be available for nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue and whether an exception for such uses of methyl chloroform under this paragraph will be necessary for purposes of airline safety after January 1, 2005 and provide a report to Congress in 1998.

(4) Cap on certain exceptions

Under no circumstances may the authority set forth in paragraphs (1), (2), and (3) of subsection (d) be applied to authorize any person to produce a class I substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

(5) Sanitation and food protection

To the extent consistent with the Montreal Protocol's quarantine and preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State, or local sanitation or food protection standard.

(6) Critical uses

To the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.

(e) Developing countries

(1) Exception

Notwithstanding the phase-out and termination of production required under subsections (a) and (b), the Administrator, after notice and opportunity for public comment, may, consistent with the Montreal Protocol, authorize the production of limited quantities of a class I substance in excess of the amounts otherwise allowable under subsection (a) or (b), or both, solely for export to, and use in, developing countries that are Parties to the Montreal Protocol and are operating under article 5 of such Protocol. Any production authorized under this paragraph shall be solely for purposes of satisfying the basic domestic needs of such countries.

(2) Cap on exception

(A) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in any year for which a production percentage is specified in Table 2 of subsection (a) in an annual quantity greater than the specified percentage, plus an amount equal to 10 percent of the amount produced by such person in the baseline year.

(B) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in the applicable termination year referred to in subsection (b), or in any year thereafter, in an annual quantity greater than 15 percent of the baseline quantity of such substance produced by such person.

(C) An exception authorized under this subsection shall terminate no later than January 1, 2010 (2012 in the case of methyl chloroform).

(3) Methyl bromide

Notwithstanding the phaseout and termination of production of methyl bromide pursuant to subsection (h), the Administrator may, consistent with the Montreal Protocol, authorize the production of limited quantities of methyl bromide, solely for use in developing countries that are Parties to the Copenhagen Amendments to the Montreal Protocol.

(f) National security

The President may, to the extent such action is consistent with the Montreal Protocol, issue such orders regarding production and use of CFC–114 (chlorofluorocarbon-114), halon-1211, halon-1301, and halon-2402, at any specified site or facility or on any vessel as may be necessary to protect the national security interests of the United States if the President finds that adequate substitutes are not available and that the production and use of such substance are necessary to protect such national security interest. Such orders may include, where necessary to protect such interests, an exemption

from any prohibition or requirement contained in this subchapter. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph. Each such additional exemption shall be for a specified period which may not exceed one year. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(g) Fire suppression and explosion prevention

(1) Notwithstanding the production phase-out set forth in subsection (a), the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in excess of the amount otherwise permitted pursuant to the schedule under subsection (a) solely for purposes of fire suppression or explosion prevention if the Administrator, in consultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression or explosion prevention purposes. The Administrator shall not authorize production under this paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator grant an exception under this paragraph that permits production after December 31, 1999.

(2) The Administrator shall periodically monitor and assess the status of efforts to obtain substitutes for the substances referred to in paragraph (1) for purposes of fire suppression or explosion prevention and the probability of such substitutes being available by December 31, 1999. The Administrator, as part of such assessment, shall consider any relevant assessments under the Montreal Protocol and the actions of the Parties pursuant to Article 2B of the Montreal Protocol in identifying essential uses and in permitting a level of production or consumption that is necessary to satisfy such uses for which no adequate alternatives are available after December 31, 1999. The Administrator shall report to Congress the results of such assessment in 1994 and again in 1998.

(3) Notwithstanding the termination of production set forth in subsection (b), the Administrator, after notice and opportunity for public comment, may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in the period after December 31, 1999, and before December 31, 2004, solely for purposes of fire suppression or explosion prevention in association with domestic production of crude oil and natural gas energy supplies on the North Slope of Alaska, if the Administrator, in consultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression and explosion prevention purposes. The Administrator shall not authorize production under the paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator authorize under this paragraph any person to produce any such halon in an amount greater than 3 percent of that produced by such person during the baseline year.

(h) Methyl bromide

Notwithstanding subsections (b) and (d), the Administrator shall not terminate production of methyl bromide prior to January 1, 2005. The Administrator shall promulgate rules for reductions in, and terminate the production, importation, and consumption of, methyl bromide under a schedule that is in accordance with, but not more stringent than, the phaseout schedule of the Montreal Protocol Treaty as in effect on October 21, 1998.

(July 14, 1955, ch. 360, title VI, §604, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2655; amended Pub. L. 105–277, div. A, §101(a) [title VII, §764], Oct. 21, 1998, 112 Stat. 2681, 2681–36.)

EDITORIAL NOTES

AMENDMENTS

1998—Subsec. (d)(5), (6). Pub. L. 105–277, §101(a) [title VII, §764(b)], added pars. (5) and (6).
Subsec. (e)(3). Pub. L. 105–277, §101(a) [title VII, §764(c)], added par. (3).
Subsec. (h). Pub. L. 105–277, §101(a) [title VII, §764(a)], added subsec. (h).

§7671d. Phase-out of production and consumption of class II substances

(a) Restriction of use of class II substances

Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance—

(1) has been used, recovered, and recycled;

(2) is used and entirely consumed (except for trace quantities) in the production of other chemicals;

(3) is used as a refrigerant in appliances manufactured prior to January 1, 2020; or

(4) is listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 7671k(c) of this title.

As used in this subsection, the term "refrigerant" means any class II substance used for heat transfer in a refrigerating system.

(b) Production phase-out

(1) Effective January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year.

(2) Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance.

(c) Regulations regarding production and consumption of class II substances

By December 31, 1999, the Administrator shall promulgate regulations phasing out the production, and restricting the use, of class II substances in accordance with this section, subject to any acceleration of the phase-out of production under section 7671e of this title. The Administrator shall also promulgate regulations to insure that the consumption of class II substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class II substances under this subchapter.

(d) Exceptions

(1) Medical devices

(A) In general

Notwithstanding the termination of production required under subsection (b)(2) and the restriction on use referred to in subsection (a), the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production and use of limited quantities of class II substances solely for purposes of use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(B) Cap on exception

Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

(2) Developing countries

(A) In general

Notwithstanding the provisions of subsection (a) or (b), the Administrator, after notice and opportunity for public comment, may authorize the production of limited quantities of a class II substance in excess of the quantities otherwise permitted under such provisions solely for export to and use in developing countries that are Parties to the Montreal Protocol, as determined by the Administrator. Any production authorized under this subsection shall be solely for purposes of satisfying the basic domestic needs of such countries.

(B) Cap on exception

(i) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in any year following the effective date of subsection (b)(1) and before the year 2030 in annual quantities greater than 110 percent of the quantity of such substance produced by such person during the baseline year.

(ii) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in the year 2030, or any year thereafter, in an annual quantity greater than 15 percent of the quantity of such substance produced by such person during the baseline year.

(iii) Each exception authorized under this paragraph shall terminate no later than January 1, 2040.

(July 14, 1955, ch. 360, title VI, §605, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2658; amended Pub. L. 112–81, div. A, title III, §320, Dec. 31, 2011, 125 Stat. 1361.)

EDITORIAL NOTES

AMENDMENTS

2011—Subsec. (a)(4). Pub. L. 112–81 added par. (4).

§7671e. Accelerated schedule

(a) In general

The Administrator shall promulgate regulations, after notice and opportunity for public comment, which establish a schedule for phasing out the production and consumption of class I and class II substances (or use of class II substances) that is more stringent than set forth in section 7671c or 7671d of this title, or both, if—

(1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects,

(2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or

(3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this subchapter.

In making any determination under paragraphs (1) and (2), the Administrator shall consider the status of the period remaining under the applicable schedule under this subchapter.

(b) Petition

Any person may petition the Administrator to promulgate regulations under this section. The Administrator shall grant or deny the petition within 180 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition, such final regulations shall be

promulgated within 1 year. Any petition under this subsection shall include a showing by the petitioner that there are data adequate to support the petition. If the Administrator determines that information is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(July 14, 1955, ch. 360, title VI, §606, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2660.)

§7671f. Exchange authority

(a) Transfers

The Administrator shall, within 10 months after November 15, 1990, promulgate rules under this subchapter providing for the issuance of allowances for the production of class I and II substances in accordance with the requirements of this subchapter and governing the transfer of such allowances. Such rules shall insure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.

(b) Interpollutant transfers

(1) The rules under this section shall permit a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis.

(2) Allowances for substances in each group of class I substances (as listed pursuant to section 7671a of this title) may only be transferred for allowances for other substances in the same Group.

(3) The Administrator shall, as appropriate, establish groups of class II substances for trading purposes and assign class II substances to such groups. In the case of class II substances, allowances may only be transferred for allowances for other class II substances that are in the same Group.

(c) Trades with other persons

The rules under this section shall permit 2 or more persons to transfer production allowances (including interpollutant transfers which meet the requirements of subsections (a) and (b)) if the transferor of such allowances will be subject, under such rules, to an enforceable and quantifiable reduction in annual production which—

(1) exceeds the reduction otherwise applicable to the transferor under this subchapter,

(2) exceeds the production allowances transferred to the transferee, and

(3) would not have occurred in the absence of such transaction.

(d) Consumption

The rules under this section shall also provide for the issuance of consumption allowances in accordance with the requirements of this subchapter and for the trading of such allowances in the same manner as is applicable under this section to the trading of production allowances under this section.

(July 14, 1955, ch. 360, title VI, §607, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2660.)

§7671g. National recycling and emission reduction program

(a) In general

(1) The Administrator shall, by not later than January 1, 1992, promulgate regulations establishing standards and requirements regarding the use and disposal of class I substances during the service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than July 1, 1992.

(2) The Administrator shall, within 4 years after November 15, 1990, promulgate regulations establishing standards and requirements regarding use and disposal of class I and II substances not covered by paragraph (1), including the use and disposal of class II substances during service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than 12 months after promulgation of the regulations.

(3) The regulations under this subsection shall include requirements that—

(A) reduce the use and emission of such substances to the lowest achievable level, and

(B) maximize the recapture and recycling of such substances.

Such regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) or to minimize use of class I or class II substances, or to promote the use of safe alternatives pursuant to section 7671k of this title or any combination of the foregoing.

(b) Safe disposal

The regulations under subsection (a) shall establish standards and requirements for the safe disposal of class I and II substances. Such regulations shall include each of the following—

(1) Requirements that class I or class II substances contained in bulk in appliances, machines or other goods shall be removed from each such appliance, machine or other good prior to the disposal of such items or their delivery for recycling.

(2) Requirements that any appliance, machine or other good containing a class I or class II substance in bulk shall not be manufactured, sold, or distributed in interstate commerce or offered for sale or distribution in interstate commerce unless it is equipped with a servicing aperture or an equally effective design feature which will facilitate the recapture of such substance during service and repair or disposal of such item.

(3) Requirements that any product in which a class I or class II substance is incorporated so as to constitute an inherent element of such product shall be disposed of in a manner that reduces, to the maximum extent practicable, the release of such substance into the environment. If the Administrator determines that the application of this paragraph to any product would result in producing only insignificant environmental benefits, the Administrator shall include in such regulations an exception for such product.

(c) Prohibitions

(1) Effective July 1, 1992, it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment. De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in the preceding sentence.

(2) Effective 5 years after November 15, 1990, paragraph (1) shall also apply to the venting, release, or disposal of any substitute substance for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment. For purposes of this paragraph, the term "appliance" includes any device which contains and uses as a refrigerant a substitute substance and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(July 14, 1955, ch. 360, title VI, §608, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2661.)

§7671h. Servicing of motor vehicle air conditioners

(a) Regulations

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations in accordance with this section establishing standards and requirements regarding the servicing of motor vehicle air conditioners.

(b) Definitions

As used in this section—

(1) The term "refrigerant" means any class I or class II substance used in a motor vehicle air conditioner. Effective 5 years after November 15, 1990, the term "refrigerant" shall also include any substitute substance.

(2)(A) The term "approved refrigerant recycling equipment" means equipment certified by the Administrator (or an independent standards testing organization approved by the Administrator) to meet the standards established by the Administrator and applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of November 15, 1990, and applicable to such equipment (SAE standard J–1990).

(B) Equipment purchased before the proposal of regulations under this section shall be considered certified if it is substantially identical to equipment certified as provided in subparagraph (A).

(3) The term "properly using" means, with respect to approved refrigerant recycling equipment, using such equipment in conformity with standards established by the Administrator and applicable to the use of such equipment. Such standards shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of November 15, 1990, and applicable to the use of such equipment (SAE standard J–1989).

(4) The term "properly trained and certified" means training and certification in the proper use of approved refrigerant recycling equipment for motor vehicle air conditioners in conformity with standards established by the Administrator and applicable to the performance of service on motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as specified, as of November 15, 1990, in SAE standard J–1989 under the certification program of the National Institute for Automotive Service Excellence (ASE) or under a similar program such as the training and certification program of the Mobile Air Conditioning Society (MACS).

(c) Servicing motor vehicle air conditioners

Effective January 1, 1992, no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recycling equipment and no such person may perform such service unless such person has been properly trained and certified. The requirements of the previous sentence shall not apply until January 1, 1993 in the case of a person repairing or servicing motor vehicles for consideration at an entity which performed service on fewer than 100 motor vehicle air conditioners during calendar year 1990 and if such person so certifies, pursuant to subsection (d)(2), to the Administrator by January 1, 1992.

(d) Certification

(1) Effective 2 years after November 15, 1990, each person performing service on motor vehicle air conditioners for consideration shall certify to the Administrator either—

(A) that such person has acquired, and is properly using, approved refrigerant recycling equipment in service on motor vehicle air conditioners involving refrigerant and that each individual authorized by such person to perform such service is properly trained and certified; or

(B) that such person is performing such service at an entity which serviced fewer than 100 motor vehicle air conditioners in 1991.

(2) Effective January 1, 1993, each person who certified under paragraph (1)(B) shall submit a certification under paragraph (1)(A).

(3) Each certification under this subsection shall contain the name and address of the person

certifying under this subsection and the serial number of each unit of approved recycling equipment acquired by such person and shall be signed and attested by the owner or another responsible officer. Certifications under paragraph (1)(A) may be made by submitting the required information to the Administrator on a standard form provided by the manufacturer of certified refrigerant recycling equipment.

(e) Small containers of class I or class II substances

Effective 2 years after November 15, 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce to any person (other than a person performing service for consideration on motor vehicle air-conditioning systems in compliance with this section) any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air-conditioning system and that is in a container which contains less than 20 pounds of such refrigerant.

(July 14, 1955, ch. 360, title VI, §609, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2662.)

§7671i. Nonessential products containing chlorofluorocarbons

(a) Regulations

The Administrator shall promulgate regulations to carry out the requirements of this section within 1 year after November 15, 1990.

(b) Nonessential products

The regulations under this section shall identify nonessential products that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce. At a minimum, such prohibition shall apply to—

(1) chlorofluorocarbon-propelled plastic party streamers and noise horns,

(2) chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment, and

(3) other consumer products that are determined by the Administrator—

(A) to release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal), and

(B) to be nonessential.

In determining whether a product is nonessential, the Administrator shall consider the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors.

(c) Effective date

Effective 24 months after November 15, 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce any nonessential product to which regulations under subsection (a) implementing subsection (b) are applicable.

(d) Other products

(1) Effective January 1, 1994, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—

(A) any aerosol product or other pressurized dispenser which contains a class II substance; or

(B) any plastic foam product which contains, or is manufactured with, a class II substance.

(2) The Administrator is authorized to grant exceptions from the prohibition under subparagraph (A) of paragraph (1) where—

(A) the use of the aerosol product or pressurized dispenser is determined by the Administrator

to be essential as a result of flammability or worker safety concerns, and

(B) the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for such class II substance.

(3) Subparagraph (B) of paragraph (1) shall not apply to—

(A) a foam insulation product, or

(B) an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I or class II substance) is practicable for effectively meeting such Standards.

(e) Medical devices

Nothing in this section shall apply to any medical device as defined in section 7671(8) of this title.

(July 14, 1955, ch. 360, title VI, §610, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2664.)

§7671j. Labeling

(a) Regulations

The Administrator shall promulgate regulations to implement the labeling requirements of this section within 18 months after November 15, 1990, after notice and opportunity for public comment.

(b) Containers containing class I or class II substances and products containing class I substances

Effective 30 months after November 15, 1990, no container in which a class I or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

"Warning: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere".

(c) Products containing class II substances

(1) After 30 months after November 15, 1990, and before January 1, 2015, no product containing a class II substance shall be introduced into interstate commerce unless it bears the label referred to in subsection (b) if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes (A) that do not rely on the use of such class II substance, (B) that reduce the overall risk to human health and the environment, and (C) that are currently or potentially available.

(2) Effective January 1, 2015, the requirements of subsection (b) shall apply to all products containing a class II substance.

(d) Products manufactured with class I and class II substances

(1) In the case of a class II substance, after 30 months after November 15, 1990, and before January 1, 2015, if the Administrator, after notice and opportunity for public comment, makes the determination referred to in subsection (c) with respect to a product manufactured with a process that uses such class II substance, no such product shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

"Warning: Manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere" [1]

(2) In the case of a class I substance, effective 30 months after November 15, 1990, and before January 1, 2015, the labeling requirements of this subsection shall apply to all products manufactured with a process that uses such class I substance unless the Administrator determines

that there are no substitute products or manufacturing processes that (A) do not rely on the use of such class I substance, (B) reduce the overall risk to human health and the environment, and (C) are currently or potentially available.

(e) Petitions

(1) Any person may, at any time after 18 months after November 15, 1990, petition the Administrator to apply the requirements of this section to a product containing a class II substance or a product manufactured with a class I or II substance which is not otherwise subject to such requirements. Within 180 days after receiving such petition, the Administrator shall, pursuant to the criteria set forth in subsection (c), either propose to apply the requirements of this section to such product or publish an explanation of the petition denial. If the Administrator proposes to apply such requirements to such product, the Administrator shall, by rule, render a final determination pursuant to such criteria within 1 year after receiving such petition.

(2) Any petition under this paragaph [2] shall include a showing by the petitioner that there are data on the product adequate to support the petition.

(3) If the Administrator determines that information on the product is not sufficient to make the required determination the Administrator shall use any authority available to the Administrator under any law administered by the Administrator to acquire such information.

(4) In the case of a product determined by the Administrator, upon petition or on the Administrator's own motion, to be subject to the requirements of this section, the Administrator shall establish an effective date for such requirements. The effective date shall be 1 year after such determination or 30 months after November 15, 1990, whichever is later.

(5) Effective January 1, 2015, the labeling requirements of this subsection [3] shall apply to all products manufactured with a process that uses a class I or class II substance.

(f) Relationship to other law

(1) The labeling requirements of this section shall not constitute, in whole or part, a defense to liability or a cause for reduction in damages in any suit, whether civil or criminal, brought under any law, whether Federal or State, other than a suit for failure to comply with the labeling requirements of this section.

(2) No other approval of such label by the Administrator under any other law administered by the Administrator shall be required with respect to the labeling requirements of this section.

(July 14, 1955, ch. 360, title VI, §611, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2665.)

[1] So in original. Probably should be followed by a period.

[2] So in original. Probably should be "paragraph".

[3] So in original. Probably should be "section".

§7671k. Safe alternatives policy

(a) Policy

To the maximum extent practicable, class I and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.

(b) Reviews and reports

The Administrator shall—

(1) in consultation and coordination with interested members of the public and the heads of relevant Federal agencies and departments, recommend Federal research programs and other

activities to assist in identifying alternatives to the use of class I and class II substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications and in achieving a transition to such alternatives, and, where appropriate, seek to maximize the use of Federal research facilities and resources to assist users of class I and class II substances in identifying and developing alternatives to the use of such substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications;

(2) examine in consultation and coordination with the Secretary of Defense and the heads of other relevant Federal agencies and departments, including the General Services Administration, Federal procurement practices with respect to class I and class II substances and recommend measures to promote the transition by the Federal Government, as expeditiously as possible, to the use of safe substitutes;

(3) specify initiatives, including appropriate intergovernmental, international, and commercial information and technology transfers, to promote the development and use of safe substitutes for class I and class II substances, including alternative chemicals, product substitutes, and alternative manufacturing processes; and

(4) maintain a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and class II substances.

(c) Alternatives for class I or II substances

Within 2 years after November 15, 1990, the Administrator shall promulgate rules under this section providing that it shall be unlawful to replace any class I or class II substance with any substitute substance which the Administrator determines may present adverse effects to human health or the environment, where the Administrator has identified an alternative to such replacement that—

(1) reduces the overall risk to human health and the environment; and

(2) is currently or potentially available.

The Administrator shall publish a list of (A) the substitutes prohibited under this subsection for specific uses and (B) the safe alternatives identified under this subsection for specific uses.

(d) Right to petition

Any person may petition the Administrator to add a substance to the lists under subsection (c) or to remove a substance from either of such lists. The Administrator shall grant or deny the petition within 90 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition the Administrator shall publish such revised list within 6 months thereafter. Any petition under this subsection shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(e) Studies and notification

The Administrator shall require any person who produces a chemical substitute for a class I substance to provide the Administrator with such person's unpublished health and safety studies on such substitute and require producers to notify the Administrator not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. This subsection shall be subject to section 7414(c) of this title.

(July 14, 1955, ch. 360, title VI, §612, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2667.)

§7671*l*. Federal procurement

Not later than 18 months after November 15, 1990, the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of this subchapter and to maximize the substitution of safe alternatives identified under section 7671k of this title for class I and class II substances. Not later than 30 months after November 15, 1990, each department, agency, and instrumentality of the United States shall so conform its procurement regulations and certify to the President that its regulations have been modified in accordance with this section.

(July 14, 1955, ch. 360, title VI, §613, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2668.)

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12843

Ex. Ord. No. 12843, Apr. 21, 1993, 58 F.R. 21881, which provided for Federal agencies to implement policies and programs to minimize procurement of ozone-depleting substances, was revoked by Ex. Ord. No. 13148, §901, Apr. 21, 2000, 65 F.R. 24604, formerly set out as a note under section 4321 of this title.

§7671m. Relationship to other laws

(a) State laws

Notwithstanding section 7416 of this title, during the 2-year period beginning on November 15, 1990, no State or local government may enforce any requirement concerning the design of any new or recalled appliance for the purpose of protecting the stratospheric ozone layer.

(b) Montreal Protocol

This subchapter as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this subchapter and any provision of the Montreal Protocol, the more stringent provision shall govern. Nothing in this subchapter shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies.

(c) Technology export and overseas investment

Upon November 15, 1990, the President shall—

(1) prohibit the export of technologies used to produce a class I substance;

(2) prohibit direct or indirect investments by any person in facilities designed to produce a class I or class II substance in nations that are not parties to the Montreal Protocol; and

(3) direct that no agency of the government provide bilateral or multilateral subsidies, aids, credits, guarantees, or insurance programs, for the purpose of producing any class I substance.

(July 14, 1955, ch. 360, title VI, §614, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2668.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (b), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

§7671n. Authority of Administrator

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

(July 14, 1955, ch. 360, title VI, §615, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2669.)

§7671*o*. Transfers among Parties to Montreal Protocol

(a) In general

Consistent with the Montreal Protocol, the United States may engage in transfers with other Parties to the Protocol under the following conditions:

(1) The United States may transfer production allowances to another Party if, at the time of such transfer, the Administrator establishes revised production limits for the United States such that the aggregate national United States production permitted under the revised production limits equals the lesser of (A) the maximum production level permitted for the substance or substances concerned in the transfer year under the Protocol minus the production allowances transferred, (B) the maximum production level permitted for the substance or substances concerned in the transfer year under applicable domestic law minus the production allowances transferred, or (C) the average of the actual national production level of the substance or substances concerned for the 3 years prior to the transfer minus the production allowances transferred.

(2) The United States may acquire production allowances from another Party if, at the time of such transfer, the Administrator finds that the other Party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States in this subsection.

(b) Effect of transfers on production limits

The Administrator is authorized to reduce the production limits established under this chapter as required as a prerequisite to transfers under paragraph (1) of subsection (a) or to increase production limits established under this chapter to reflect production allowances acquired under a transfer under paragraph (2) of subsection (a).

(c) Regulations

The Administrator shall promulgate, within 2 years after November 15, 1990, regulations to implement this section.

(d) "Applicable domestic law" defined

In the case of the United States, the term "applicable domestic law" means this chapter.

(July 14, 1955, ch. 360, title VI, §616, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2669.)

§7671p. International cooperation

(a) In general

The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this subchapter, and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. For these purposes the President through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals

at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements.

(b) Assistance to developing countries

The Administrator, in consultation with the Secretary of State, shall support global participation in the Montreal Protocol by providing technical and financial assistance to developing countries that are Parties to the Montreal Protocol and operating under article 5 of the Protocol. There are authorized to be appropriated not more than $30,000,000 to carry out this section in fiscal years 1991, 1992 and 1993 and such sums as may be necessary in fiscal years 1994 and 1995. If China and India become Parties to the Montreal Protocol, there are authorized to be appropriated not more than an additional $30,000,000 to carry out this section in fiscal years 1991, 1992, and 1993.

(July 14, 1955, ch. 360, title VI, §617, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2669.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.

§7671q. Miscellaneous provisions

For purposes of section 7416 of this title, requirements concerning the areas addressed by this subchapter for the protection of the stratosphere against ozone layer depletion shall be treated as requirements for the control and abatement of air pollution. For purposes of section 7418 of this title, the requirements of this subchapter and corresponding State, interstate, and local requirements, administrative authority, and process, and sanctions respecting the protection of the stratospheric ozone layer shall be treated as requirements for the control and abatement of air pollution within the meaning of section 7418 of this title.

(July 14, 1955, ch. 360, title VI, §618, as added Pub. L. 101–549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2670.)

SUBCHAPTER VII—AMERICAN INNOVATION AND MANUFACTURING

§7675. American innovation and manufacturing

(a) Short title

This section may be cited as the "American Innovation and Manufacturing Act of 2020".

(b) Definitions

In this section:

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Allowance

The term "allowance" means a limited authorization for the production or consumption of a regulated substance established under subsection (e).

(3) Consumption

The term "consumption", with respect to a regulated substance, means a quantity equal to the difference between—

(A) a quantity equal to the sum of—

(i) the quantity of that regulated substance produced in the United States; and

(ii) the quantity of the regulated substance imported into the United States; and

(B) the quantity of the regulated substance exported from the United States.

(4) Consumption baseline

The term "consumption baseline" means the baseline established for the consumption of regulated substances under subsection (e)(1)(C).

(5) Exchange value

The term "exchange value" means the value assigned to a regulated substance in accordance with subsections (c) and (e), as applicable.

(6) Import

The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(7) Produce

(A) In general

The term "produce" means the manufacture of a regulated substance from a raw material or feedstock chemical (but not including the destruction of a regulated substance by a technology approved by the Administrator).

(B) Exclusions

The term "produce" does not include—

(i) the manufacture of a regulated substance that is used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or

(ii) the reclamation, reuse, or recycling of a regulated substance.

(8) Production baseline

The term "production baseline" means the baseline established for the production of regulated substances under subsection (e)(1)(B).

(9) Reclaim; reclamation

The terms "reclaim" and "reclamation" mean—

(A) the reprocessing of a recovered regulated substance to at least the purity described in standard 700–2016 of the Air-Conditioning, Heating, and Refrigeration Institute (or an appropriate successor standard adopted by the Administrator); and

(B) the verification of the purity of that regulated substance using, at a minimum, the analytical methodology described in the standard referred to in subparagraph (A).

(10) Recover

The term "recover" means the process by which a regulated substance is—

(A) removed, in any condition, from equipment; and

(B) stored in an external container, with or without testing or processing the regulated substance.

(11) Regulated substance

The term "regulated substance" means—

(A) a substance listed in the table contained in subsection (c)(1); and

(B) a substance included as a regulated substance by the Administrator under subsection

(c)(3).

(c) Listing of regulated substances

(1) List of regulated substances

Each of the following substances, and any isomers of such a substance, shall be a regulated substance:

Chemical Name	Common Name	Exchange Value
CHF_2CHF_2	HFC–134	1100
CH_2FCF_3	HFC–134a	1430
CH_2FCHF_2	HFC–143	353
$CHF_2CH_2CF_3$	HFC–245fa	1030
$CF_3CH_2CF_2CH_3$	HFC–365mfc	794
CF_3CHFCF_3	HFC–227ea	3220
$CH_2FCF_2CF_3$	HFC–236cb	1340
CHF_2CHFCF_3	HFC–236ea	1370
$CF_3CH_2CF_3$	HFC–236fa	9810
$CH_2FCF_2CHF_2$	HFC–245ca	693
$CF_3CHFCHFCF_2CF_3$	HFC–43–10mee	1640
CH_2F_2	HFC–32	675
CHF_2CF_3	HFC–125	3500
CH_3CF_3	HFC–143a	4470
CH_3F	HFC–41	92
CH_2FCH_2F	HFC–152	53
CH_3CHF_2	HFC–152a	124
CHF_3	HFC–23	14800.

(2) Review

The Administrator may—

(A) review the exchange values listed in the table contained in paragraph (1) on a periodic basis; and

(B) subject to notice and opportunity for public comment, adjust the exchange values solely on the basis of—

(i) the best available science; and

(ii) other information consistent with widely used or commonly accepted existing exchange values.

(3) Other regulated substances

(A) In general

Subject to notice and opportunity for public comment, the Administrator may designate a substance not included in the table contained in paragraph (1) as a regulated substance if—

(i) the substance—

(I) is a chemical substance that is a saturated hydrofluorocarbon; and

(II) has an exchange value, as determined by the Administrator in accordance with the basis described in paragraph (2)(B), of greater than 53; and

(ii) the designation of the substance as a regulated substance would be consistent with the purposes of this section.

(B) Savings provision

(i) In general

Nothing in this paragraph authorizes the Administrator to designate as a regulated substance a blend of substances that includes a saturated hydrofluorocarbon for purposes of phasing down production or consumption of regulated substances under subsection (e), even if the saturated hydrofluorocarbon is, or may be, designated as a regulated substance.

(ii) Authority of Administrator

Clause (i) does not affect the authority of the Administrator to regulate under this Act [1] a regulated substance within a blend of substances.

(d) Monitoring and reporting requirements

(1) Production, import, and export level reports

(A) In general

On a periodic basis, to be determined by the Administrator, but not less frequently than annually, each person who, within the applicable reporting period, produces, imports, exports, destroys, transforms, uses as a process agent, or reclaims a regulated substance shall submit to the Administrator a report that describes, as applicable, the quantity of the regulated substance that the person—

(i) produced, imported, and exported;

(ii) reclaimed;

(iii) destroyed by a technology approved by the Administrator;

(iv) used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or

(v) used as a process agent.

(B) Requirements

(i) Signed and attested

The report under subparagraph (A) shall be signed and attested by a responsible officer (within the meaning of the Clean Air Act (42 U.S.C. 7401 et seq.)).

(ii) No further reports required

A report under subparagraph (A) shall not be required from a person if the person—

(I) permanently ceases production, importation, exportation, destruction, transformation, use as a process agent, or reclamation of all regulated substances; and

(II) notifies the Administrator in writing that the requirement under subclause (I) has been met.

(iii) Baseline period

Each report under subparagraph (A) shall include, as applicable, the information described in that subparagraph for the baseline period of calendar years 2011 through 2013.

(2) Coordination

The Administrator may allow any person subject to the requirements of paragraph (1)(A) to combine and include the information required to be reported under that paragraph with any other related information that the person is required to report to the Administrator.

(e) Phase-down of production and consumption of regulated substances

(1) Baselines

(A) In general

Subject to subparagraph (D), the Administrator shall establish for the phase-down of regulated substances—

(i) a production baseline for the production of all regulated substances in the United States, as described in subparagraph (B); and

(ii) a consumption baseline for the consumption of all regulated substances in the United States, as described in subparagraph (C).

(B) Production baseline described

The production baseline referred to in subparagraph (A)(i) is the quantity equal to the sum of—

(i) the average annual quantity of all regulated substances produced in the United States during the period—

(I) beginning on January 1, 2011; and

(II) ending on December 31, 2013; and

(ii) the quantity equal to the sum of—

(I) 15 percent of the production level of hydrochlorofluorocarbons in calendar year 1989; and

(II) 0.42 percent of the production level of chlorofluorocarbons in calendar year 1989.

(C) Consumption baseline described

The consumption baseline referred to in subparagraph (A)(ii) is the quantity equal to the sum of—

(i) the average annual quantity of all regulated substances consumed in the United States during the period—

(I) beginning on January 1, 2011; and

(II) ending on December 31, 2013; and

(ii) the quantity equal to the sum of—

(I) 15 percent of the consumption level of hydrochlorofluorocarbons in calendar year 1989; and

(II) 0.42 percent of the consumption level of chlorofluorocarbons in calendar year 1989.

(D) Exchange values

(i) In general

For purposes of establishing the baselines pursuant to subparagraphs (B) and (C), the Administrator shall use the exchange values listed in the table contained in subsection (c)(1) for regulated substances and the following exchange values for hydrochlorofluorocarbons and chlorofluorocarbons:

Table 2

Chemical Name	Common Name	Exchange Value
$CHFC1_2$	HCFC–21	151
CHF_2C1	HCFC–22	1810
$C_2HF_3C1_2$	HCFC–123	77
C_2HF_4C1	HCFC–124	609
CH_3CFC1_2	HCFC–141b	725
	HCFC–142b	2310

CH_3CF_2C1		
$CF_3CF_2CHC1_2$	HCFC–225ca	122
CF_2C1CF_2CHC1F	HCFC–225cb	595

Table 3

Chemical Name	Common Name	Exchange Value
$CFC1_3$	CFC–11	4750
CF_2C1_2	CFC–12	10900
$C_2F_3C1_3$	CFC–113	6130
$C_2F_4C1_2$	CFC–114	10000
C_2F_5C1	CFC–115	7370

(ii) Review

The Administrator may—

(I) review the exchange values listed in the tables contained in clause (i) on a periodic basis; and

(II) subject to notice and opportunity for public comment, adjust the exchange values solely on the basis of—

(aa) the best available science; and

(bb) other information consistent with widely used or commonly accepted existing exchange values.

(2) Production and consumption phase-down

(A) In general

During the period beginning on January 1 of each year listed in the table contained in subparagraph (C) and ending on December 31 of the year before the next year listed on that table, except as otherwise permitted under this section, no person shall—

(i) produce a quantity of a regulated substance without a corresponding quantity of production allowances, except as provided in paragraph (5);

(ii) consume a quantity of a regulated substance without a corresponding quantity of consumption allowances; or

(iii) hold, use, or transfer any production allowance or consumption allowance allocated under this section except in accordance with regulations promulgated by the Administrator pursuant to subsection (g).

(B) Compliance

For each year listed on the table contained in subparagraph (C), the Administrator shall ensure that the annual quantity of all regulated substances produced or consumed in the United States does not exceed the product obtained by multiplying—

(i) the production baseline or consumption baseline, as applicable; and

(ii) the applicable percentage listed on the table contained in subparagraph (C).

(C) Relation to baseline

On January 1 of each year listed in the following table, the Administrator shall apply the applicable percentage, as described in subparagraph (A):

Date	Percentage of Production Baseline	Percentage of Consumption Baseline
2020–2023	90 percent	90 percent
2024–2028	60 percent	60 percent
2029–2033	30 percent	30 percent
2034–2035	20 percent	20 percent
2036 and thereafter	15 percent	15 percent

(D) Allowances

(i) Quantity

Not later than October 1 of each calendar year, the Administrator shall use the quantity calculated under subparagraph (B) to determine the quantity of allowances for the production and consumption of regulated substances that may be used for the following calendar year.

(ii) Nature of allowances

(I) In general

An allowance allocated under this section—

(aa) does not constitute a property right; and

(bb) is a limited authorization for the production or consumption of a regulated substance under this section.

(II) Savings provision

Nothing in this section or in any other provision of law limits the authority of the United States to terminate or limit an authorization described in subclause (I)(bb).

(3) Regulations regarding production and consumption of regulated substances

Not later than 270 days after December 27, 2020, which shall include a period of notice and opportunity for public comment, the Administrator shall issue a final rule—

(A) phasing down the production of regulated substances in the United States through an allowance allocation and trading program in accordance with this section; and

(B) phasing down the consumption of regulated substances in the United States through an allowance allocation and trading program in accordance with the schedule under paragraph (2)(C) (subject to the same exceptions and other requirements as are applicable to the phase-down of production of regulated substances under this section).

(4) Exceptions; essential uses

(A) Feedstocks and process agents

Except for the reporting requirements described in subsection (d)(1), this section does not apply to—

(i) a regulated substance that is used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or

(ii) a regulated substance that is used and not entirely consumed in the manufacture of another chemical, if the remaining amounts of the regulated substance are subsequently destroyed.

(B) Essential uses

(i) In general

Beginning on December 27, 2020, and subject to paragraphs (2) and (3) and clauses (ii) and (iii), the Administrator may, by rule, after considering technical achievability, commercial demands, affordability for residential and small business consumers, safety, and other relevant factors, including overall economic costs and environmental impacts compared to historical trends, allocate a quantity of allowances for a period of not more than 5 years for

the production and consumption of a regulated substance exclusively for the use of the regulated substance in an application, if—

(I) no safe or technically achievable substitute will be available during the applicable period for that application; and

(II) the supply of the regulated substance that manufacturers or users of the regulated substance for that application are capable of securing from chemical manufacturers, as authorized under paragraph (2)(A), including any quantities of a regulated substance available from production or import, is insufficient to accommodate the application.

(ii) Petition

If the Administrator receives a petition requesting the designation of an application as an essential use under clause (i), the Administrator shall—

(I) not later than 180 days after the date on which the Administrator receives the petition—

(aa) make the complete petition available to the public; and

(bb) when making the petition available to the public under item (aa), propose and seek public comment on—

(AA) a determination of whether to designate the application as an essential use; and

(BB) if the Administrator proposes to designate the application as an essential use, making the requisite allocation of allowances; and

(II) not later than 270 days after the date on which the Administrator receives the petition, take final action on the petition.

(iii) Limitation

A person receiving an allocation under clause (i) or (iv) or as a result of a petition granted under clause (ii) may not produce or consume a produced quantity of regulated substances that, considering the respective exchange values of the regulated substances, exceeds the number of allowances issued under paragraphs (2) and (3) that are held by that person.

(iv) Mandatory allocations

(I) In general

Notwithstanding clause (i) and subject to clause (iii) and paragraphs (2) and (3), for the 5-year period beginning on December 27, 2020, the Administrator shall allocate the full quantity of allowances necessary, based on projected, current, and historical trends, for the production or consumption of a regulated substance for the exclusive use of the regulated substance in an application solely for—

(aa) a propellant in metered-dose inhalers;

(bb) defense sprays;

(cc) structural composite preformed polyurethane foam for marine use and trailer use;

(dd) the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector;

(ee) mission-critical military end uses, such as armored vehicle engine and shipboard fire suppression systems and systems used in deployable and expeditionary applications; and

(ff) onboard aerospace fire suppression.

(II) Requirement

The allocation of allowances under subclause (I) shall be determined through a rulemaking.

(v) Review

(I) In general

For each essential use application receiving an allocation of allowances under clause (i) or (iv), the Administrator shall review the availability of substitutes, including any quantities of the regulated substance available from reclaiming or prior production, not less frequently than once every 5 years.

(II) Extension

If, pursuant to a review under subclause (I), the Administrator determines, subject to notice and opportunity for public comment, that the requirements described in subclauses (I) and (II) of clause (i) are met, the Administrator shall authorize the production or consumption, as applicable, of any regulated substance used in the application for renewable periods of not more than 5 years for exclusive use in the application.

(5) Domestic manufacturing

Notwithstanding paragraph (2)(A)(i), the Administrator may, by rule, authorize a person to produce a regulated substance in excess of the number of production allowances held by that person, subject to the conditions that—

(A) the authorization is—

(i) for a renewable period of not more than 5 years; and

(ii) subject to notice and opportunity for public comment; and

(B) the production—

(i) is at a facility located in the United States;

(ii) is solely for export to, and use in, a foreign country that is not subject to the prohibition in subsection (j)(1); and

(iii) would not violate paragraph (2)(B).

(f) Accelerated schedule

(1) In general

Subject to paragraph (4), the Administrator may, only in response to a petition submitted to the Administrator in accordance with paragraph (3) and after notice and opportunity for public comment, promulgate regulations that establish a schedule for phasing down the production or consumption of regulated substances that is more stringent than the production and consumption levels of regulated substances required under subsection (e)(2)(C).

(2) Requirements

Any regulations promulgated under this subsection—

(A) shall—

(i) apply uniformly to the allocation of production and consumption allowances for regulated substances, in accordance with subsection (e)(3);

(ii) ensure that there will be sufficient quantities of regulated substances, including substances available from reclaiming, prior production, or prior import, to meet the needs for—

(I) applications that receive an allocation under clause (i) of subsection (e)(4)(B); and

(II) all applications that receive a mandatory allocation under items (aa) through (ff) of clause (iv)(I) of that subsection; and

(iii) foster continued reclamation of and transition from regulated substances; and

(B) shall not set the level of production allowances or consumption allowances below the percentage of the consumption baseline that is actually consumed during the calendar year prior to the year during which the Administrator makes a final determination with respect to the applicable proposal described in paragraph (3)(C)(iii)(I).

(3) Petition

(A) In general

A person may petition the Administrator to promulgate regulations for an accelerated schedule for the phase-down of production or consumption of regulated substances under paragraph (1).

(B) Requirement

A petition submitted under subparagraph (A) shall—

(i) be made at such time, in such manner, and containing such information as the Administrator shall require; and

(ii) include a showing by the petitioner that there are data to support the petition.

(C) Timelines

(i) In general

If the Administrator receives a petition under subparagraph (A), the Administrator shall—

(I) not later than 180 days after the date on which the Administrator receives the petition—

(aa) make the complete petition available to the public; and

(bb) when making the petition available to the public under item (aa), propose and seek public comment on the proposal of the Administrator to grant or deny the petition; and

(II) not later than 270 days after the date on which the Administrator receives the petition, take final action on the petition.

(ii) Factors for determination

In making a determination to grant or deny a petition submitted under subparagraph (A), the Administrator shall, to the extent practicable, factor in—

(I) the best available data;

(II) the availability of substitutes for uses of the regulated substance that is the subject of the petition, taking into account technological achievability, commercial demands, affordability for residential and small business consumers, safety, consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors, including the quantities of regulated substances available from reclaiming, prior production, or prior import;

(III) overall economic costs and environmental impacts, as compared to historical trends; and

(IV) the remaining phase-down period for regulated substances under the final rule issued under subsection (e)(3), if applicable.

(iii) Regulations

After receiving public comment with respect to the proposal under clause (i)(I)(bb), if the Administrator makes a final determination to grant a petition under subparagraph (A), the final regulations with respect to the petition shall—

(I) be promulgated by not later than 1 year after the date on which the Administrator makes the proposal to grant the petition under that clause; and

(II) meet the requirements of paragraph (2).

(D) Publication

When the Administrator makes a final determination to grant or deny a petition under subparagraph (A), the Administrator shall publish a description of the reasons for that grant or denial, including a description of the information considered under subclauses (I) through (IV) of subparagraph (C)(ii).

(E) Insufficient information

If the Administrator determines that the data included under subparagraph (B)(ii) in a petition are not sufficient to make a determination under this paragraph, the Administrator shall use any

authority available to the Administrator to acquire the necessary data.

(4) Date of effectiveness

The Administrator may not promulgate under paragraph (1) a regulation for the production or consumption of regulated substances that is more stringent than the production or consumption levels required under subsection (e)(2)(C) that takes effect before January 1, 2025.

(5) Review

(A) In general

The Administrator shall review the availability of substitutes for regulated substances subject to an accelerated schedule established under paragraph (1) in each sector and subsector in which the regulated substance is used, taking into account technological achievability, commercial demands, safety, and other relevant factors, including the quantities of regulated substances available from reclaiming, prior production, or prior import, by January 1, 2026 (for the first review), by January 1, 2031 (for the second review), and at least once every 5 years thereafter.

(B) Public availability

The Administrator shall make the results of a review conducted under subparagraph (A) publicly available.

(6) Savings provision

Nothing in this subsection authorizes the Administrator to promulgate regulations pursuant to this subsection that establish a schedule for phasing down the production or consumption of regulated substances that is less stringent than the production and consumption levels of regulated substances required under subsection (e)(2)(C).

(g) Exchange authority

(1) Transfers

Not later than 270 days after December 27, 2020, which shall include a period of notice and opportunity for public comment, the Administrator shall promulgate a final regulation that governs the transfer of allowances for the production of regulated substances under subsection (e)(3)(A) that uses—

(A) the applicable exchange values described in the table contained in subsection (c)(1); or

(B) the exchange value described in the rule designating the substance as a regulated substance under subsection (c)(3).

(2) Requirements

The final rule promulgated pursuant to paragraph (1) shall—

(A) ensure that the transfers under this subsection will result in greater total reductions in the production of regulated substances in each year than would occur during the year in the absence of the transfers;

(B) permit 2 or more persons to transfer production allowances if the transferor of the allowances will be subject, under the final rule, to an enforceable and quantifiable reduction in annual production that—

(i) exceeds the reduction otherwise applicable to the transferor under this section;

(ii) exceeds the quantity of production represented by the production allowances transferred to the transferee; and

(iii) would not have occurred in the absence of the transaction; and

(C) provide for the trading of consumption allowances in the same manner as is applicable under this subsection to the trading of production allowances.

(h) Management of regulated substances

(1) In general

For purposes of maximizing reclaiming and minimizing the release of a regulated substance

from equipment and ensuring the safety of technicians and consumers, the Administrator shall promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment (including requiring, where appropriate, that any such servicing, repair, disposal, or installation be performed by a trained technician meeting minimum standards, as determined by the Administrator) that involves—

(A) a regulated substance;

(B) a substitute for a regulated substance;

(C) the reclaiming of a regulated substance used as a refrigerant; or

(D) the reclaiming of a substitute for a regulated substance used as a refrigerant.

(2) Reclaiming

(A) In general

In carrying out this section, the Administrator shall consider the use of authority available to the Administrator under this section to increase opportunities for the reclaiming of regulated substances used as refrigerants.

(B) Recovery

A regulated substance used as a refrigerant that is recovered shall be reclaimed before the regulated substance is sold or transferred to a new owner, except where the recovered regulated substance is sold or transferred to a new owner solely for the purposes of being reclaimed or destroyed.

(3) Coordination

In promulgating regulations to carry out this subsection, the Administrator may coordinate those regulations with any other regulations promulgated by the Administrator that involve—

(A) the same or a similar practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment; or

(B) reclaiming.

(4) Inapplicability

No regulation promulgated pursuant to this subsection shall apply to a regulated substance or a substitute for a regulated substance that is contained in a foam.

(5) Small business grants

(A) Definition of small business concern

In this paragraph, the term "small business concern" has the same meaning as in section 632 of title 15.

(B) Establishment

Subject to the availability of appropriations, the Administrator shall establish a grant program to award grants to small business concerns for the purchase of new specialized equipment for the recycling, recovery, or reclamation of a substitute for a regulated substance, including the purchase of approved refrigerant recycling equipment (as defined in section 609(b) of the Clean Air Act (42 U.S.C. 7671h(b))) for recycling, recovery, or reclamation in the service or repair of motor vehicle air conditioning systems.

(C) Matching funds

The non-Federal share of a project carried out with a grant under this paragraph shall be not less than 25 percent.

(D) Authorization of appropriations

There is authorized to be appropriated to carry out this paragraph $5,000,000 for each of fiscal years 2021 through 2023.

(i) Technology transitions

(1) Authority

Subject to the provisions of this subsection, the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used.

(2) Negotiated rulemaking

(A) Consideration required

Before proposing a rule for the use of a regulated substance for a sector or subsector under paragraph (1), the Administrator shall consider negotiating with stakeholders in the sector or subsector subject to the potential rule in accordance with the negotiated rulemaking procedure provided for under subchapter III of chapter 5 of title 5 (commonly known as the "Negotiated Rulemaking Act of 1990").

(B) Negotiated rulemakings

If the Administrator negotiates a rulemaking with stakeholders using the procedure described in subparagraph (A), the Administrator shall, to the extent practicable, give priority to completing that rulemaking over completing rulemakings under this subsection that were not negotiated using that procedure.

(C) No negotiated rulemaking

If the Administrator does not negotiate a rulemaking with stakeholders using the procedure described in subparagraph (A), the Administrator shall, before commencement of the rulemaking process for a rule under paragraph (1), publish an explanation of the decision of the Administrator to not use that procedure.

(3) Petitions

(A) In general

A person may petition the Administrator to promulgate a rule under paragraph (1) for the restriction on use of a regulated substance in a sector or subsector, which shall include a request that the Administrator negotiate with stakeholders in accordance with paragraph (2)(A).

(B) Response

The Administrator shall grant or deny a petition under subparagraph (A) not later than 180 days after the date of receipt of the petition.

(C) Requirements

(i) Explanation

If the Administrator denies a petition under subparagraph (B), the Administrator shall publish in the Federal Register an explanation of the denial.

(ii) Final rule

If the Administrator grants a petition under subparagraph (B), the Administrator shall promulgate a final rule not later than 2 years after the date on which the Administrator grants the petition.

(iii) Publication of petitions

Not later than 30 days after the date on which the Administrator receives a petition under subparagraph (A), the Administrator shall make that petition available to the public in full.

(4) Factors for determination

In carrying out a rulemaking using the procedure described in paragraph (2) or making a determination to grant or deny a petition submitted under paragraph (3), the Administrator shall, to the extent practicable, factor in—

(A) the best available data;

(B) the availability of substitutes for use of the regulated substance that is the subject of the rulemaking or petition, as applicable, in a sector or subsector, taking into account technological achievability, commercial demands, affordability for residential and small business consumers,

safety, consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors, including the quantities of regulated substances available from reclaiming, prior production, or prior import;

(C) overall economic costs and environmental impacts, as compared to historical trends; and

(D) the remaining phase-down period for regulated substances under the final rule issued under subsection (e)(3), if applicable.

(5) Evaluation

In carrying out this subsection, the Administrator shall—

(A) evaluate substitutes for regulated substances in a sector or subsector, taking into account technological achievability, commercial demands, safety, overall economic costs and environmental impacts, and other relevant factors; and

(B) make the evaluation under subparagraph (A) available to the public, including the factors associated with the safety of those substitutes.

(6) Effective date of rules

No rule under this subsection may take effect before the date that is 1 year after the date on which the Administrator promulgates the applicable rule under this subsection.

(7) Applicability

(A) Definition of retrofit

In this paragraph, the term "retrofit" means to upgrade existing equipment where the regulated substance is changed, which—

(i) includes the conversion of equipment to achieve system compatibility; and

(ii) may include changes in lubricants, gaskets, filters, driers, valves, o-rings, or equipment components for that purpose.

(B) Applicability of rules

A rule promulgated under this subsection shall not apply to—

(i) an essential use under clause (i) or (iv) of subsection (e)(4)(B), including any use for which the production or consumption of the regulated substance is extended under clause (v)(II) of that subsection; or

(ii) except for a retrofit application, equipment in existence in a sector or subsector before December 27, 2020.

(j) International cooperation

(1) In general

Subject to paragraph (2), no person subject to the requirements of this section shall trade or transfer a production allowance or, after January 1, 2033, export a regulated substance to a person in a foreign country that, as determined by the Administrator, has not enacted or otherwise established within a reasonable timeframe after December 27, 2020, the same or similar requirements or otherwise undertaken commitments regarding the production and consumption of regulated substances as are contained in this section.

(2) Transfers

Pursuant to paragraph (1), a person in the United States may engage in a trade or transfer of a production allowance—

(A) to a person in a foreign country if, at the time of the transfer, the Administrator revises the number of allowances for production under subsection (e)(2), as applicable, for the United States such that the aggregate national production of the regulated substance to be traded under the revised production limits is equal to the least of—

(i) the maximum production level permitted for the applicable regulated substance in the year of the transfer under this section, less the production allowances transferred;

(ii) the maximum production level permitted for the applicable regulated substances in the transfer year under applicable law, less the production allowances transferred; and

(iii) the average of the actual national production level of the applicable regulated substances for the 3-year period ending on the date of the transfer, less the production allowances transferred; or

(B) from a person in a foreign country if, at the time of the trade or transfer, the Administrator finds that the foreign country has revised the domestic production limits of the regulated substance in the same manner as provided with respect to transfers by a person in United [2] States under this subsection.

(3) Effect of transfers on production limits

The Administrator may—

(A) reduce the production limits established under subsection (e)(2)(B) as required as a prerequisite to a transfer described in paragraph (2)(A); or

(B) increase the production limits established under subsection (e)(2)(B) to reflect production allowances acquired under a trade or transfer described in paragraph (2)(B).

(4) Regulations

The Administrator shall—

(A) not later than 1 year after December 27, 2020, promulgate a final rule to carry out this subsection; and

(B) not less frequently than annually, review and, if necessary, revise the final rule promulgated pursuant to subparagraph (A).

(k) Relationship to other law

(1) Implementation

(A) Rulemakings

The Administrator may promulgate such regulations as are necessary to carry out the functions of the Administrator under this section.

(B) Delegation

The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of the powers and duties of the Administrator under this section as the Administrator determines to be appropriate.

(C) Clean Air Act

Sections 113, 114, 304, and 307 of the Clean Air Act (42 U.S.C. 7413, 7414, 7604, 7607) shall apply to this section and any rule, rulemaking, or regulation promulgated by the Administrator pursuant to this section as though this section were expressly included in title VI of that Act (42 U.S.C. 7671 et seq.).

(2) Preemption

(A) In general

Subject to subparagraph (B), during the 5-year period beginning on December 27, 2020, and with respect to an exclusive use for which a mandatory allocation of allowances is provided under subsection (e)(4)(B)(iv)(I), no State or political subdivision of a State may enforce a statute or administrative action restricting the management or use of a regulated substance within that exclusive use.

(B) Extension

(i) In general

Subject to clause (ii), if, pursuant to subclause (I) of subsection (e)(4)(B)(v), the Administrator authorizes an additional period under subclause (II) of that subsection for the production or consumption of a regulated substance for an exclusive use described in subparagraph (A), no State or political subdivision of a State may enforce a statute or

administrative action restricting the management or use of the regulated substance within that exclusive use for the duration of that additional period.

(ii) Limitation

The period for which the limitation under clause (i) applies shall not exceed 5 years from the date on which the period described in subparagraph (A) ends.

(Pub. L. 116–260, div. S, §103, Dec. 27, 2020, 134 Stat. 2255.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (d)(1)(B)(i) and (k)(1)(C), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to this chapter. Title VI of the Act is classified generally to subchapter VI (§7671 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

CODIFICATION

Section was enacted as the American Innovation and Manufacturing Act of 2020, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the Clean Air Act which comprises this chapter.

[1] So in original. Probably means "this section".

[2] So in original. Probably should be preceded by "the".

CHAPTER 86—EARTHQUAKE HAZARDS REDUCTION

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§7701. Congressional findings

The Congress finds and declares the following:

(1) All 50 States, and the Commonwealth of Puerto Rico, are vulnerable to the hazards of earthquakes, and at least 39 of them are subject to major or moderate seismic risk, including Alaska, California, Hawaii, Illinois, Massachusetts, Missouri, Montana, Nevada, New Jersey, New York, Oregon, South Carolina Tennessee,,[1] Utah, and Washington. A large portion of the population of the United States lives in areas vulnerable to earthquake hazards.

(2) Earthquakes have caused, and can cause in the future, enormous loss of life, injury, destruction of property, and economic and social disruption. With respect to future earthquakes, such loss, destruction, and disruption can be substantially reduced through the development and

implementation of earthquake hazards reduction measures, including (A) improved design and construction methods and practices, (B) land-use controls and redevelopment, (C) early-warning systems, (D) coordinated emergency preparedness plans, and (E) public education and involvement programs.

(3) An expertly staffed and adequately financed earthquake hazards reduction program, based on Federal, State, local, and private research, planning, decisionmaking, and contributions would reduce the risk of such loss, destruction, and disruption in seismic areas by an amount far greater than the cost of such program.

(4) A well-funded seismological research program could provide the scientific understanding needed to fully implement an effective earthquake early warning system.

(5) The geological study of active faults and features can reveal how recently and how frequently major earthquakes have occurred on those faults and how much risk they pose. Such long-term seismic risk assessments are needed in virtually every aspect of earthquake hazards management, whether emergency planning, public regulation, detailed building design, insurance rating, or investment decision.

(6) The vulnerability of buildings, lifeline infrastructure, public works, and industrial and emergency facilities can be reduced through proper earthquake resistant design and construction practices. The economy and efficacy of such procedures can be substantially increased through research and development.

(7) Programs and practices of departments and agencies of the United States are important to the communities they serve; some functions, such as emergency communications and national defense, and lifeline infrastructure, such as dams, bridges, and public works, must remain in service during and after an earthquake. Federally owned, operated, and influenced structures and lifeline infrastructure should serve as models for how to reduce and minimize hazards to the community.

(8) The implementation of earthquake hazards reduction measures would, as an added benefit, also reduce the risk of loss, destruction, and disruption from other natural hazards and manmade hazards, including hurricanes, tornadoes, accidents, explosions, landslides, building and structural cave-ins, and fires.

(9) Reduction of loss, destruction, and disruption from earthquakes will depend on the actions of individuals, and organizations in the private sector and governmental units at Federal, State, and local levels. The current capability to transfer knowledge and information to these sectors is insufficient. Improved mechanisms are needed to translate existing information and research findings into reasonable and usable specifications, criteria, and practices so that individuals, organizations, and governmental units may make informed decisions and take appropriate actions.

(10) Severe earthquakes are a worldwide problem. Since damaging earthquakes occur infrequently in any one nation, international cooperation is desirable for mutual learning from limited experiences.

(11) An effective Federal program in earthquake hazards reduction will require input from and review by persons outside the Federal Government expert in the sciences of earthquake hazards reduction and in the practical application of earthquake hazards reduction measures.

(12) The built environment has generally been constructed and maintained to meet the needs of the users under normal conditions. When earthquakes occur, the built environment is generally designed to prevent severe injuries or loss of human life and is not expected to remain operational or able to recover under any specified schedule.

(13) The National Research Council published a study on reducing hazards and risks associated with earthquakes based on the goals and objectives for achieving national earthquake resilience described in the strategic plan entitled "Strategic Plan for the National Earthquake Hazards Reduction Program". The study and an accompanying report called for work in 18 tasks focused on research, preparedness, and mitigation and annual funding of approximately $300,000,000 per year for 20 years.

(Pub. L. 95–124, §2, Oct. 7, 1977, 91 Stat. 1098; Pub. L. 101–614, §2, Nov. 16, 1990, 104 Stat. 3231; Pub. L. 115–307, §2(a), Dec. 11, 2018, 132 Stat. 4408.)

EDITORIAL NOTES

AMENDMENTS

2018—Par. (1). Pub. L. 115–307, §2(a)(1), inserted ", and the Commonwealth of Puerto Rico," after "States", "Oregon," after "New York,", and "Tennessee," after "South Carolina".

Par. (2)(C). Pub. L. 115–307, §2(a)(2), struck out "prediction techniques and" before "early-warning systems,".

Par. (4). Pub. L. 115–307, §2(a)(3), added par. (4) and struck out former par. (4) which read as follows: "A well-funded seismological research program in earthquake prediction could provide data adequate for the design, of an operational system that could predict accurately the time, place, magnitude, and physical effects of earthquakes in selected areas of the United States."

Pars. (6), (7). Pub. L. 115–307, §2(a)(4), substituted "lifeline infrastructure" for "lifelines" wherever appearing.

Pars. (12), (13). Pub. L. 115–307, §2(a)(5), added pars. (12) and (13).

1990—Pars. (5) to (11). Pub. L. 101–614 added pars. (5) to (7), struck out former pars. (5) and (6), and redesignated former pars. (7) to (10) as (8) to (11), respectively. Prior to amendment, pars. (5) and (6) read as follows:

"(5) An operational earthquake prediction system can produce significant social, economic, legal, and political consequences.

"(6) There is a scientific basis for hypothesizing that major earthquakes may be moderated, in at least some seismic areas, by application of the findings of earthquake control and seismological research."

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–307, §1, Dec. 11, 2018, 132 Stat. 4408, provided that: "This Act [amending this section and sections 7702 to 7704, 7705b, 7705c, and 7705e to 7707 of this title and enacting provisions set out as a note under section 7704 of this title] may be cited as the 'National Earthquake Hazards Reduction Program Reauthorization Act of 2018'."

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–360, title I, §101, Oct. 25, 2004, 118 Stat. 1668, provided that: "This title [amending sections 7703, 7704, and 7706 to 7708 of this title] may be cited as the 'National Earthquake Hazards Reduction Program Reauthorization Act of 2004'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–503, title II, §201, Nov. 13, 2000, 114 Stat. 2304, provided that: "This title [enacting sections 7707 to 7709 of this title, amending sections 7703, 7704, and 7706 of this title, repealing section 7705d of this title, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 7704 of this title] may be cited as the 'Earthquake Hazards Reduction Authorization Act of 2000'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–614, §1, Nov. 16, 1990, 104 Stat. 3231, provided that: "This Act [enacting sections 7705a to 7705e, amending this section and sections 7702 to 7705, and 7706 of this title, and enacting provisions set out as notes under sections 7704, 7705b, and 7705e of this title] may be cited as the 'National Earthquake Hazards Reduction Program Reauthorization Act'."

SHORT TITLE

Pub. L. 95–124, §1, Oct. 7, 1977, 91 Stat. 1098, provided: "That this Act [enacting this chapter] may be cited as the 'Earthquake Hazards Reduction Act of 1977'."

REPORT ON AT-RISK POPULATIONS

Pub. L. 106–503, title II, §207, Nov. 13, 2000, 114 Stat. 2307, required the Director of the Federal Emergency Management Agency to transmit to Congress a report no later than 1 year after Nov. 13, 2000, describing the elements of the National Earthquake Hazards Reduction Program that specifically addressed the needs of at-risk populations.

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Functions of President under Earthquake Hazards Reduction Act of 1977 delegated, transferred, or reassigned to Secretary of Homeland Security pursuant to sections 1–104 and 4–204 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended, set out as a note under section 5195 of this title.

[1] *So in original.*

§7702. Congressional statement of purpose

It is the purpose of the Congress in this chapter to reduce the risks of life and property from future earthquakes and increase the resilience of communities in the United States through the establishment and maintenance of an effective earthquake hazards reduction program. The objectives of such program shall include—

(1) the education of the public, including State and local officials, as to earthquake phenomena, the identification of locations and structures which are especially susceptible to earthquake damage, ways to reduce the adverse consequences of an earthquake to individuals and the communities, and related matters;

(2) the development of technologically and economically feasible design and construction methods and procedures to make new and existing structures, in areas of seismic risk, earthquake resistant, giving priority to the development of such methods and procedures for power generating plants, dams, hospitals, schools, public utilities and other lifeline infrastructure, public safety structures, high occupancy buildings, and other structures which are especially needed to facilitate community-wide post-earthquake recovery and in times of disaster;

(3) the implementation to the greatest extent practicable, in all areas of high or moderate seismic risk, of a system (including personnel, technology, and procedures) for identifying, evaluating, and accurately characterizing seismic hazards;

(4) the development, publication, and promotion, in conjunction with State and local officials and professional organizations, of model building and planning codes and other means to encourage consideration of information about seismic risk in making decisions about land-use policy and construction activity;

(5) the development, in areas of seismic risk, of improved understanding of, and capability with respect to, earthquake-related issues, including methods of mitigating the risks from earthquakes, planning to prevent such risks, disseminating warnings of earthquakes, organization emergency services, and planning for re-occupancy, recovery, reconstruction, and redevelopment after an earthquake;

(6) the development of ways to increase the use of existing scientific and engineering knowledge to mitigate earthquake hazards; and

(7) the development of ways to assure the availability of affordable earthquake insurance.

(Pub. L. 95–124, §3, Oct. 7, 1977, 91 Stat. 1099; Pub. L. 101–614, §3, Nov. 16, 1990, 104 Stat. 3231; Pub. L. 115–307, §2(b), (c)(1)(B), Dec. 11, 2018, 132 Stat. 4408, 4409.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–307, §2(b)(1), inserted "and increase the resilience of communities" after "future earthquakes" in introductory provisions.

Par. (1). Pub. L. 115–307, §2(b)(2), inserted "to individuals and the communities" after "an earthquake".

Par. (2). Pub. L. 115–307, §2(b)(3), (c)(1)(B), substituted "lifeline infrastructure" for "lifelines" and "to facilitate community-wide post-earthquake recovery and in times of disaster" for "in time of disaster".

Par. (3). Pub. L. 115–307, §2(b)(4), struck out "for predicting damaging earthquakes and" before "for identifying,".

Par. (4). Pub. L. 115–307, §2(b)(5), inserted "and planning" after "model building".

Par. (5). Pub. L. 115–307, §2(b)(6), substituted "re-occupancy, recovery, reconstruction," for "reconstruction".

1990—Pub. L. 101–614 inserted sentence at end, listing objectives of program.

§7703. Definitions

As used in this chapter, unless the context otherwise requires:

(1) The term "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth.

(2) The term "Program" means the National Earthquake Hazards Reduction Program established under section 7704 of this title.

(3) The term "seismic" and variants thereof mean having to do with, or caused by earthquakes.

(4) The term "State" means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands, and any other territory or possession of the United States.

(5) The term "United States" means, when used in a geographical sense, all of the States as defined in paragraph (4).

(6) The term "lifeline infrastructure" means public works and utilities, including transportation facilities and infrastructure, oil and gas pipelines, electrical power and communication facilities and infrastructure, and water supply and sewage treatment facilities.

(7) The term "Program agencies" means the Federal Emergency Management Agency, the United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

(8) The term "Interagency Coordinating Committee" means the Interagency Coordinating Committee on Earthquake Hazards Reduction established under section 7704(a) of this title.

(9) The term "Advisory Committee" means the Advisory Committee established under section 7704(a)(5) of this title.

(10) The term "community resilience" means the ability of a community to prepare and plan for, absorb, recover from, and more successfully adapt to adverse seismic events.

(Pub. L. 95–124, §4, Oct. 7, 1977, 91 Stat. 1099; Pub. L. 101–614, §4, Nov. 16, 1990, 104 Stat. 3232; Pub. L. 106–503, title II, §209, Nov. 13, 2000, 114 Stat. 2308; Pub. L. 108–360, title I, §102, Oct. 25, 2004, 118 Stat. 1668; Pub. L. 115–307, §2(c)(1)(A), (2), Dec. 11, 2018, 132 Stat. 4409.)

EDITORIAL NOTES

AMENDMENTS

2018—Par. (6). Pub. L. 115–307, §2(c)(1)(A), substituted "lifeline infrastructure" for "lifelines".

Par. (10). Pub. L. 115–307, §2(c)(2), added par. (10).

2004—Pars. (8), (9). Pub. L. 108–360 added pars. (8) and (9).

2000—Par. (6). Pub. L. 106–503 inserted "and infrastructure" after "communication facilities".

1990—Par. (2). Pub. L. 101–614, §4(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'program' means the earthquake hazards reduction program established under section 7704 of this title."

Pars. (6), (7). Pub. L. 101–614, §4(2), added pars. (6) and (7).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§7704. National Earthquake Hazards Reduction Program

(a) Establishment

(1) In general

There is established the National Earthquake Hazards Reduction Program.

(2) Program activities

The activities of the Program shall be designed to—

(A) develop effective measures for earthquake hazards reduction;

(B) promote the adoption of earthquake hazards reduction measures by Federal, State, and local governments, national standards and model code organizations, architects and engineers, building owners, and others with a role in planning and constructing buildings, structures, and lifeline infrastructure through—

(i) grants, contracts, cooperative agreements, and technical assistance;

(ii) development of standards, guidelines, and voluntary consensus codes for earthquake hazards reduction for buildings, structures, and lifeline infrastructure;

(iii) development and maintenance of a repository of information, including technical data, on seismic risk, community resilience, and hazards reduction; and

(iv) publishing a systematic set of maps of active faults and folds, liquefaction susceptibility, susceptibility for earthquake induced landslides, and other seismically induced hazards; and [1]

(C) improve the understanding of earthquakes and their effects on communities, buildings, structures, and lifeline infrastructure, through interdisciplinary research that involves engineering, natural sciences, and social, economic, and decisions sciences; and

(D) continue the development of the Advanced National Seismic System, including earthquake early warning capabilities and the Global Seismographic Network.

(3) Interagency Coordinating Committee on Earthquake Hazards Reduction

(A) In general

There is established an Interagency Coordinating Committee on Earthquake Hazards Reduction chaired by the Director of the National Institute of Standards and Technology (referred to in this subsection as the "Director").

(B) Membership

In addition to the Director, the committee shall be composed of—

(i) the Administrator of the Federal Emergency Management Agency;

(ii) the Director of the United States Geological Survey;

(iii) the Director of the National Science Foundation;

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

(v) the Director of the Office of Management and Budget.

(C) Meetings

The Committee shall meet not less frequently than once each year at the call of the Director.

(D) Duties

(i) General duty

The Interagency Coordinating Committee shall oversee the planning, management, and coordination of the Program.

(ii) Specific duties

The duties of the Interagency Coordinating Committee include the following:

(I) Developing, not later than 6 months after October 25, 2004, and updating periodically—

(aa) a strategic plan that establishes goals and priorities for the Program activities described under subsection (a)(2); and

(bb) a detailed management plan to implement such strategic plan.

(II) Developing a coordinated interagency budget for the Program that will ensure appropriate balance among the Program activities described under subsection (a)(2), and, in accordance with the plans developed under subclause (I), submitting such budget to the Director of the Office of Management and Budget at the time designated by the Director for agencies to submit biennial budgets.

(III) Developing interagency memorandums of understanding with any relevant Federal agencies on data sharing and resource commitment in the event of an earthquake disaster.

(IV) Coordinating with the Interagency Coordinating Committee on Windstorm Impact Reduction and other natural hazards coordination committees as the Director determines appropriate to share data and best practices.

(V) Coordinating with the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Oceanic and Atmospheric Administration on data sharing and resource allocation to ensure judicious use of Government resources and the free-flowing exchange of information related to earthquakes.

(VI) Coordinating with the Secretary of Agriculture and the Secretary of the Interior on the use of public lands for earthquake monitoring and research stations, and related data collection.

(VII) Coordinating with the Secretary of Transportation and the Secretary of Housing and Urban Development on the effects of earthquakes on transportation and housing stocks.

(iii) Assistance from Secretary of Agriculture and Secretary of the Interior

To the extent practicable, the Secretary of Agriculture and the Secretary of the Interior shall expedite any request for a permit to use public land under clause (ii)(VI).

(4) Biennial report

(A) In general

Not less frequently than once every two years, the Interagency Coordinating Committee shall submit to the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science, Space, and Technology, the Committee on Energy and Commerce, the Committee on Natural Resources, and the Committee on Homeland Security of the House of Representatives a report on the Program. Such report shall include—

(i) the Program budget for the current fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under paragraph (3)(D)(i)(I); [2]

(ii) the proposed Program budget for the next fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under paragraph (3)(D)(i)(I); [2]

(iii) a description of the activities and results of the Program during the previous year, including an assessment of the effectiveness of the Program in furthering the goals

established in the strategic plan under paragraph (3)(D)(i)(I); [2]

(iv) a description of the extent to which the Program has incorporated the recommendations of the Advisory Committee;

(v) a description of activities, including budgets for the current fiscal year and proposed budgets for the next fiscal year, that are carried out by Program agencies and contribute to the Program, but are not included in the Program;

(vi) a description of the activities, including budgets for the current fiscal year and proposed budgets for the following fiscal year, related to the grant program carried out under subsection (b)(2)(A)(i); and

(vii) a statement regarding whether the Administrator of the Federal Emergency Management Agency has lowered or waived the cost share requirement for assistance provided under subsection (b)(2)(A)(i).

(B) Support for preparation of report

Each head of a Program agency shall submit to the Director of the National Institute of Standards and Technology such information as the Director may request for the preparation of a report under subparagraph (A) not later than 90 days after the date on which the Director requests such information.

(5) Advisory Committee

(A) In general

The Director shall establish an Advisory Committee on Earthquake Hazards Reduction of at least 11 members, none of whom may be an employee (as defined in subparagraphs (A) through (F) of section 7342(a)(1) of title 5 [3] including representatives of research and academic institutions, industry standards development organizations, State and local government, and financial communities who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines. The recommendations of the Advisory Committee shall be considered by Federal agencies in implementing the Program.

(B) Assessment

The Advisory Committee shall assess—

(i) trends and developments in the science and engineering of earthquake hazards reduction;

(ii) effectiveness of the Program in carrying out the activities under (a)(2) [4];

(iii) the need to revise the Program; and

(iv) the management, coordination, implementation, and activities of the Program.

(C) Report

Not later than 1 year after October 25, 2004, and at least once every 2 years thereafter, the Advisory Committee shall report to the Director on its findings of the assessment carried out under subparagraph (B) and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey Scientific Earthquake Studies Advisory Committee.

(D) Application of chapter 10 of title 5

Section 1013 of title 5 shall not apply to the Advisory Committee.

(b) Responsibilities of Program agencies

(1) Lead agency

The National Institute of Standards and Technology shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director of the Institute shall—

(A) ensure that the Program includes the necessary steps to promote the implementation of

earthquake hazard reduction measures by Federal, State, and local governments, national standards and model building code organizations, architects and engineers, and others with a role in planning [5] constructing, evaluating, and retrofitting buildings and lifeline infrastructure;

(B) support the development of performance-based seismic engineering tools, and work with appropriate groups to promote the commercial application of such tools, through earthquake-related building codes, standards, and construction practices;

(C) request the assistance of Federal agencies other than the Program agencies, as necessary to assist in carrying out this chapter; and

(D) work with the Federal Emergency Management Agency, the National Science Foundation, and the United States Geological Survey, to develop a comprehensive plan for earthquake engineering research to provide new and effectively use existing testing facilities and laboratories (existing at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.

(2) Department of Homeland Security; Federal Emergency Management Agency

(A) Program responsibilities

The Administrator of the Federal Emergency Management Agency—

(i) shall operate a program of grants and assistance to enable States to develop mitigation, preparedness, and response plans, purchase necessary instrumentation, prepare inventories and conduct seismic safety inspections of critical structures and lifeline infrastructure, update building, land use planning, and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and provide assistance to multi-State groups for such purposes;

(ii) shall support the implementation of a comprehensive earthquake education, outreach, and public awareness program, including development of materials and their wide dissemination to all appropriate audiences and support public access to locality-specific information that may assist the public in preparing for, mitigating against, responding to and recovering from earthquakes and related disasters;

(iii) shall, in conjunction with the Director of the National Institute of Standards and Technology, other Federal agencies, and private sector groups, use research results to support the preparation, maintenance, and wide dissemination of seismic resistant design guidance and related information on building codes, standards, and practices for new and existing buildings, structures, and lifeline infrastructure, aid in the development of performance-based design guidelines and methodologies, and support model codes that are cost effective and affordable in order to promote better practices within the design and construction industry and reduce losses from earthquakes;

(iv) shall enter into cooperative agreements or contracts with States and local jurisdictions and other Federal agencies to establish demonstration projects on earthquake hazard mitigation, to link earthquake research and mitigation efforts with emergency management programs, or to prepare educational materials for national distribution; and

(v) shall support the Director of the National Institute of Standards and Technology in the completion of programmatic goals.

(B) State assistance program criteria

In order to qualify for assistance under subparagraph (A)(i), a State must—

(i) demonstrate that the assistance will result in enhanced seismic safety in the State;

(ii) provide 25 percent of the costs of the activities for which assistance is being given, except that the Administrator may lower or waive the cost-share requirement for these activities for a small impoverished community, as defined in section 5133 of this title; and

(iii) meet such other requirements as the Administrator shall prescribe.

(3) United States Geological Survey

The United States Geological Survey shall report on significant domestic and international

earthquakes and conduct research and other activities necessary to characterize and identify earthquake hazards, assess earthquake risks, monitor seismic activity, and improve earthquake forecasts. In carrying out this paragraph, the Director of the United States Geological Survey shall—

(A) conduct a systematic assessment of the seismic risks in each region of the Nation prone to earthquakes, including, where appropriate, the establishment and operation of intensive monitoring projects on hazardous faults, seismic microzonation studies in urban and other developed areas where earthquake risk is determined to be significant, and engineering seismology studies;

(B) work with officials of State and local governments to ensure that they are knowledgeable about the specific seismic risks in their areas;

(C) develop standard procedures, in consultation with the Administrator of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology, for issuing earthquake alerts and early warnings;

(D) issue when necessary and feasible, and notify the Administrator of the Federal Emergency Management Agency, the Director of the National Institute of Standards and Technology, and State and local officials, an alert and an earthquake warning;

(E) operate, including the National Earthquake Information Center, a forum for the international exchange of earthquake information which shall—

(i) promote the exchange of information on earthquake research and earthquake preparedness between the United States and other nations;

(ii) maintain a library containing selected reports, research papers, and data produced through the Program;

(iii) answer requests from other nations for information on United States earthquake research and earthquake preparedness programs; and

(iv) direct foreign requests to the agency involved in the Program which is best able to respond to the request;

(F) operate a National Seismic System;

(G) support regional seismic networks, which shall complement the National Seismic Network; and [1]

(H) work with the National Science Foundation, the Federal Emergency Management Agency, and the National Institute of Standards and Technology to develop a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (in existence at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.[6]

(I) work with other Program agencies to coordinate Program activities with similar earthquake hazards reduction efforts in other countries, to ensure that the Program benefits from relevant information and advances in those countries;

(J) maintain suitable seismic hazard maps and data in support of building codes for structures and lifeline infrastructure, including additional maps needed for performance-based design approaches; and

(K) support the Director of the National Institute of Standards and Technology in the completion of programmatic goals.

(4) National Science Foundation

(A) In general

The National Science Foundation shall be responsible for funding research on earth sciences to improve the understanding of the causes and behavior of earthquakes, on earthquake engineering, and on human response to earthquakes. In carrying out this paragraph, the Director of the National Science Foundation shall—

(i) encourage prompt dissemination of significant findings, sharing of data, samples,

physical collections, and other supporting materials, and development of intellectual property so research results can be used by appropriate organizations to mitigate earthquake damage;

(ii) in addition to supporting individual investigators, support university research consortia, State agencies, State geological surveys, and centers for research in geosciences and in earthquake engineering;

(iii) work closely with the United States Geological Survey to support applied science in the production of a systematic series of earthquake-related geologic hazard maps, and to identify geographic regions of national concern that should be the focus of targeted solicitations for earthquake-related research proposals;

(iv) support research that improves the safety and performance of buildings, structures, and lifeline systems using experimental and computational facilities;

(v) emphasize, in earthquake engineering research, development of economically feasible methods to retrofit existing buildings and to protect lifeline infrastructure to mitigate earthquake damage;

(vi) support research that studies the political, economic, and social factors that influence the implementation of hazard reduction measures;

(vii) include to the maximum extent practicable diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Hispanics, Native Americans, Asian-Pacific Americans, and other underrepresented populations;

(viii) develop, in conjunction with the Federal Emergency Management Agency, the National Institute of Standards and Technology, and the United States Geological Survey, a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (in existence at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner; and

(ix) support the Director of the National Institute of Standards and Technology in the completion of programmatic goals.

(B) Identification of funding

The National Science Foundation shall—

(i) to the extent practicable, note in any notice of Program funding or other funding possibilities under the Program that the funds are part of the Program;

(ii) to the extent practicable, track the awarding of Federal funds through the Program; and

(iii) not less frequently than once every 2 years, submit to the director of the Program a report specifying the amount of Federal funds awarded to conduct research that enhances the understanding of earthquake science.

(5) National Institute of Standards and Technology

In addition to the lead agency responsibilities described under paragraph (1), the National Institute of Standards and Technology shall be responsible for carrying out research and development to improve community resilience through building codes and standards and practices for structures and lifeline infrastructure. In carrying out this paragraph, the Director of the National Institute of Standards and Technology shall—

(A) work closely with national standards and model building code organizations, in conjunction with the Agency, to promote the implementation of research results;

(B) promote better building practices among architects and engineers;

(C) work closely with national standards organizations to develop seismic safety standards and practices for new and existing lifeline infrastructure;

(D) support the development and commercial application of cost effective and affordable performance-based seismic engineering by providing technical support for seismic engineering practices and related building code, standards, and practices development; and

(E) work with the National Science Foundation, the Federal Emergency Management Agency, and the United States Geological Survey to develop a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (in

existence at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.

(c) Budget coordination

(1) Guidance

The Interagency Coordinating Committee shall each year provide guidance to the other Program agencies concerning the preparation of requests for appropriations for activities related to the Program, and shall prepare, in conjunction with the other Program agencies, an annual Program budget to be submitted to the Office of Management and Budget.

(2) Reports

Each Program agency shall include with its annual request for appropriations submitted to the Office of Management and Budget a report that—

(A) identifies each element of the proposed Program activities of the agency;

(B) specifies how each of these activities contributes to the Program; and

(C) states the portion of its request for appropriations allocated to each element of the Program.

(Pub. L. 95–124, §5, Oct. 7, 1977, 91 Stat. 1099; Pub. L. 96–472, title I, §101, Oct. 19, 1980, 94 Stat. 2257; Pub. L. 99–105, §§5, 6, Sept. 30, 1985, 99 Stat. 475; Pub. L. 100–252, §2, Feb. 29, 1988, 102 Stat. 18; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 100–707, title I, §109(u), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 101–614, §5, Nov. 16, 1990, 104 Stat. 3232; Pub. L. 105–47, §3, Oct. 1, 1997, 111 Stat. 1162; Pub. L. 106–503, title II, §§206, 208, Nov. 13, 2000, 114 Stat. 2307; Pub. L. 108–360, title I, §103, Oct. 25, 2004, 118 Stat. 1669; Pub. L. 115–307, §§2(c)(1)(B), 3(a)–(b)(4)(A), (c)–(f), 8(a)(1), (c), Dec. 11, 2018, 132 Stat. 4409–4413, 4417; Pub. L. 117–286, §4(a)(271), Dec. 27, 2022, 136 Stat. 4335.)

EDITORIAL NOTES

REFERENCES IN TEXT

Paragraph (3)(D), referred to in subsec. (a)(4)(A)(i) to (iii), was amended generally by Pub. L. 115–307, §3(b)(3), Dec. 11, 2018, 132 Stat. 4410, and, as so amended, does not contain a cl. (i)(I). For similar provisions after amendment by Pub. L. 115–307, see cl. (ii)(I)(aa) of par. (3)(D).

Section 5133 of this title, referred to in subsec. (b)(2)(B)(ii), was in the original "section 203 of the Disaster Relief Act of 1974 (42 U.S.C. 5133(a))", and was translated as if it had been a reference to section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which was formerly known as the Disaster Relief Act of 1974, to reflect the probable intent of Congress. Subsec. (a) of section 5133 of this title defines "small impoverished community".

AMENDMENTS

2022—Subsec. (a)(5)(D). Pub. L. 117–286 substituted "Application of chapter 10 of title 5" for "Federal Advisory Committee Act application" in heading and "Section 1013 of title 5" for "Section 14 of the Federal Advisory Committee Act (5 App. U.S.C. 14)" in text.

2018—Pub. L. 115–307, §2(c)(1)(B), substituted "lifeline infrastructure" for "lifelines" wherever appearing.

Subsec. (a)(2)(B)(iii). Pub. L. 115–307, §3(a)(1)(A), inserted ", community resilience," after "seismic risk".

Subsec. (a)(2)(B)(iv). Pub. L. 115–307, §3(a)(1)(B), added cl. (iv).

Subsec. (a)(2)(D). Pub. L. 115–307, §3(a)(2), substituted "continue the development of the Advanced National Seismic System, including earthquake early warning capabilities" for "develop, operate, and maintain an Advanced National Seismic Research and Monitoring System established under section 7707 of this title, the George E. Brown, Jr. Network for Earthquake Engineering Simulation established under section 7708 of this title,".

Subsec. (a)(3)(B). Pub. L. 115–307, §8(a)(1)(A), struck out "the directors of" after "composed of" in introductory provisions and inserted "the Administrator of" before "the" in cl. (i) and "the Director of" before "the" in cls. (ii) to (v).

Pub. L. 115–307, §3(b)(1), substituted "In addition to the Director, the committee" for "The committee" in

introductory provisions.

Subsec. (a)(3)(C). Pub. L. 115–307, §3(b)(2), substituted "not less frequently than once each year" for "not less than 3 times a year".

Subsec. (a)(3)(D). Pub. L. 115–307, §3(b)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) set out the purpose and duties of the Interagency Coordinating Committee.

Subsec. (a)(4). Pub. L. 115–307, §3(b)(4)(A)(ii), (vi), (vii), designated existing provisions as subpar. (A) and inserted heading, substituted "Not less frequently than once every two years, the Interagency Coordinating Committee shall submit to the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science, Space, and Technology, the Committee on Energy and Commerce, the Committee on Natural Resources, and the Committee on Homeland Security of the House of Representatives a report on the Program" for "The Interagency Coordinating Committee shall transmit, at the time of the President's budget request to Congress, an annual report to the Committee on Science and the Committee on Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate" in introductory provisions, redesignated former subpars. (A) to (F) as cls. (i) to (vi), respectively, of subpar. (A) and realigned margins, and added subpar. (B).

Pub. L. 115–307, §3(b)(4)(A)(i), substituted "Biennial" for "Annual" in heading.

Subsec. (a)(4)(A)(i), (ii). Pub. L. 115–307, §8(c)(1), substituted "paragraph (3)(D)(i)(I)" for "subparagraph (3)(A)".

Subsec. (a)(4)(A)(iii). Pub. L. 115–307, §8(c)(2), substituted "under paragraph (3)(D)(i)(I)" for "under (3)(A)".

Subsec. (a)(4)(A)(vii). Pub. L. 115–307, §3(b)(4)(A)(iii)–(v), added cl. (vii).

Subsec. (b)(1)(A). Pub. L. 115–307, §3(c)(1)(A), which directed substitution of "constructing, evaluating, and retrofitting" for "and constructing,", was executed by making the substitution for "and constructing" to reflect the probable intent of Congress.

Subsec. (b)(1)(D). Pub. L. 115–307, §3(c)(1)(B), inserted "provide new and" after "research to".

Subsec. (b)(2). Pub. L. 115–307, §3(d), amended par. (2) generally. Prior to amendment, par. (2) related to program responsibilities of the Department of Homeland Security and Federal Emergency Management Agency, State assistance program criteria, and non-Federal cost sharing.

Subsec. (b)(3). Pub. L. 115–307, §3(e)(1), in introductory provisions, inserted "report on significant domestic and international earthquakes and" before "conduct research" and substituted "forecasts." for "predictions."

Subsec. (b)(3)(C). Pub. L. 115–307, §8(a)(1)(B), substituted "Administrator of the Federal Emergency Management Agency" for "Director of the Federal Emergency Management Agency".

Pub. L. 115–307, §3(e)(2), substituted "alerts and early warnings" for "predictions, including aftershock advisories".

Subsec. (b)(3)(D). Pub. L. 115–307, §3(e)(3), added subpar. (D) and struck out former subpar. (D) which read as follows: "issue when necessary, and notify the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology of, an earthquake prediction or other earthquake advisory, which may be evaluated by the National Earthquake Prediction Evaluation Council, which shall be exempt from the requirements of section 10(a)(2) of the Federal Advisory Committee Act when meeting for such purposes;".

Subsec. (b)(3)(E). Pub. L. 115–307, §3(e)(4), substituted "including" for "using" in introductory provisions.

Subsec. (b)(3)(I). Pub. L. 115–307, §3(e)(5), struck out "and" at end.

Subsec. (b)(3)(J). Pub. L. 115–307, §3(e)(6), inserted "and data" after "hazard maps" and substituted "; and" for period at end.

Subsec. (b)(3)(K). Pub. L. 115–307, §3(e)(7), added subpar. (K).

Subsec. (b)(4). Pub. L. 115–307, §3(f)(7)–(9), designated existing provisions as subpar. (A) and inserted heading, redesignated former subpars. (A) to (I) as cls. (i) to (ix), respectively, of subpar. (A), and added subpar. (B).

Subsec. (b)(4)(B). Pub. L. 115–307, §3(f)(1), inserted ", State agencies, State geological surveys," after "consortia".

Subsec. (b)(4)(C). Pub. L. 115–307, §3(f)(2), inserted "to support applied science in the production of a systematic series of earthquake-related geologic hazard maps, and" after "Survey".

Subsec. (b)(4)(D). Pub. L. 115–307, §3(f)(3), substituted "experimental and computational facilities" for "large-scale experimental and computational facilities of the George E. Brown Jr. Network for Earthquake Engineering Simulation and other institutions engaged in research and the implementation of the National Earthquake Hazards Reduction Program".

Subsec. (b)(4)(I). Pub. L. 115–307, §3(f)(4)–(6), added subpar. (I).

Subsec. (b)(5). Pub. L. 115–307, §3(c)(2), inserted "community resilience through" after "improve" in introductory provisions.

2004—Subsec. (a). Pub. L. 108–360, §103(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "There is established a National Earthquake Hazards Reduction Program."

Subsec. (b)(1). Pub. L. 108–360, §103(2)(A)(i), (iv), in introductory provisions, substituted "National Institute of Standards and Technology shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director of the Institute" for "Federal Emergency Management Agency (hereafter in this chapter referred to as the 'Agency') shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director of the Agency" and struck out concluding provisions which read as follows: "The principal official carrying out the responsibilities described in this paragraph shall be at a level no lower than that of Associate Director."

Subsec. (b)(1)(B). Pub. L. 108–360, §103(2)(A)(ii), (iii), added subpar. (B) and struck out former subpar. (B) which read as follows: "prepare, in conjunction with the other Program agencies, a written plan for the Program, which shall include specific tasks and milestones for each Program agency, and which shall be submitted to the Congress and updated at such times as may be required by significant Program events, but in no event less frequently than every 3 years;".

Subsec. (b)(1)(C). Pub. L. 108–360, §103(2)(A)(ii), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: "prepare, in conjunction with the other Program agencies, a biennial report, to be submitted to the Congress within 90 days after the end of each even-numbered fiscal year, which shall describe the activities and achievements of the Program during the preceding two fiscal years;".

Subsec. (b)(1)(D), (E). Pub. L. 108–360, §103(2)(A)(ii), (v), redesignated subpar. (E) as (D) and substituted "Federal Emergency Management Agency, the National Science Foundation" for "National Science Foundation, the National Institute of Standards and Technology". Former subpar. (D) redesignated (C).

Subsec. (b)(2). Pub. L. 108–360, §103(2)(B), inserted heading, struck out former heading "Federal Emergency Management Agency", added subpar. (A), and struck out heading and text of former subpar. (A) which related to earthquake program responsibilities of the Director of the Federal Emergency Management Agency.

Subsec. (b)(3). Pub. L. 108–360, §103(2)(C)(i), inserted "and other activities" after "shall conduct research" in introductory provisions.

Subsec. (b)(3)(C). Pub. L. 108–360, §103(2)(C)(ii), substituted "the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology" for "the Agency".

Subsec. (b)(3)(D). Pub. L. 108–360, §103(2)(C)(iii), substituted "the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology" for "the Director of the Agency".

Subsec. (b)(3)(E). Pub. L. 108–360, §103(2)(C)(iv), substituted "operate, using the National Earthquake Information Center, a forum for the international exchange of earthquake information" for "establish, using existing facilities, a Center for the International Exchange of Earthquake Information" in introductory provisions.

Subsec. (b)(3)(F). Pub. L. 108–360, §103(2)(C)(v), substituted "System" for "Network".

Subsec. (b)(3)(I), (J). Pub. L. 108–360, §103(2)(C)(vi), added subpars. (I) and (J).

Subsec. (b)(4)(D) to (H). Pub. L. 108–360, §103(2)(D), added subpars. (D) and (G) and redesignated former subpars. (D), (E), and (F) as (E), (F), and (H), respectively.

Subsec. (b)(5). Pub. L. 108–360, §103(2)(E), in introductory provisions, substituted "In addition to the lead agency responsibilities described under paragraph (1), the National" for "The National".

Subsec. (b)(5)(D), (E). Pub. L. 108–360, §103(2)(F), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (c)(1). Pub. L. 108–360, §103(3), substituted "Interagency Coordinating Committee" for "Agency".

2000—Subsec. (b)(1). Pub. L. 106–503, §206(1), redesignated subpars. (B) to (F) as (A) to (E), respectively, and struck out former subpar. (A) which read as follows: "prepare, in conjunction with the other Program agencies, an annual budget for the Program to be submitted to the Office of Management and Budget;".

Subsec. (b)(2)(A)(ii). Pub. L. 106–503, §208, inserted before semicolon at end ", and development of means of increasing public access to available locality-specific information that may assist the public in preparing for or responding to earthquakes".

Subsec. (c). Pub. L. 106–503, §206(2), added subsec. (c).

1997—Subsec. (b)(1)(F). Pub. L. 105–47, §3(b), added subpar. (F).

Subsec. (b)(3)(H). Pub. L. 105–47, §3(c), added subpar. (H).

Subsec. (b)(4)(F). Pub. L. 105–47, §3(a), added subpar. (F).

Subsec. (b)(5)(D). Pub. L. 105–47, §3(d), added subpar. (D).

1990—Pub. L. 101–614 amended section generally, substituting present provisions consisting of subsecs. (a) and (b) for former provisions which provided for: in subsec. (a), establishment of program; in subsec. (b), duties of President and Director of Federal Emergency Management Agency; in subsec. (c), objectives of program; in subsec. (d), Federal participation; in subsec. (e), research elements; in subsec. (f), mitigation elements; in subsec. (g), State assistance; in subsec. (h), non-Federal participation; in subsec. (i), study and recommendations on disaster relief; and in subsec. (j), cost sharing.

1988—Subsec. (b)(2)(F). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

Subsecs. (g), (i). Pub. L. 100–707 substituted "Disaster Relief and Emergency Assistance Act" for "Disaster Relief Act of 1974".

Subsec. (j). Pub. L. 100–252 added subsec. (j).

1985—Subsec. (b)(2)(E). Pub. L. 99–105, §5, amended subpar. (E) generally, substituting "to be submitted to the Congress and updated at such times as may be required by significant program events, but in no event less frequently than every three years;" for "which plan will recommend base and incremental budget options for the agencies to carry out the elements and programs specified through at least 1985, and which plan shall be completed by September 30, 1981, and transmitted to the Congress and shall be updated annually; and".

Subsec. (b)(2)(F), (G). Pub. L. 99–105, §6, added subpar. (F) and redesignated former subpar. (F) as (G).

1980—Subsec. (a). Pub. L. 96–472, §101(a), inserted provisions relating to non-Federal participation in par. (2), and substituted provisions respecting the elements described in subsec. (f) of this section, for provisions respecting the implementation plan described in subsec. (f) of this section in par. (3).

Subsec. (b). Pub. L. 96–472, §101(b), substituted provisions setting forth the duties of the President and the Director of the Federal Emergency Management Agency with respect to the Program for provisions setting forth the duties of the President with respect to the program and plan.

Subsec. (d). Pub. L. 96–472, §101(c), substituted "(1)(A)" for "(3)(B)", "Department of Commerce" for "National Bureau of Standards", and "Federal Emergency Management Agency" for "National Fire Prevention and Control Administration".

Subsec. (e)(6). Pub. L. 96–472, §101(d), substituted "potential" for "political".

Subsec. (f). Pub. L. 96–472, §101(e), substituted in provision preceding par. (1), provision directing that the mitigation elements of the program are to be as specified in pars. (1) to (8) for provision authorizing the establishment of a implementation plan, year-by-year targets, and Federal and non-Federal roles, in par. (1), substituted provision including as one of the mitigating elements, issuance of earthquake predictions for provision including in the implementation plan development of measures in preparing for earthquakes, actual predictions, warnings, and insuring a comprehensive response to an earthquake, added pars. (7) and (8), and struck out provision following par. (8), that when the implementation plan developed by the President contemplates specific action to be taken by a Federal agency, department, or entity, and at the end of the 30-day period beginning on the date the President submits such plan to the appropriate authorizing committees of Congress and such action has not been initiated, the President submit to such committees a report why such action has not been taken.

Subsec. (i). Pub. L. 96–472, §101(f), added subsec. (i).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–307, §3(b)(4)(B), Dec. 11, 2018, 132 Stat. 4411, provided that: "The amendments made by subparagraph (A) [amending this section] shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act [Dec. 11, 2018]."

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and

sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REAL-TIME PUBLIC AVAILABILITY OF RAW SEISMOLOGICAL DATA

Pub. L. 107–228, div. B, title XVI, §1602, Sept. 30, 2002, 116 Stat. 1460, provided that: "The head of the Air Force Technical Applications Center shall make available to the public, immediately upon receipt or as soon after receipt as is practicable, all raw seismological data provided to the United States Government by any international monitoring organization that is directly responsible for seismological monitoring."

Pub. L. 106–113, div. B, §1000(a)(7) [div. B, title XI, §1116], Nov. 29, 1999, 113 Stat. 1536, 1501A–489, provided that: "The United States Government shall, to the maximum extent practicable, make available to the public in real time, or as quickly as possible, all raw seismological data provided to the United States Government by any international organization that is directly responsible for seismological monitoring."

AUTHORIZATION OF REAL-TIME SEISMIC HAZARD WARNING SYSTEM DEVELOPMENT, AND OTHER ACTIVITIES

Pub. L. 105–47, §2, Oct. 1, 1997, 111 Stat. 1160, as amended by Pub. L. 106–503, title II, §202(c), Nov. 13, 2000, 114 Stat. 2305; Pub. L. 107–110, title X, §1076(cc), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 114–95, title IX, §9215(aa), Dec. 10, 2015, 129 Stat. 2172, provided that:

"(a) AUTOMATIC SEISMIC WARNING SYSTEM DEVELOPMENT.—

"(1) DEFINITIONS.—In this section:

"(A) DIRECTOR.—The term 'Director' means the Director of the United States Geological Survey.

"(B) HIGH-RISK ACTIVITY.—The term 'high-risk activity' means an activity that may be adversely affected by a moderate to severe seismic event (as determined by the Director). The term includes high-speed rail transportation.

"(C) REAL-TIME SEISMIC WARNING SYSTEM.—The term 'real-time seismic warning system' means a system that issues warnings in real-time from a network of seismic sensors to a set of analysis processors, directly to receivers related to high-risk activities.

"(2) IN GENERAL.—The Director shall conduct a program to develop a prototype real-time seismic warning system. The Director may enter into such agreements or contracts as may be necessary to carry out the program.

"(3) UPGRADE OF SEISMIC SENSORS.—In carrying out a program under paragraph (2), in order to increase the accuracy and speed of seismic event analysis to provide for timely warning signals, the Director shall provide for the upgrading of the network of seismic sensors participating in the prototype to increase the capability of the sensors—

"(A) to measure accurately large magnitude seismic events (as determined by the Director); and

"(B) to acquire additional parametric data.

"(4) DEVELOPMENT OF COMMUNICATIONS AND COMPUTATION INFRASTRUCTURE .—In carrying out a program under paragraph (2), the Director shall develop a communications and computation infrastructure that is necessary—

"(A) to process the data obtained from the upgraded seismic sensor network referred to in paragraph (3); and

"(B) to provide for, and carry out, such communications engineering and development as is necessary to facilitate—

"(i) the timely flow of data within a real-time seismic hazard warning system; and

"(ii) the issuance of warnings to receivers related to high-risk activities.

"(5) PROCUREMENT OF COMPUTER HARDWARE AND COMPUTER SOFTWARE.—In carrying out a program under paragraph (2), the Director shall procure such computer hardware and computer software as may be necessary to carry out the program.

"(6) REPORTS ON PROGRESS.—

"(A) IN GENERAL.—Not later than 120 days after the date of enactment of this Act [Oct. 1, 1997], the Director shall prepare and submit to Congress a report that contains a plan for implementing a real-time seismic hazard warning system.

"(B) ADDITIONAL REPORTS.—Not later than 1 year after the date on which the Director submits the report under subparagraph (A), and annually thereafter, the Director shall prepare and submit to Congress a report that summarizes the progress of the Director in implementing the plan referred to in subparagraph (A).

"(7) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts made available to the Director under section 12(b) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7706(b)), there

are authorized to be appropriated to the Department of the Interior, to be used by the Director to carry out paragraph (2), $3,000,000 for each of fiscal years 1998 and 1999; $2,600,000 for fiscal year 2001; $2,710,000 for fiscal year 2002; and $2,825,000 for fiscal year 2003.

"(b) SEISMIC MONITORING NETWORKS ASSESSMENT.—

"(1) IN GENERAL.—The Director shall provide for an assessment of regional seismic monitoring networks in the United States. The assessment shall address—

"(A) the need to update the infrastructure used for collecting seismological data for research and monitoring of seismic events in the United States;

"(B) the need for expanding the capability to record strong ground motions, especially for urban area engineering purposes;

"(C) the need to measure accurately large magnitude seismic events (as determined by the Director);

"(D) the need to acquire additional parametric data; and

"(E) projected costs for meeting the needs described in subparagraphs (A) through (D).

"(2) RESULTS.—The Director shall transmit the results of the assessment conducted under this subsection to Congress not later than 1 year after the date of enactment of this Act [Oct. 1, 1997].

"(c) EARTH SCIENCE TEACHING MATERIALS.—

"(1) DEFINITIONS.—In this subsection:

"(A) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given that term in section 8101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801].

"(B) SCHOOL.—The term 'school' means a nonprofit institutional day or residential school that provides education for any of the grades kindergarten through grade 12.

"(2) TEACHING MATERIALS.—In a manner consistent with the requirement under section 5(b)(4) [now 5(b)(4)(A)] of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(b)(4)[(A)]) and subject to a merit based competitive process, the Director of the National Science Foundation may use funds made available to him or her under section 12(c) of such Act (42 U.S.C. 7706(c)) to develop, and make available to schools and local educational agencies for use by schools, at a minimal cost, earth science teaching materials that are designed to meet the needs of elementary and secondary school teachers and students.

"(d) IMPROVED SEISMIC HAZARD ASSESSMENT.—

"(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act [Oct. 1, 1997], the Director shall conduct a project to improve the seismic hazard assessment of seismic zones.

"(2) REPORTS.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and annually during the period of the project, the Director shall prepare, and submit to Congress, a report on the findings of the project.

"(B) FINAL REPORT.—Not later than 60 days after the date of termination of the project conducted under this subsection, the Director shall prepare and submit to Congress a report concerning the findings of the project.

"(e) STUDY OF NATIONAL EARTHQUAKE EMERGENCY TRAINING CAPABILITIES.—

"(1) IN GENERAL.—The Director of the Federal Emergency Management Agency shall conduct an assessment of the need for additional Federal disaster-response training capabilities that are applicable to earthquake response.

"(2) CONTENTS OF ASSESSMENT.—The assessment conducted under this subsection shall include—

"(A) a review of the disaster training programs offered by the Federal Emergency Management Agency at the time of the assessment;

"(B) an estimate of the number and types of emergency response personnel that have, during the period beginning on January 1, 1990 and ending on July 1, 1997, sought the training referred to in subparagraph (A), but have been unable to receive that training as a result of the oversubscription of the training capabilities of the Federal Emergency Management Agency; and

"(C) a recommendation on the need to provide additional Federal disaster-response training centers.

"(3) REPORT.—Not later than 180 days after the date of enactment of this Act [Oct. 1, 1997], the Director shall prepare and submit to Congress a report that addresses the results of the assessment conducted under this subsection."

STUDIES ON ECONOMIC IMPACT OF CATASTROPHIC EARTHQUAKES AND IMPROVING

EARTHQUAKE MITIGATION

Pub. L. 101–614, §14, Nov. 16, 1990, 104 Stat. 3242, directed Director of Federal Emergency Management Agency to submit two reports to Congress within 12 months after Nov. 16, 1990, one report outlining results of a study on impact and repercussions of a catastrophic earthquake on local, regional, and national economies, and the other report outlining results of a study on adequacy of preparation and response capabilities for reducing and recovering from losses caused by a catastrophic earthquake.

EARTHQUAKE ENGINEERING RESEARCH

Pub. L. 100–570, title I, §115, Oct. 31, 1988, 102 Stat. 2871, directed National Academy of Sciences to conduct a study of earthquake engineering activities being carried out by the Foundation and other Federal agencies under the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), such study to include (1) an assessment of adequacy of each agency's current Federal earthquake engineering efforts, including those designed to increase the implementation of new techniques; the need for specialized research facilities, including large-scale facilities; the division of responsibilities among the various Federal agencies; and recommended levels of funding that the Foundation and other agencies should provide, in the form of grants to individuals, groups, and centers, to non-Federal researchers principally engaged in earthquake engineering research; and (2) recommendations, if any, of the National Academy of Sciences for improvements in the current Federal efforts in the area of earthquake engineering research, with results of the study to be reported to Congress on or before expiration of 12-month period following Oct. 31, 1988.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12699

Ex. Ord. No. 12699, Jan. 5, 1990, 55 F.R. 835, as amended by Ex. Ord. No. 13286, §40, Feb. 28, 2003, 68 F.R. 10626, which related to seismic safety of Federal and federally assisted or regulated new building construction, was revoked by Ex. Ord. No. 13717, §5, Feb. 2, 2016, 81 F.R. 6409, set out below.

EX. ORD. NO. 13717. ESTABLISHING A FEDERAL EARTHQUAKE RISK MANAGEMENT STANDARD

Ex. Ord. No. 13717, Feb. 2, 2016, 81 F.R. 6407, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Earthquake Hazards Reduction Act of 1977, as amended, and section 121(a) of title 40, United States Code, and to improve the Nation's resilience to earthquakes, I hereby direct the following:

SECTION 1. *Policy*. It is the policy of the United States to strengthen the security and resilience of the Nation against earthquakes, to promote public safety, economic strength, and national security. To that end, the Federal Government must continue to take proactive steps to enhance the resilience of buildings that are owned, leased, financed, or regulated by the Federal Government. When making investment decisions related to Federal buildings, each executive department and agency (agency) responsible for implementing this order shall seek to enhance resilience by reducing risk to the lives of building occupants and improving continued performance of essential functions following future earthquakes. The Federal Government recognizes that building codes and standards primarily focus on ensuring minimum acceptable levels of earthquake safety for preserving the lives of building occupants. To achieve true resilience against earthquakes, however, new and existing buildings may need to exceed those codes and standards to ensure, for example, that the buildings can continue to perform their essential functions following future earthquakes. Agencies are thus encouraged to consider going beyond the codes and standards set out in this order to ensure that buildings are fully earthquake resilient.

SEC. 2. *Requirements for Earthquake Safety of New Federal Buildings, Improvements to Existing Federal Buildings, and Federally Leased, Financed, or Regulated Buildings.*

(a) *New Buildings and Alterations to Existing Buildings*. Each agency responsible for the design and construction of a new building or an alteration to an existing building shall ensure that the building is designed, constructed, or altered, respectively, in accord with appropriate earthquake-resistant design and construction codes and standards as set forth in sections 3(a) and 3(b) of this order.

(b) *Space Leased for Federal Occupancy*. Each agency responsible for the lease of a building shall, to the extent permitted by law, ensure that it leases only buildings that have been designed and constructed in accord with the appropriate earthquake-resistant design and construction standards that apply to the type of lease at issue, as set forth in section 3(c) of this order.

(c) *Federal Assistance Programs*. Each agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of a newly constructed building

shall consider updating its procedures for providing the assistance to be consistent with section 3(a) of this order, to assure appropriate consideration of earthquake safety.

(d) *Federally Regulated Buildings*. Each agency with responsibility for regulating the structural safety of a new building shall consider using earthquake-resistant design and construction standards for the new building consistent with section 3(a) of this order.

SEC. 3. *Codes, Standards, and Concurrent Requirements*. (a) Commencing within 90 days after the date of this order, each agency shall ensure that every new building for which the agency has not started programming is in compliance with the earthquake-resistant design provisions of the 2015 editions of the International Building Code (IBC) or the International Residential Code (IRC), nationally recognized building codes promulgated by the International Code Council (ICC), or equivalent codes, consistent with the provisions of and to the extent required by 40 U.S.C. 3312. When the ICC releases a new version of the IRC or IBC, each agency that constructs buildings shall determine whether the new version is a nationally recognized code for the purposes of 40 U.S.C. 3312(b), as expeditiously as practicable, but not later than 2 years after the release of the new version. If an agency determines that a new version is a nationally recognized code, it shall ensure that any building, for which the agency has not started programming, shall be in compliance with that new version or an equivalent code.

(b) Each agency that owns an existing Federal building shall adopt the *Standards of Seismic Safety for Existing Federally Owned and Leased Buildings* (Standards), which are developed, issued, and maintained by the Interagency Committee on Seismic Safety in Construction (ICSSC), as the minimum level acceptable for managing the earthquake risks in that building. Any agency that has not adopted the Standards at the time of this order shall adopt the Standards no later than 90 days from the date of this order. All agencies shall adopt subsequent editions of the Standards as expeditiously as practicable, but no later than 2 years following their issuance.

(c) Each agency that leases space in an existing building shall adopt the Standards as the minimum level acceptable for managing the earthquake risks in that building. This requirement shall apply to existing leases or leases existing at the time of issuance of updated Standards only to the extent appropriate, as determined by the leasing agency. With respect to leases for a building being constructed to accommodate a Federal agency under the authority in 40 U.S.C. 585(a), the leasing agency shall ensure that the building complies with the earthquake-resistant design and construction standards that would apply to a building constructed by the agency pursuant to section 3(a) of this order. With respect to such leases entered into under authority other than 40 U.S.C. 585(a), the leasing agency shall ensure that the building complies with the earthquake-resistant design and construction standards that would apply to a building constructed by the agency pursuant to section 3(a) of this order, to the extent permitted by law.

(d) Agencies may require higher performance levels than exist in the codes and standards described in sections 3(a), (b), and (c) of this order.

SEC. 4. *Agency and Committee Responsibilities*. (a) The ICSSC shall be composed of representatives of all Federal agencies engaged in construction, financing of construction, or related activities. The National Earthquake Hazards Reduction Program (NEHRP) Lead Agency, currently the National Institute of Standards and Technology (NIST), shall lead the ICSSC, and shall lead the development and maintenance of ICSSC guidelines to assist the Federal agencies with implementing earthquake risk reduction measures in their construction programs.

(b) Agencies whose activities are covered by this order shall designate one or more Seismic Safety Coordinator(s) to serve as focal points for the agency's compliance with this order and to participate in the ICSSC as appropriate. Within 30 days of the date of this order, each agency shall identify its Seismic Safety Coordinator(s) to the Director of NIST.

(c) The Director of NIST, on behalf of the ICSSC, shall issue implementing guidelines to assist agency compliance with this order within 8 months of the date of this order. The implementing guidelines shall provide specific guidance, including guidance about the roles and responsibilities of the agencies under section 2 of this order. The implementing guidelines shall also describe the responsibilities and necessary qualifications of the Seismic Safety Coordinator.

(d) The Director of NIST, on behalf of the ICSSC, shall provide assistance in interpreting the implementing guidelines to the Federal departments and agencies.

(e) The ICSSC shall publish updated Standards for assessing and enhancing the earthquake resilience of existing buildings as required by this order. The ICSSC shall review and update the Standards as needed to comply with this order at the maximum interval of every 6 years. Participation in the ICSSC shall continue to be open to all agencies with programs affected by this order. The Director of NIST shall provide support for the secretariat of the ICSSC and determine the frequency and scope of the ICSSC meetings as necessary to support this order.

(f) Agencies whose activities are covered by this order shall submit biennial reports to the Director of the Office of Management and Budget (OMB) and the Director of NIST on their progress in implementing the order, commencing 2 years from the date of this order.

(g) Agency compliance shall be summarized in the NEHRP reports to the Congress.

SEC. 5. *Revocation*. Executive Order 12699 of January 5, 1990 (Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction), as amended, and Executive Order 12941 of December 1, 1994 (Seismic Safety of Existing Federally Owned or Leased Buildings) are hereby revoked.

SEC. 6. *Definitions*. As used in this order:

(a) "building" means any structure, fully or partially enclosed, used or intended for sheltering persons or property;

(b) "alteration to an existing building" means an action that alters, as defined in 40 U.S.C. 3301(a)(1), a building and that significantly extends the building's useful life and totals more than the replacement values established in the Standards for the building's assigned Seismic Design Category; and

(c) "programming" means developing and validating project assumptions, scope, budgets, and implementation strategy for a building.

SEC. 7. *Exemption Authority*. (a) The head of an agency may exempt a building from sections 2 and 3 of this order:

(i) to the extent the head of an agency determines that exempting such building is substantially related to an important law enforcement purpose; or

(ii) to the extent the head of an agency determines that exempting such building is necessary to address an extraordinary circumstance relating to national security or public safety.

(b) Even when otherwise eligible for an exemption under this section, each agency shall strive to comply with the purposes, goals, and requirements set forth in this order to the maximum extent practicable.

(c) If the head of an agency issues an exemption under this section, the agency must notify the Director of OMB in writing within 30 days of issuance of the exemption under this subsection.

SEC. 8. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Nothing in this order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to agencies' statutory authorities, and sections 402, 403, 502, and 503 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act") (42 U.S.C. 5170a, 5170b, 5192, and 5193), or for temporary housing assistance programs and individual and family grants performed pursuant to section 408 of the Stafford Act (42 U.S.C. 5174). This order shall, however, apply to other provisions of the Stafford Act after a Presidentially declared major disaster or emergency when assistance actions involve new construction or alterations to an existing building.

(e) This order applies only to buildings within the United States and its territories and possessions.

BARACK OBAMA.

[1] So in original. The word "and" probably should not appear.

[2] See References in Text note below.

[3] So in original. Probably should be followed by a closing parenthesis.

[4] So in original. Probably should be preceded by "subsection".

[5] So in original. Probably should be followed by a comma.

[6] So in original. The period probably should be a semicolon.

§7704a. Report on seismic safety property standards

(a) Authority

The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") shall assess the risk of earthquake-related damage to properties assisted under programs administered by the Secretary and shall develop seismic safety standards for such properties. This section may not be construed to prohibit the Secretary from deferring to local building codes that meet the requirements of the seismic safety standards developed under this section.

(b) Standards

The standards shall be designed to reduce the risk of loss of life to building occupants to the maximum extent feasible and to reduce the risk of shake-related property damage to the maximum extent practicable.

(c) Consultation

In carrying out this section, the Secretary shall consult with the Administrator of the Federal Emergency Management Agency and may utilize the resources under the National Earthquake Hazards Reduction Program (established under the Earthquake Hazards Reduction Act of 1977 [42 U.S.C. 7701 et seq.]) and any other resources as may be required to carry out the activities under this section.

(Pub. L. 101–625, title IX, §947, Nov. 28, 1990, 104 Stat. 4416; Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Earthquake Hazards Reduction Act of 1977, referred to in subsec. (c), is Pub. L. 95–124, Oct. 7, 1977, 91 Stat. 1098, which is classified generally to this chapter (§7701 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

CODIFICATION

Subsec. (d) of this section, which required the Secretary to submit a report to Congress not less than biennially on the findings of the risk assessment study conducted under this section and the activities undertaken, and the expenditures made, by the Secretary to carry out this section and Executive Order No. 12699, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 104 of House Document No. 103–7.

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Earthquake Hazards Reduction Act of 1977 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Administrator of the Federal Emergency Management Agency" substituted for "Director of the Federal Emergency Management Agency" in subsec. (c) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency,

including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§§7705, 7705a. Repealed. Pub. L. 105–47, §4, Oct. 1, 1997, 111 Stat. 1164

Section 7705, Pub. L. 95–124, §6, Oct. 7, 1977, 91 Stat. 1102; Pub. L. 96–472, title I, §102(a), Oct. 19, 1980, 94 Stat. 2259; Pub. L. 101–614, §6, Nov. 16, 1990, 104 Stat. 3236, related to Office of Science and Technology Policy report.

Section 7705a, Pub. L. 95–124, §7, as added Pub. L. 101–614, §7(2), Nov. 16, 1990, 104 Stat. 3236, related to establishment of a National Earthquake Hazards Reduction Program Advisory Committee.

§7705b. Seismic standards

(a) Assessment and recommendations

Not later than December 1, 2019, the Director of the National Institute of Standards and Technology and the Administrator of the Federal Emergency Management Agency shall jointly convene a committee of experts from Federal agencies, nongovernmental organizations, private sector entities, disaster management professional associations, engineering professional associations, and professional construction and homebuilding industry associations, to assess and recommend options for improving the built environment and critical infrastructure to reflect performance goals stated in terms of post-earthquake reoccupancy and functional recovery time.

(b) Report to Congress

Not later than June 30, 2020, the committee convened under paragraph (1) shall submit to the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science, Space, and Technology, the Committee on Natural Resources, and the Committee on Homeland Security of the House of Representatives a report on recommended options for improving the built environment and critical infrastructure to reflect performance goals stated in terms of post-earthquake reoccupancy and functional recovery time.

(Pub. L. 95–124, §8, as added Pub. L. 101–614, §8(a), Nov. 16, 1990, 104 Stat. 3237; amended Pub. L. 115–307, §5, Dec. 11, 2018, 132 Stat. 4415.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–307 amended section generally. Prior to amendment, section related to adoption of seismic safety standards.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPORT ON VULNERABILITY OF BUILDINGS OWNED AND LEASED BY GOVERNMENT

Pub. L. 101–614, §8(b), Nov. 16, 1990, 104 Stat. 3238, directed Comptroller General, not later than 18 months after Nov. 16, 1990, to report to Congress on vulnerability of buildings owned and leased by the Federal Government and on efforts of Federal agencies to improve the seismic resistance of buildings they own or lease, and for each such agency, the Comptroller General to enumerate the number of buildings owned or leased by the agency, the seriousness of the seismic risk to such buildings, and the value of the buildings at risk, as well as tabulate the expenditures each such agency had devoted to reducing earthquake damage and estimate the total expenditure necessary to address the problem adequately.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12941

Ex. Ord. No. 12941, Dec. 1, 1994, 59 F.R. 62545, which related to seismic safety of existing federally owned or leased buildings, was revoked by Ex. Ord. No. 13717, §5, Feb. 2, 2016, 81 F.R. 6409, set out as a note under section 7704 of this title.

§7705c. Acceptance of gifts

(a) Authority

In furtherance of the purposes of this chapter, the Administrator of the Federal Emergency Management Agency may accept and use bequests, gifts, or donations of services, money, or property, notwithstanding section 1342 of title 31.

(b) Criteria

The Administrator of the Federal Emergency Management Agency shall establish by regulation criteria for determining whether to accept bequests, gifts, or donations of services, money, or property. Such criteria shall take into consideration whether the acceptance of the bequest, gift, or donation would reflect unfavorably on the Director's [1] ability to carry out his responsibilities in a fair and objective manner, or would compromise the integrity of, or the appearance of the integrity of, the Program or any official involved in administering the Program.

(Pub. L. 95–124, §9, as added Pub. L. 101–614, §9, Nov. 16, 1990, 104 Stat. 3238; amended Pub. L. 115–307, §8(a)(2), Dec. 11, 2018, 132 Stat. 4417.)

EDITORIAL NOTES

CODIFICATION

In subsec. (a), "section 1342 of title 31" was substituted for "section 3679 of the Revised Statutes (31 U.S.C. 1342)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2018—Pub. L. 115–307 substituted "Administrator of the Federal Emergency Management Agency" for "Director of the Agency" in subsecs. (a) and (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[1] So in original. Probably should be "Administrator's".

§7705d. Repealed. Pub. L. 106–503, title II, §203, Nov. 13, 2000, 114 Stat. 2305

Section, Pub. L. 95–124, §10, as added Pub. L. 101–614, §10, Nov. 16, 1990, 104 Stat. 3238, related to non-Federal cost sharing for supplemental funds.

§7705e. Post-earthquake investigations program

There is established within the United States Geological Survey a post-earthquake investigations program, the purpose of which is to investigate major earthquakes, so as to learn lessons which can be applied to reduce the loss of lives and property in future earthquakes. The United States Geological Survey, in consultation with each Program agency, shall organize investigations to study the implications of the earthquake in the areas of responsibility of each Program agency. The investigations shall begin as rapidly as possible and may be conducted by grantees and contractors. The Program agencies shall ensure that the results of investigations are disseminated widely. The Director of the Survey is authorized to utilize earthquake expertise from the Agency, the National Science Foundation, the National Institute of Standards and Technology, other Federal agencies, and private contractors, on a reimbursable basis, in the conduct of such earthquake investigations. At a minimum, investigations under this section shall include—

(1) analysis by the National Science Foundation and the United States Geological Survey of the causes of the earthquake and the nature of the resulting ground motion;

(2) analysis by the National Science Foundation and the National Institute of Standards and Technology of the behavior of structures and lifeline infrastructure, both those that were damaged and those that were undamaged; and

(3) analysis by each of the Program agencies of the effectiveness of the earthquake hazards mitigation programs and actions relating to its area of responsibility under the Program, and how those programs and actions could be strengthened.

(Pub. L. 95–124, §11, as added Pub. L. 101–614, §11(a), Nov. 16, 1990, 104 Stat. 3239; amended Pub. L. 115–307, §2(c)(1)(B), Dec. 11, 2018, 132 Stat. 4409.)

EDITORIAL NOTES

AMENDMENTS

2018—Par. (2). Pub. L. 115–307 substituted "lifeline infrastructure" for "lifelines".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORT ON FUNDING OF PROGRAM

Pub. L. 101–614, §11(b), Nov. 16, 1990, 104 Stat. 3239, directed Director of Federal Emergency Management Agency in consultation with other agencies of National Earthquake Hazards Reduction Program, not later than one year after Nov. 16, 1990, to report to Congress on possible options for funding a program for post-earthquake investigations, which would, at a minimum, consider funding such a program either by setting aside a percentage of disaster relief funds provided by Federal Emergency Management Agency after a major earthquake or by a revolving fund, and which would also include a recommendation on how the funding for such investigations would be allocated among the other Program agencies.

§7706. Authorization of appropriations

(a) General authorization for program

(1) There are authorized to be appropriated to the President to carry out the provisions of sections 7704 and 7705 [1] of this title (in addition to any authorizations for similar purposes included in other Acts and the authorizations set forth in subsections (b) and (c) of this section), not to exceed $1,000,000 for the fiscal year ending September 30, 1978, not to exceed $2,000,000 for the fiscal year ending September 30, 1979, and not to exceed $2,000,000 for the fiscal year ending September 30, 1980.

(2) There are authorized to be appropriated to the Director to carry out the provisions of sections 7704 and 7705 [1] of this title for the fiscal year ending September 30, 1981—

(A) $1,000,000 for continuation of the Interagency Committee on Seismic Safety in Construction and the Building Seismic Safety Council programs,

(B) $1,500,000 for plans and preparedness for earthquake disasters,

(C) $500,000 for prediction response planning,

(D) $600,000 for architectural and engineering planning and practice programs,

(E) $1,000,000 for development and application of a public education program,

(F) $3,000,000 for use by the National Science Foundation in addition to the amount authorized to be appropriated under subsection (c), which amount includes $2,400,000 for earthquake policy research and $600,000 for the strong ground motion element of the siting program, and

(G) $1,000,000 for use by the Center for Building Technology, National Institute of Standards and Technology in addition to the amount authorized to be appropriated under subsection (d) for earthquake activities in the Center.

(3) There are authorized to be appropriated to the Director for the fiscal year ending September 30, 1982, $2,000,000 to carry out the provisions of sections 7704 and 7705 [1] of this title.

(4) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705 [1] of this title, $1,281,000 for the fiscal year ending September 30, 1983.

(5) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705 [1] of this title, for the fiscal year ending September 30, 1984, $3,705,000, and for the fiscal year ending September 30, 1985, $6,096,000.

(6) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705 [1] of this title, for the fiscal year ending September 30, 1986, $5,596,000, and for the fiscal year ending September 30, 1987, $5,848,000.

(7) There are authorized to be appropriated to the Administrator of the Agency, to carry out this chapter, $5,778,000 for the fiscal year ending September 30, 1988, $5,788,000 for the fiscal year ending September 30, 1989, $8,798,000 for the fiscal year ending September 30, 1990, $14,750,000 for the fiscal year ending September 30, 1991, $19,000,000 for the fiscal year ending September 30, 1992, $22,000,000 for the fiscal year ending September 30, 1993, $25,000,000 for the fiscal year ending September 30, 1995, $25,750,000 for the fiscal year ending September 30, 1996, $20,900,000 for the fiscal year ending September 30, 1998, $21,500,000 for the fiscal year ending September 30, 1999; $19,861,000 for the fiscal year ending September 30, 2001, of which $450,000 is for National Earthquake Hazard Reduction Program-eligible efforts of an established multi-state consortium to reduce the unacceptable threat of earthquake damages in the New Madrid seismic region through efforts to enhance preparedness, response, recovery, and mitigation; $20,705,000 for the fiscal year ending September 30, 2002; and $21,585,000 for the fiscal year ending September 30, 2003.

(8) There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this chapter—

(A) $21,000,000 for fiscal year 2005,

(B) $21,630,000 for fiscal year 2006,

(C) $22,280,000 for fiscal year 2007,

(D) $22,950,000 for fiscal year 2008,

(E) $23,640,000 for fiscal year 2009,

(F) $8,758,000 for fiscal year 2019,

(G) $8,758,000 for fiscal year 2020,
(H) $8,758,000 for fiscal year 2021,
(I) $8,758,000 for fiscal year 2022, and
(J) $8,758,000 for fiscal year 2023,

of which not less than 10 percent of available program funds actually appropriated shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable design guidelines and methodologies in codes for buildings, structures, and lifeline infrastructure.

(b) United States Geological Survey

(1) There are authorized to be appropriated to the Secretary of the Interior for purposes for carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter not to exceed $27,500,000 for the fiscal year ending September 30, 1978; not to exceed $35,000,000 for the fiscal year ending September 30, 1979; not to exceed $40,000,000 for the fiscal year ending September 30, 1980; $32,484,000 for the fiscal year ending September 30, 1981; $34,425,000 for the fiscal year ending September 30, 1982; $31,843,000 for the fiscal year ending September 30, 1983; $35,524,000 for the fiscal year ending September 30, 1984; $37,300,200 for the fiscal year ending September 30, 1985 [2] $35,578,000 for the fiscal year ending September 30, 1986; $37,179,000 for the fiscal year ending September 30, 1987; $38,540,000 for the fiscal year ending September 30, 1988; $41,819,000 for the fiscal year ending September 30, 1989; $55,283,000 for the fiscal year ending September 30, 1990, of which $8,000,000 shall be for earthquake investigations under section 7705e of this title; $50,000,000 for the fiscal year ending September 30, 1991; $54,500,000 for the fiscal year ending September 30, 1992; $62,500,000 for the fiscal year ending September 30, 1993; $49,200,000 for the fiscal year ending September 30, 1995; $50,676,000 for the fiscal year ending September 30, 1996; $52,565,000 for the fiscal year ending September 30, 1998, of which $3,800,000 shall be used for the Global Seismic Network operated by the Agency; and $54,052,000 for the fiscal year ending September 30, 1999, of which $3,800,000 shall be used for the Global Seismic Network operated by the Agency. There are authorized to be appropriated to the Secretary of the Interior for purposes of carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter $48,360,000 for fiscal year 2001, of which $3,500,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee established under section 7709 of this title; $50,415,000 for fiscal year 2002, of which $3,600,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee; and $52,558,000 for fiscal year 2003, of which $3,700,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee. Of the amounts authorized to be appropriated under this paragraph, at least—

(A) $8,000,000 of the amount authorized to be appropriated for the fiscal year ending September 30, 1998;
(B) $8,250,000 of the amount authorized for the fiscal year ending September 30, 1999;
(C) $9,000,000 of the amount authorized to be appropriated for fiscal year 2001;
(D) $9,250,000 of the amount authorized to be appropriated for fiscal year 2002; and
(E) $9,500,000 of the amount authorized to be appropriated for fiscal year 2003,

shall be used for carrying out a competitive, peer-reviewed program under which the Director, in close coordination with and as a complement to related activities of the United States Geological Survey, awards grants to, or enters into cooperative agreements with, State and local governments and persons or entities from the academic community and the private sector.

(2) There are authorized to be appropriated to the United States Geological Survey for carrying out this chapter—

(A) $77,000,000 for fiscal year 2005, of which not less than $30,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707

of this title;

(B) $84,410,000 for fiscal year 2006, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707 of this title;

(C) $85,860,000 for fiscal year 2007, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707 of this title;

(D) $87,360,000 for fiscal year 2008, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707 of this title;

(E) $88,900,000 for fiscal year 2009, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707 of this title;

(F) $83,403,000 for fiscal year 2019, of which not less than $30,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707 of this title; [1]

(G) $83,403,000 for fiscal year 2020, of which not less than $30,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707 of this title; [1]

(H) $83,403,000 for fiscal year 2021, of which not less than $30,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707 of this title; [1]

(I) $83,403,000 for fiscal year 2022, of which not less than $30,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707 of this title; [1] and

(J) $83,403,000 for fiscal year 2023, of which not less than $30,000,000 shall be made available for completion of the Advanced National Seismic System established under section 7707 of this title.[1]

(c) National Science Foundation

(1) To enable the Foundation to carry out responsibilities that may be assigned to it under this chapter, there are authorized to be appropriated to the Foundation not to exceed $27,500,000 for the fiscal year ending September 30, 1978; not to exceed $35,000,000 for the fiscal year ending September 30, 1979; not to exceed $40,000,000 for the fiscal year ending September 30, 1980; $26,600,000 for the fiscal year ending September 30, 1981; $27,150,000 for the fiscal year ending September 30, 1982; $25,000,000 for the fiscal year ending September 30, 1983; $25,800,000 for the fiscal year ending September 30, 1984; $28,665,000 for the fiscal year ending September 30, 1985 [2] $27,760,000 for the fiscal year ending September 30, 1986; $29,009,000 for the fiscal year ending September 30, 1987; $28,235,000 for the fiscal year ending September 30, 1988; $31,634,000 for the fiscal year ending September 30, 1989; $38,454,000 for the fiscal year ending September 30, 1990. Of the amounts authorized for Engineering under section 101(d)(1)(B) of the National Science Foundation Authorization Act of 1988, $24,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991, and of the amounts authorized for Geosciences [3] under section 101(d)(1)(D) of the National Science Foundation Authorization Act of 1988, $13,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991. Of the amounts authorized for Research and Related Activities under section 101(e)(1) of the National Science Foundation Authorization Act of 1988, $29,000,000 is authorized for engineering research under this chapter, and $14,750,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1992. Of the amounts authorized for Research and Related Activities under section 101(f)(1) of the National Science Foundation Authorization Act of 1988, $34,500,000 is authorized for engineering research under this chapter, and $17,500,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1993. There are

authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Science Foundation: (1) $16,200,000 for engineering research and $10,900,000 for geosciences research for the fiscal year ending September 30, 1995, (2) $16,686,000 for engineering research and $11,227,000 for geosciences research for the fiscal year ending September 30, 1996, (3) $18,450,000 for engineering research and $11,920,000 for geosciences research for the fiscal year ending September 30, 1998, (4) $19,000,000 for engineering research and $12,280,000 for geosciences research for the fiscal year ending September 30, 1999. There are authorized to be appropriated to the National Science Foundation $19,000,000 for engineering research and $11,900,000 for geosciences research for fiscal year 2001; $19,808,000 for engineering research and $12,406,000 for geosciences research for fiscal year 2002; and $20,650,000 for engineering research and $12,933,000 for geosciences research for fiscal year 2003.

(2) There are authorized to be appropriated to the National Science Foundation for carrying out this chapter—

(A) $38,000,000 for fiscal year 2005;
(B) $39,140,000 for fiscal year 2006;
(C) $40,310,000 for fiscal year 2007;
(D) $41,520,000 for fiscal year 2008;
(E) $42,770,000 for fiscal year 2009;
(F) $54,000,000 for fiscal year 2019,
(G) $54,000,000 for fiscal year 2020,
(H) $54,000,000 for fiscal year 2021,
(I) $54,000,000 for fiscal year 2022, and
(J) $54,000,000 for fiscal year 2023.

(d) National Institute of Standards and Technology

(1) To enable the National Institute of Standards and Technology to carry out responsibilities that may be assigned to it under this chapter, there are authorized to be appropriated $425,000 for the fiscal year ending September 30, 1981; $425,000 for the fiscal year ending September 30, 1982; $475,000 for the fiscal year ending September 30, 1983; $475,000 for the fiscal year ending September 30, 1984; $498,750 for the fiscal year ending September 30, 1985 [2] $499,000 for the fiscal year ending September 30, 1986; $521,000 for the fiscal year ending September 30, 1987; $525,000 for the fiscal year ending September 30, 1988; $525,000 for the fiscal year ending September 30, 1989; $2,525,000 for the fiscal year ending September 30, 1990; $1,000,000 for the fiscal year ending September 30, 1991; $3,000,000 for the fiscal year ending September 30, 1992; and $4,750,000 for the fiscal year ending September 30, 1993. There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Institute of Standards and Technology, $1,900,000 for the fiscal year ending September 30, 1995, $1,957,000 for the fiscal year ending September 30, 1996, $2,000,000 for the fiscal year ending September 30, 1998, $2,060,000 for the fiscal year ending September 30, 1999, $2,332,000 for fiscal year 2001, $2,431,000 for fiscal year 2002, and $2,534,300 for fiscal year 2003.

(2) There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this chapter—

(A) $10,000,000 for fiscal year 2005,
(B) $11,000,000 for fiscal year 2006,
(C) $12,100,000 for fiscal year 2007,
(D) $13,310,000 for fiscal year 2008,
(E) $14,640,000 for fiscal year 2009,
(F) $5,900,000 for fiscal year 2019,
(G) $5,900,000 for fiscal year 2020,
(H) $5,900,000 for fiscal year 2021,
(I) $5,900,000 for fiscal year 2022, and
(J) $5,900,000 for fiscal year 2023.[4]

of which $2,000,000 shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable codes for buildings, structures, and lifeline infrastructure.

(Pub. L. 95–124, §12, formerly §7, Oct. 7, 1977, 91 Stat. 1102; Pub. L. 96–472, title I, §103, Oct. 19, 1980, 94 Stat. 2259; Pub. L. 97–80, title I, §101, Nov. 20, 1981, 95 Stat. 1081; Pub. L. 97–464, title I, §101, Jan. 12, 1983, 96 Stat. 2533; Pub. L. 98–241, title I, §101, Mar. 22, 1984, 98 Stat. 95; Pub. L. 99–105, §§1–4, Sept. 30, 1985, 99 Stat. 475; Pub. L. 100–252, §1, Feb. 29, 1988, 102 Stat. 18; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; renumbered §12 and amended Pub. L. 101–614, §§7(1), 12, Nov. 16, 1990, 104 Stat. 3236, 3240; Pub. L. 103–374, §1, Oct. 19, 1994, 108 Stat. 3492; Pub. L. 105–47, §1, Oct. 1, 1997, 111 Stat. 1159; Pub. L. 106–503, title II, §§202(a), (b), (d), (e), 203, Nov. 13, 2000, 114 Stat. 2304, 2305; Pub. L. 108–360, title I, §104(a), Oct. 25, 2004, 118 Stat. 1674; Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 115–307, §§2(c)(1)(B), 7, 8(b)(2), Dec. 11, 2018, 132 Stat. 4409, 4416, 4417.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7705 of this title, referred to in subsec. (a)(1) to (6), was repealed by Pub. L. 105–47, §4, Oct. 1, 1997, 111 Stat. 1164.

This chapter, referred to in subsecs. (a)(8), (b)(2), (c)(2), and (d)(2), was in the original "this title", and was translated as reading "this Act", meaning Pub. L. 95–124, known as the Earthquake Hazards Reduction Act of 1977, to reflect the probable intent of Congress, because Pub. L. 95–124, which enacted this chapter, does not contain titles.

Section 7707 of this title, referred to in subsec. (b)(2)(F) to (J), was so in the original, but probably should have been a reference to section 13 of Pub. L. 95–124, which is classified to section 7707 of this title.

Section 101(d)(1)(B), (D), (e)(1), and (f)(1) of the National Science Foundation Authorization Act of 1988, referred to in subsec. (c)(1), is section 101(d)(1)(B), (D), (e)(1), and (f)(1) of Pub. L. 100–570, Oct. 31, 1988, 102 Stat. 2865, 2866, which is not classified to the Code.

AMENDMENTS

2018—Subsec. (a)(8). Pub. L. 115–307, §2(c)(1)(B), substituted "lifeline infrastructure" for "lifelines" in concluding provisions.

Subsec. (a)(8)(F) to (J). Pub. L. 115–307, §7(1), added subpars. (F) to (J).

Subsec. (b)(2). Pub. L. 115–307, §8(b)(2), substituted "Advanced National Seismic System" for "Advanced National Seismic Research and Monitoring System" in subpars. (A) to (E).

Subsec. (b)(2)(F) to (J). Pub. L. 115–307, §7(2), added subpars. (F) to (J).

Subsec. (c)(2)(F) to (J). Pub. L. 115–307, §7(3), added subpars. (F) to (J).

Subsec. (d)(2). Pub. L. 115–307, §2(c)(1)(B), substituted "lifeline infrastructure" for "lifelines" in concluding provisions.

Subsec. (d)(2)(F) to (J). Pub. L. 115–307, §7(4), added subpars. (F) to (J).

2004—Subsec. (a)(8). Pub. L. 108–360, §104(a)(1), added par. (8).

Subsec. (b). Pub. L. 108–360, §104(a)(2)–(5), designated existing provisions as par. (1) and substituted "paragraph" for "subsection" in last sentence, redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, and added par. (2).

Subsec. (c). Pub. L. 108–360, §104(a)(6), (7), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 108–360, §104(a)(8), (9), designated existing provisions as par. (1) and added par. (2).

2000—Subsec. (a)(7). Pub. L. 106–503, §202(a), struck out "and" after "1998," and substituted "1999; $19,861,000 for the fiscal year ending September 30, 2001, of which $450,000 is for National Earthquake Hazard Reduction Program-eligible efforts of an established multi-state consortium to reduce the unacceptable threat of earthquake damages in the New Madrid seismic region through efforts to enhance preparedness, response, recovery, and mitigation; $20,705,000 for the fiscal year ending September 30, 2002; and $21,585,000 for the fiscal year ending September 30, 2003." for "1999."

Subsec. (b). Pub. L. 106–503, §202(b)(1), in introductory provisions, inserted after "operated by the Agency." "There are authorized to be appropriated to the Secretary of the Interior for purposes of carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter $48,360,000 for fiscal year 2001, of which $3,500,000 is for the Global Seismic

Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee established under section 7709 of this title; $50,415,000 for fiscal year 2002, of which $3,600,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee; and $52,558,000 for fiscal year 2003, of which $3,700,000 is for the Global Seismic Network and $100,000 is for the Scientific Earthquake Studies Advisory Committee."

Subsec. (b)(3) to (5). Pub. L. 106–503, §202(b)(2)–(4), added pars. (3) to (5).

Subsec. (c). Pub. L. 106–503, §202(d), struck out "and" after "1998," and inserted at end "There are authorized to be appropriated to the National Science Foundation $19,000,000 for engineering research and $11,900,000 for geosciences research for fiscal year 2001; $19,808,000 for engineering research and $12,406,000 for geosciences research for fiscal year 2002; and $20,650,000 for engineering research and $12,933,000 for geosciences research for fiscal year 2003."

Subsec. (d). Pub. L. 106–503, §202(e), struck out "and" after "1998," and substituted "1999, $2,332,000 for fiscal year 2001, $2,431,000 for fiscal year 2002, and $2,534,300 for fiscal year 2003." for "1999."

Subsecs. (e), (f). Pub. L. 106–503, §203, struck out subsecs. (e) and (f), which related, respectively, to funds for certain required adjustments and availability of funds.

1997—Subsec. (a)(7). Pub. L. 105–47, §1(1), struck out "and" after "1995," and inserted before period at end ", $20,900,000 for the fiscal year ending September 30, 1998, and $21,500,000 for the fiscal year ending September 30, 1999".

Subsec. (b). Pub. L. 105–47, §1(2), substituted "$50,676,000 for the fiscal year ending September 30, 1996; $52,565,000 for the fiscal year ending September 30, 1998, of which $3,800,000 shall be used for the Global Seismic Network operated by the Agency; and $54,052,000 for the fiscal year ending September 30, 1999, of which $3,800,000 shall be used for the Global Seismic Network operated by the Agency. Of the amounts authorized to be appropriated under this subsection, at least—

"(1) $8,000,000 of the amount authorized to be appropriated for the fiscal year ending September 30, 1998; and

"(2) $8,250,000 of the amount authorized for the fiscal year ending September 30, 1999,

shall be used for carrying out a competitive, peer-reviewed program under which the Director, in close coordination with and as a complement to related activities of the United States Geological Survey, awards grants to, or enters into cooperative agreements with, State and local governments and persons or entities from the academic community and the private sector." for "and $50,676,000 for the fiscal year ending September 30, 1996."

Subsec. (c). Pub. L. 105–47, §1(3), struck out "and" after "September 30, 1995," and inserted before period at end ", (3) $18,450,000 for engineering research and $11,920,000 for geosciences research for the fiscal year ending September 30, 1998, and (4) $19,000,000 for engineering research and $12,280,000 for geosciences research for the fiscal year ending September 30, 1999".

Subsec. (d). Pub. L. 105–47, §1(4), struck out "and" after "September 30, 1995," and inserted before period at end ", $2,000,000 for the fiscal year ending September 30, 1998, and $2,060,000 for the fiscal year ending September 30, 1999".

1994—Subsec. (a)(7). Pub. L. 103–374, §1(1), inserted "of the Agency" after "to the Director", struck out "and" after "September 30, 1992,", and inserted before period at end ", $25,000,000 for the fiscal year ending September 30, 1995, and $25,750,000 for the fiscal year ending September 30, 1996" after "September 30, 1993".

Subsec. (b). Pub. L. 103–374, §1(2), struck out "and" after "September 30, 1992;" and inserted before period at end "; $49,200,000 for the fiscal year ending September 30, 1995; and $50,676,000 for the fiscal year ending September 30, 1996".

Subsec. (c). Pub. L. 103–374, §1(3), inserted at end "There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Science Foundation: (1) $16,200,000 for engineering research and $10,900,000 for geosciences research for the fiscal year ending September 30, 1995, and (2) $16,686,000 for engineering research and $11,227,000 for geosciences research for the fiscal year ending September 30, 1996."

Subsec. (d). Pub. L. 103–374, §1(4), inserted at end "There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Institute of Standards and Technology, $1,900,000 for the fiscal year ending September 30, 1995, and $1,957,000 for the fiscal year ending September 30, 1996."

1990—Subsec. (a)(7). Pub. L. 101–614, §12(1), substituted "carry out this chapter" for "carry out the provisions of sections 7704 and 7705 of this title", substituted "$8,798,000" for "and $5,798,000", and inserted before period at end ", $14,750,000 for the fiscal year ending September 30, 1991, $19,000,000 for the fiscal year ending September 30, 1992, and $22,000,000 for the fiscal year ending September 30, 1993".

Subsec. (b). Pub. L. 101–614, §12(2), substituted "$55,283,000" for "and $43,283,000" and inserted before

period at end ", of which $8,000,000 shall be for earthquake investigations under section 7705e of this title; $50,000,000 for the fiscal year ending September 30, 1991; $54,500,000 for the fiscal year ending September 30, 1992; and $62,500,000 for the fiscal year ending September 30, 1993".

Subsec. (c). Pub. L. 101–614, §12(3), substituted "$38,454,000" for "and $35,454,000" and inserted at end "Of the amounts authorized for Engineering under section 101(d)(1)(B) of the National Science Foundation Authorization Act of 1988, $24,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991, and of the amounts authorized for Geosciences under section 101(d)(1)(D) of the National Science Foundation Authorization Act of 1988, $13,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991. Of the amounts authorized for Research and Related Activities under section 101(e)(1) of the National Science Foundation Authorization Act of 1988, $29,000,000 is authorized for engineering research under this chapter, and $14,750,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1992. Of the amounts authorized for Research and Related Activities under section 101(f)(1) of the National Science Foundation Authorization Act of 1988, $34,500,000 is authorized for engineering research under this chapter, and $17,500,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1993."

Subsec. (d). Pub. L. 101–614, §12(4), substituted "National Institute of Standards and Technology" for "National Bureau of Standards" in heading and for "Bureau" in text, substituted "$2,525,000" for "and $525,000", and inserted before period at end "; $1,000,000 for the fiscal year ending September 30, 1991; $3,000,000 for the fiscal year ending September 30, 1992; and $4,750,000 for the fiscal year ending September 30, 1993".

Subsec. (f). Pub. L. 101–614, §12(5), added subsec. (f).

1988—Subsec. (a)(2)(G). Pub. L. 100–418 substituted "Institute" for "Bureau".

Subsec. (a)(7). Pub. L. 100–252, §1(a), added par. (7).

Subsec. (b). Pub. L. 100–252, §1(b), struck out "and" after "1986;" and inserted "; $38,540,000 for the fiscal year ending September 30, 1988; $41,819,000 for the fiscal year ending September 30, 1989; and $43,283,000 for the fiscal year ending September 30, 1990".

Subsec. (c). Pub. L. 100–252, §1(c), struck out "and" after "1986;" and inserted "; $28,235,000 for the fiscal year ending September 30, 1988; $31,634,000 for the fiscal year ending September 30, 1989; and $35,454,000 for the fiscal year ending September 30, 1990".

Subsec. (d). Pub. L. 100–252, §1(d), struck out "and" after "1986;" and inserted "; $525,000 for the fiscal year ending September 30, 1988; $525,000 for the fiscal year ending September 30, 1989; and $525,000 for the fiscal year ending September 30, 1990".

1985—Subsec. (a)(6). Pub. L. 99–105, §1, added par. (6).

Subsec. (b). Pub. L. 99–105, §2, substituted a semicolon for ", and" after "1984" and inserted "$35,578,000 for the fiscal year ending September 30, 1986; and $37,179,000 for the fiscal year ending September 30, 1987".

Subsec. (c). Pub. L. 99–105, §3, struck out "and" after "1984;" and inserted "$27,760,000 for the fiscal year ending September 30, 1986; and $20,009,000 for the fiscal year ending September 30, 1987".

Subsec. (d). Pub. L. 99–105, §4, struck out "and" after "1984;" and inserted "$499,000 for the fiscal year ending September 30, 1986; and $521,000 for the fiscal year ending September 30, 1987".

1984—Subsec. (a). Pub. L. 98–241, §101(a), added par. (5).

Subsec. (b). Pub. L. 98–241, §101(b), struck out "and" after "1982;" and inserted "; $35,524,000 for the fiscal year ending September 30, 1984, and $37,300,200 for the fiscal year ending September 30, 1985".

Subsec. (c). Pub. L. 98–241, §101(c), struck out "and" after "1982;" and inserted "; $25,800,000 for the fiscal year ending September 30, 1984; and $28,665,000 for the fiscal year ending September 30, 1985".

Subsec. (d). Pub. L. 98–241, §101(d), struck out "and" after "1982;" and inserted "; $475,000 for the fiscal year ending September 30, 1984; and $498,750 for the fiscal year ending September 30, 1985".

Subsec. (e). Pub. L. 98–241, §101(e), substituted "1982," for "1982 and" and inserted "September 30, 1984, and September 30, 1985,".

1983—Subsec. (a)(4). Pub. L. 97–464, §101(a), added par. (4).

Subsecs. (b) to (d). Pub. L. 97–464, §101(b)–(d), inserted authorization for fiscal year ending Sept. 30, 1983.

Subsec. (e). Pub. L. 97–464, §101(e), substituted "each of the fiscal years ending September 30, 1982 and September 30, 1983" for "the fiscal year ending September 30, 1982".

1981—Subsec. (a)(3). Pub. L. 97–80, §101(a), added par. (3).

Subsecs. (b) to (d). Pub. L. 97–80, §101(b)–(d), inserted authorization for fiscal year ending Sept. 30, 1982.

Subsec. (e). Pub. L. 97–80, §101(e), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–472, §103(a), designated existing provisions as par. (1) and added par. (2).

Subsecs. (b), (c). Pub. L. 96–472, §103(b), (c), inserted authorization for fiscal year ending Sept. 30, 1981.
Subsec. (d). Pub. L. 96–472, §103(d), added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Administrator of the Agency" substituted for "Director of the Agency" in subsec. (a)(7) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[1] See References in Text note below.

[2] So in original. Probably should be followed by a semicolon.

[3] So in original. Probably should not be capitalized.

[4] So in original. The period probably should be a comma.

§7707. Advanced National Seismic System

(a) Establishment

The Director of the United States Geological Survey shall establish and operate an Advanced National Seismic System. The purpose of such system shall be to organize, modernize, standardize, and stabilize the national, regional, and urban seismic monitoring systems in the United States, including sensors, recorders, and data analysis centers, into a coordinated system that will measure and record the full range of frequencies and amplitudes exhibited by seismic waves, in order to enhance earthquake research and warning capabilities.

(b) Management plan

Not later than 90 days after November 13, 2000, the Director of the United States Geological Survey shall transmit to the Congress a 5-year management plan for establishing and operating the Advanced National Seismic System. The plan shall include annual cost estimates for both modernization and operation, milestones, standards, and performance goals, as well as plans for securing the participation of all existing networks in the Advanced National Seismic System and for establishing new, or enhancing existing, partnerships to leverage resources.

(Pub. L. 95–124, §13, as added Pub. L. 106–503, title II, §204, Nov. 13, 2000, 114 Stat. 2305; amended Pub. L. 108–360, title I, §104(b), Oct. 25, 2004, 118 Stat. 1675; Pub. L. 115–307, §8(b), Dec. 11, 2018, 132 Stat. 4417.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–307 substituted "Advanced National Seismic System" for "Advanced National Seismic Research and Monitoring System" in section catchline and wherever appearing in text.

2004—Subsec. (c). Pub. L. 108–360 struck out subsec. (c) which related to authorization of appropriations.

§7708. Network for Earthquake Engineering Simulation

(a) Establishment

The Director of the National Science Foundation shall establish the George E. Brown, Jr. Network for Earthquake Engineering Simulation that will upgrade, link, and integrate a system of geographically distributed experimental facilities for earthquake engineering testing of full-sized structures and their components and partial-scale physical models. The system shall be integrated through networking software so that integrated models and databases can be used to create model-based simulation, and the components of the system shall be interconnected with a computer network and allow for remote access, information sharing, and collaborative research.

(b) Authorization of appropriations

In addition to amounts appropriated under section 7706(c) of this title, there are authorized to be appropriated to the National Science Foundation for the George E. Brown, Jr. Network for Earthquake Engineering Simulation—

(1) $28,200,000 for fiscal year 2001;
(2) $24,400,000 for fiscal year 2002;
(3) $4,500,000 for fiscal year 2003;
(4) $17,000,000 for fiscal year 2004;
(5) $20,000,000 for fiscal year 2005, all of which shall be available for operations and maintenance;
(6) $20,400,000 for fiscal year 2006, all of which shall be available for operations and maintenance;
(7) $20,870,000 for fiscal year 2007, all of which shall be available for operations and maintenance;
(8) $21,390,000 for fiscal year 2008, all of which shall be available for operations and maintenance; and
(9) $21,930,000 for fiscal year 2009, all of which shall be available for operations and maintenance.

(Pub. L. 95–124, §14, as added Pub. L. 106–503, title II, §205, Nov. 13, 2000, 114 Stat. 2306; amended Pub. L. 108–360, title I, §104(c), Oct. 25, 2004, 118 Stat. 1675.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (b)(5) to (9). Pub. L. 108–360 added pars. (5) to (9).

§7709. Scientific Earthquake Studies Advisory Committee

(a) Establishment

The Director of the United States Geological Survey shall establish a Scientific Earthquake Studies Advisory Committee.

(b) Organization

The Director shall establish procedures for selection of individuals not employed by the Federal

Government who are qualified in the seismic sciences and other appropriate fields and may, pursuant to such procedures, select up to 10 individuals, one of whom shall be designated Chairman, to serve on the Advisory Committee. Selection of individuals for the Advisory Committee shall be based solely on established records of distinguished service, and the Director shall ensure that a reasonable cross-section of views and expertise is represented. In selecting individuals to serve on the Advisory Committee, the Director shall seek and give due consideration to recommendations from the National Academy of Sciences, professional societies, and other appropriate organizations.

(c) Meetings

The Advisory Committee shall meet at such times and places as may be designated by the Chairman in consultation with the Director.

(d) Duties

The Advisory Committee shall advise the Director on matters relating to the United States Geological Survey's participation in the National Earthquake Hazards Reduction Program, including the United States Geological Survey's roles, goals, and objectives within that Program, its capabilities and research needs, guidance on achieving major objectives, and establishing and measuring performance goals. The Advisory Committee shall issue an annual report to the Director for submission to Congress on or before September 30 of each year. The report shall describe the Advisory Committee's activities and address policy issues or matters that affect the United States Geological Survey's participation in the National Earthquake Hazards Reduction Program.

(Pub. L. 106–503, title II, §210, Nov. 13, 2000, 114 Stat. 2308.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Earthquake Hazards Reduction Authorization Act of 2000, and not as part of the Earthquake Hazards Reduction Act of 1977 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

CHAPTER 87—WATER RESEARCH AND DEVELOPMENT

§§7801, 7802. Repealed. Pub. L. 98–242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101

Section 7801, Pub. L. 95–467, §2, Oct. 17, 1978, 92 Stat. 1305, set out Congressional findings and declarations for a water research and development program.

Section 7802, Pub. L. 95–467, §3, Oct. 17, 1978, 92 Stat. 1305, set out Congressional statement of purpose.

For similar provisions, see section 10301 et seq. of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SAVINGS PROVISION

Pub. L. 98–242, title I, §110(b), Mar. 22, 1984, 98 Stat. 101, provided that: "Rules and regulations issued

prior to the date of enactment of this Act [Mar. 22, 1984] under the authority of Public Law 95–467 [this chapter] shall remain in full force and effect under this Act [repealing this chapter and enacting chapter 109 (§10301 et seq.) of this title] until superseded by new rules and regulations promulgated under this Act."

SHORT TITLE

Pub. L. 95–467, §1, Oct. 17, 1978, 92 Stat. 1305, which provided that Pub. L. 95–467 was to be cited as the "Water Research and Development Act of 1978", was repealed by section 110(a) of Pub. L. 98–242.

SUBCHAPTER I—WATER RESOURCES RESEARCH AND DEVELOPMENT

§§7811 to 7819. Repealed. Pub. L. 98–242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101

Section 7811, Pub. L. 95–467, title I, §101, Oct. 17, 1978, 92 Stat. 1306, related to establishment of research and technology institutes.

Section 7812, Pub. L. 95–467, title I, §102, Oct. 17, 1978, 92 Stat. 1307, authorized use of appropriated funds for printing and publishing of program results, and planning, coordinating, and conducting of cooperative research.

Section 7813, Pub. L. 95–467, title I, §103, Oct. 17, 1978, 92 Stat. 1308, set out responsibilities of Secretary of the Interior in prescribing procedures, rules, and regulations, and in developing a 5-year water resource research program.

Section 7814, Pub. L. 95–467, title I, §104, Oct. 17, 1978, 92 Stat. 1308, related to non-impairment of legal relationship between State governments and educational institutions involved in water research and to prohibition with regard to any Federal control of educational institutions.

Section 7815, Pub. L. 95–467, title I, §105, Oct. 17, 1978, 92 Stat. 1308, provided for making of grants and contracts.

Section 7816, Pub. L. 95–467, title I, §106, Oct. 17, 1978, 92 Stat. 1309, set out range of program issues and provided for due consideration to be given to priority problems.

Section 7817, Pub. L. 95–467, title I, §107, Oct. 17, 1978, 92 Stat. 1309, defined "State".

Section 7818, Pub. L. 95–467, title I, §108, Oct. 17, 1978, 92 Stat. 1309, authorized advance payment of initial expenses.

Section 7819, Pub. L. 95–467, title I, §109, Oct. 17, 1978, 92 Stat. 1309, provided for study and design of water resources programs and activities and for reports to Congress.

For similar provisions, see section 10301 et seq. of this title.

SUBCHAPTER II—WATER RESEARCH AND DEVELOPMENT FOR SALINE AND OTHER IMPAIRED WATERS

§§7831 to 7835. Repealed. Pub. L. 98–242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101

Section 7831, Pub. L. 95–467, title II, §200, Oct. 17, 1978, 92 Stat. 1310, set out Congressional findings and declaration of policy in establishing a program for water research and development for saline and other impaired waters.

Section 7832, Pub. L. 95–467, title II, §201, Oct. 17, 1978, 92 Stat. 1310, set out functions of the Secretary.

Section 7833, Pub. L. 95–467, title II, §202, Oct. 17, 1978, 92 Stat. 1310, set out additional functions of the Secretary with regard to demonstrations and prototype plants, utilization of Federal expertise, and financial assistance from State or public agencies.

Section 7834, Pub. L. 95–467, title II, §203, Oct. 17, 1978, 92 Stat. 1311, authorized the Secretary to issue rules and regulations to carry out this subchapter.

Section 7835, Pub. L. 95–467, title II, §204, Oct. 17, 1978, 92 Stat. 1311, defined "saline and other impaired water", "United States", "pilot plant", "demonstration", and "prototype".

For similar provisions, see section 10301 et seq. of this title.

§7836. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 95–84, §2, Aug. 2, 1977, 91 Stat. 400; Pub. L. 95–467, title II, §205(a), (b), Oct. 17, 1978, 92 Stat. 1311; Pub. L. 96–457, §3, Oct. 15, 1980, 94 Stat. 2032; Pub. L. 98–242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101, which directed Secretary of the Interior to construct facilities demonstrating the engineering and economic viability of various desalting processes, was transferred, and is set out as a Desalting Plants note under section 10301 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95–467, title II, §205(c), Oct. 17, 1978, 92 Stat. 1311, which authorized an appropriation of $10,000,000 to remain available until expended for the fiscal year ending Sept. 30, 1980, and thereafter in addition to sums previously authorized to be appropriated to carry out the purpose of this section, was repealed by Pub. L. 96–457, §4, Oct. 15, 1980, 94 Stat. 2034, and Pub. L. 98–242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101.

SUBCHAPTER III—TECHNOLOGY TRANSFER AND INFORMATION DISSEMINATION

§§7851 to 7853. Repealed. Pub. L. 98–242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101

Section 7851, Pub. L. 95–467, title III, §300, Oct. 17, 1978, 92 Stat. 1312, provided for creation and operation of a research assessment and technology transfer program.

Section 7852, Pub. L. 95–467, title III, §301, Oct. 17, 1978, 92 Stat. 1312, authorized the Secretary to maintain a national center for acquisition, processing, and dissemination of information dealing with all areas of water research.

Section 7853, Pub. L. 95–467, title III, §302, Oct. 17, 1978, 92 Stat. 1312, provided for establishment of a center for cataloging current scientific research in all fields of water resources.

For similar provisions, see section 10301 et seq. of this title.

SUBCHAPTER IV—GENERAL PROVISIONS

§§7871 to 7883. Repealed. Pub. L. 98–242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101

Section 7871, Pub. L. 95–467, title IV, §400, Oct. 17, 1978, 92 Stat. 1313, enumerated powers of Secretary of the Interior in carrying out this chapter.

Section 7872, Pub. L. 95–467, title IV, §401, Oct. 17, 1978, 92 Stat. 1313; Pub. L. 96–457, §§1, 2(a), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for programs under sections 7811(a) and (c),

7815(a) and (b), and 7819 of this title.

Section 7873, Pub. L. 95–467, title IV, §402, Oct. 17, 1978, 92 Stat. 1314; Pub. L. 96–457, §2(b)(1), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for research, development, and demonstration plants.

Section 7874, Pub. L. 95–467, title IV, §403, Oct. 17, 1978, 92 Stat. 1314; Pub. L. 96–457, §2(b)(2), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for programs conducted under this chapter for which there were no specific appropriations.

Section 7875, Pub. L. 95–467, title IV, §404, Oct. 17, 1978, 92 Stat. 1314, related to grant applications, approval of applications by the Secretary, and the basis of approvals.

Section 7876, Pub. L. 95–467, title IV, §405, Oct. 17, 1978, 92 Stat. 1315, related to payments to institutes and accounting for such payments.

Section 7877, Pub. L. 95–467, title IV, §406, Oct. 17, 1978, 92 Stat. 1315, related to cooperation in research programs between Federal agencies, State and local governments, private institutions, and individuals.

Section 7878, Pub. L. 95–467, title IV, §407, Oct. 17, 1978, 92 Stat. 1316, authorized conveyance of property acquired by the Secretary to a cooperating institute, educational institution, or cooperating nonprofit organization, and empowered the Secretary to dispose of water and byproducts resulting from operations under this chapter.

Section 7879, Pub. L. 95–467, title IV, §408, Oct. 17, 1978, 92 Stat. 1316, set out policy under this chapter with regard to patents.

Section 7880, Pub. L. 95–467, title IV, §409, Oct. 17, 1978, 92 Stat. 1316, provided for annual reports to the Secretary by various water research institutes.

Section 7881, Pub. L. 95–467, title IV, §410, Oct. 17, 1978, 92 Stat. 1316, provided that the chapter was not intended to repeal, supersede, or diminish existing authorities of agencies concerning water resources, or to be construed to alter existing law with respect to ownership and control of water.

Section 7882, Pub. L. 95–467, title IV, §411, Oct. 17, 1978, 92 Stat. 1317, Pub. L. 96–457, §2(b)(3), Oct. 15, 1980, 94 Stat. 2032, provided for transmittal of rules, regulations, etc., to the Speaker of the House and President of the Senate.

Section 7883, Pub. L. 95–467, title IV, §412, Oct. 17, 1978, 92 Stat. 1317, provided that authority to enter into contracts or cooperative agreements and to make payments under this chapter was effective only to the extent or in such amounts as were provided in advance in appropriations acts.

For prior provisions, see section 10301 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982 TO 1984

Pub. L. 97–35, title XVIII, §1807(b), Aug. 13, 1979, 95 Stat. 765, provided that no funds were authorized to be appropriated to the Secretary of the Interior for the purposes of water resources research and development, saline water research, development, and demonstration, and associated activities in excess of $23,650,000 per fiscal year for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984.

CHAPTER 88—URANIUM MILL TAILINGS RADIATION CONTROL

Sec.

7901. Congressional findings and purposes.

SUBCHAPTER I—REMEDIAL ACTION PROGRAM

7911. Definitions.
7912. Processing site designations.
7913. State cooperative agreements.
7914. Acquisition and disposition of lands and materials.
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7916. Acquisition of land by Secretary; transfer of public lands by Secretary of the Interior to Secretary; consultations with Governor; consent of Governor; transfer from Federal

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7917. Financial assistance.
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7919. Rules.
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7921. Public participation; public hearings.
7922. Termination of authority of Secretary.
7923. Limitation of contractual authority.
7924. Reports to Congress.
7925. Active operations; liability for remedial action.
SUBCHAPTER II—STUDY AND DESIGNATION OF TWO MILL TAILING SITES IN NEW MEXICO
7941. Study of authority for regulation and control of residual radioactive materials at New Mexico sites for protection of public health, safety, and the environment; report to Congress and Secretary; basis for determination of inadequacy of authority; interim regulation pending completion of study.
7942. Designation by Secretary as processing sites for subchapter I purposes.

§7901. Congressional findings and purposes

(a) The Congress finds that uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and that the protection of the public health, safety, and welfare and the regulation of interstate commerce require that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings.

(b) The purposes of this chapter are to provide—

(1) in cooperation with the interested States, Indian tribes, and the persons who own or control inactive mill tailings sites, a program of assessment and remedial action at such sites, including, where appropriate, the reprocessing of tailings to extract residual uranium and other mineral values where practicable, in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public, and

(2) a program to regulate mill tailings during uranium or thorium ore processing at active mill operations and after termination of such operations in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public.

(Pub. L. 95–604, §2, Nov. 8, 1978, 92 Stat. 3021.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–616, §1, Nov. 5, 1988, 102 Stat. 3192, provided: "That this Act [amending sections 7916 and 7922 of this title] may be cited as the 'Uranium Mill Tailings Remedial Action Amendments Act of 1988'."

SHORT TITLE

Pub. L. 95–604, §1, Nov. 8, 1978, 92 Stat. 3021, provided that: "This Act [enacting this chapter and sections 2022, 2113, and 2114 of this title, amending sections 2014, 2021, 2111, and 2201 of this title, and enacting provisions set out as notes under sections 2014, 2021, and 2113 of this title] may be cited as the 'Uranium Mill Tailings Radiation Control Act of 1978'."

SUBCHAPTER I—REMEDIAL ACTION PROGRAM

§7911. Definitions

For purposes of this subchapter—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(4) The term "Indian tribe" means any tribe, band, clan, group, pueblo, or community of Indians recognized as eligible for services provided by the Secretary of the Interior to Indians.

(5) The term "person" means any individual, association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

(6) The term "processing site" means—

(A) any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or

(ii) a license (issued by the Commission or its predecessor agency under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021]) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(B) any other real property or improvement thereon which—

(i) is in the vicinity of such site, and

(ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under this subchapter shall not be treated as ownership or control by such agency for purposes of subparagraph (A)(i). A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 7918(b) of this title.

(7) The term "residual radioactive material" means—

(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low-grade materials.

(8) The term "tailings" means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

(9) The term "Federal agency" includes any executive agency as defined in section 105 of title 5.

(10) The term "United States" means the 48 contiguous States and Alaska, Hawaii, Puerto Rico, the District of Columbia, and the territories and possessions of the United States.

(Pub. L. 95–604, title I, §101, Nov. 8, 1978, 92 Stat. 3022.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in par. (6)(A)(ii), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§7912. Processing site designations

(a) Specific and other site locations; remedial action; consultations; boundaries; Grand Junction, Colorado, site restriction

(1) As soon as practicable, but no later than one year after November 8, 1978, the Secretary shall designate processing sites at or near the following locations:

Salt Lake City, Utah
Green River, Utah
Mexican Hat, Utah
Durango, Colorado
Grand Junction, Colorado
Rifle, Colorado (two sites)
Gunnison, Colorado
Naturita, Colorado
Maybell, Colorado
Slick Rock, Colorado (two sites)
Shiprock, New Mexico
Ambrosia Lake, New Mexico
Riverton, Wyoming
Converse County, Wyoming
Lakeview, Oregon
Falls City, Texas
Tuba City, Arizona
Monument Valley, Arizona
Lowman, Idaho
Cannonsburg, Pennsylvania

Subject to the provisions of this subchapter, the Secretary shall complete remedial action at the above listed sites before his authority terminates under this subchapter. The Secretary shall within one year of November 8, 1978, also designate all other processing sites within the United States which he determines requires remedial action to carry out the purposes of this subchapter. In making such designation, the Secretary shall consult with the Administrator, the Commission, and the affected States, and in the case of Indian lands, the appropriate Indian tribe and the Secretary of the Interior.

(2) As part of his designation under this subsection, the Secretary, in consultation with the Commission, shall determine the boundaries of each such site.

(3) No site or structure with respect to which remedial action is authorized under Public Law 92–314 in Grand Junction, Colorado, may be designated by the Secretary as a processing site under

this section.

(b) Health hazard assessment; priorities for remedial action

Within one year from November 8, 1978, the Secretary shall assess the potential health hazard to the public from the residual radioactive materials at designated processing sites. Based upon such assessment, the Secretary shall, within such one year period, establish priorities for carrying out remedial action at each such site. In establishing such priorities, the Secretary shall rely primarily on the advice of the Administrator.

(c) Notification

Within thirty days after making designations of processing sites and establishing the priorities for such sites under this section, the Secretary shall notify the Governor of each affected State, and, where appropriate, the Indian tribes and the Secretary of the Interior.

(d) Finality of determinations

The designations made, and priorities established, by the Secretary under this section shall be final and not be subject to judicial review.

(e) Certain real property or improved areas

(1) The designation of processing sites within one year after November 8, 1978, under this section shall include, to the maximum extent practicable, the areas referred to in section 7911(6)(B) of this title.

(2) Notwithstanding the one year limitation contained in this section, the Secretary may, after such one year period, include any area described in section 7911(6)(B) of this title as part of a processing site designated under this section if he determines such inclusion to be appropriate to carry out the purposes of this subchapter.

(3) The Secretary shall designate as a processing site within the meaning of section 7911(6) of this title any real property, or improvements thereon, in Edgemont, South Dakota, that—

(A) is in the vicinity of the Tennessee Valley Authority uranium mill site at Edgemont (but not including such site), and

(B) is determined by the Secretary to be contaminated with residual radioactive materials.

In making the designation under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of this subchapter shall apply to the site so designated in the same manner and to the same extent as to the sites designated under subsection (a) except that, in applying such provisions to such site, any reference in this subchapter to November 8, 1978, shall be treated as a reference to January 4, 1983, and in determining the State share under section 7917 of this title of the costs of remedial action, there shall be credited to the State, expenditures made by the State prior to January 4, 1983, which the Secretary determines would have been made by the State or the United States in carrying out the requirements of this subchapter.

(f) Designation of Moab Site as processing site

(1) Designation

Notwithstanding any other provision of law, the Moab uranium milling site (referred to in this subsection as the "Moab site") located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA–917, is designated as a processing site.

(2) Applicability

This subchapter applies to the Moab site in the same manner and to the same extent as to other processing sites designated under subsection (a), except that—

(A) sections 7913, 7914(b), 7917(a), 7922(a), and 7925(a) of this title shall not apply; and

(B) a reference in this subchapter to November 8, 1978, shall be treated as a reference to

October 30, 2000.

(3) Remediation

Subject to the availability of appropriations for this purpose, the Secretary shall conduct remediation at the Moab site in a safe and environmentally sound manner that takes into consideration the remedial action plan prepared pursuant to section 3405(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 8720 note; Public Law 105–261), including—

(A) ground water restoration; and

(B) the removal, to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the Moab site and the floodplain of the Colorado River.

(Pub. L. 95–604, title I, §102, Nov. 8, 1978, 92 Stat. 3023; Pub. L. 97–415, §21, Jan. 4, 1983, 96 Stat. 2079; Pub. L. 106–398, §1 [div. C, title XXXIV, §3403(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–489; Pub. L. 115–232, div. A, title VIII, §809(n)(4), Aug. 13, 2018, 132 Stat. 1844.)

EDITORIAL NOTES

REFERENCES IN TEXT

Remedial action authorized under Public Law 92–314, referred to in subsec. (a)(3), means the remedial action authorized by title II of Pub. L. 92–314, June 16, 1972, 86 Stat. 222, which is not classified to the Code.

AMENDMENTS

2018—Subsec. (f)(3). Pub. L. 115–232 substituted "(10 U.S.C. 8720 note; Public Law 105–261)" for "(10 U.S.C. 7420 note; Public Law 105–261)" in introductory provisions.

2000—Subsec. (f). Pub. L. 106–398 added subsec. (f).

1983—Subsec. (e)(3). Pub. L. 97–415 added par. (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of Title 10, Armed Forces.

§7913. State cooperative agreements

(a) Authority of Secretary; prompt commencement of preparations

After notifying a State of the designation referred to in section 7912 of this title, the Secretary subject to section 7923 of this title, is authorized to enter into cooperative agreements with such State to perform remedial actions at each designated processing site in such State (other than a site located on Indian lands referred to in section 7915 of this title). The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. The Secretary shall commence preparations for cooperative agreements with respect to each designated processing site as promptly as practicable following the designation of each site.

(b) Terms and conditions; limitation of Federal assistance

Each cooperative agreement under this section shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to complete the remedial action selected pursuant to section 7918 of this title.

(c) Written consent of record interest holder; waiver

(1) Except where the State is required to acquire the processing site as provided in subsection (a) of section 7914 of this title, each cooperative agreement with a State under this section shall provide that the State shall obtain, in a form prescribed by the Secretary, written consent from any person holding any record interest in the designated processing site for the Secretary or any person designated by him to perform remedial action at such site.

(2) Such written consent shall include a waiver by each such person on behalf of himself, his heirs, successors, and assigns—

(A) releasing the United States of any liability or claim thereof by such person, his heirs, successors, and assigns concerning such remedial action, and

(B) holding the United States harmless against any claim by such person on behalf of himself, his heirs, successors, or assigns arising out of the performance of any such remedial action.

(d) Inspection entries; termination of right of entry

Each cooperative agreement under this section shall require the State to assure that the Secretary, the Commission, and the Administrator and their authorized representatives have a permanent right of entry at any time to inspect the processing site and the site provided pursuant to section 7914(b)(1) of this title in furtherance of the provisions of this subchapter and to carry out such agreement and enforce this chapter and any rules prescribed under this chapter. Such right of entry under this section or section 7916 of this title into an area described in section 7911(6)(B) of this title shall terminate on completion of the remedial action, as determined by the Secretary.

(e) Effective date

Each agreement under this section shall take effect only upon the concurrence of the Commission with the terms and conditions thereof.

(f) Reimbursement

The Secretary may, in any cooperative agreement entered into under this section or section 7915 of this title, provide for reimbursement of the actual costs, as determined by the Secretary, of any remedial action performed with respect to so much of a designated processing site as is described in section 7911(6)(B) of this title. Such reimbursement shall be made only to a property owner of record at the time such remedial action was undertaken and only with respect to costs incurred by such property owner. No such reimbursement may be made unless—

(1) such remedial action was completed prior to November 8, 1978, and unless the application for such reimbursement was filed by such owner within one year after an agreement under this section or section 7915 of this title is approved by the Secretary and the Commission, and

(2) the Secretary is satisfied that such action adequately achieves the purposes of this chapter with respect to the site concerned and is consistent with the standards established by the Administrator pursuant to section 2022(a) of this title.

(Pub. L. 95–604, title I, §103, Nov. 8, 1978, 92 Stat. 3024.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b), (d), and (f)(2), was in the original "this Act", meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note under section 7901 of this title and Tables.

§7914. Acquisition and disposition of lands and materials

(a) State acquisition; windfall profits prevention

Each cooperative agreement under section 7913 of this title shall require the State, where determined appropriate by the Secretary with the concurrence of the Commission, to acquire any designated processing site, including where appropriate any interest therein. In determining whether

to require the State to acquire a designated processing site or interest therein, consideration shall be given to the prevention of windfall profits.

(b) Disposition and stabilization site for residual radioactive materials; Federal site available

(1) If the Secretary with the concurrence of the Commission determines that removal of residual radioactive material from a processing site is appropriate, the cooperative agreement shall provide that the State shall acquire land (including, where appropriate, any interest therein) to be used as a site for the permanent disposition and stabilization of such residual radioactive materials in a safe and environmentally sound manner.

(2) Acquisition by the State shall not be required under this subsection if a site located on land controlled by the Secretary or made available by the Secretary of the Interior pursuant to section 7916(2) of this title is designated by the Secretary, with the concurrence of the Commission, for such disposition and stabilization.

(c) Boundary limitations

No State shall be required under subsection (a) or (b) to acquire any real property or improvement outside the boundaries of—

(1) that portion of the processing site which is described in section 7911(6)(A) of this title, and

(2) the site used for disposition of the residual radioactive materials.

(d) Purchasers of sites; notification; rules and regulations

In the case of each processing site designated under this subchapter other than a site designated on Indian land, the State shall take such action as may be necessary, and pursuant to regulations of the Secretary under this subsection, to assure that any person who purchases such a processing site after the removal of radioactive materials from such site shall be notified in an appropriate manner prior to such purchase, of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place, and the condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of such site. The Secretary shall issue appropriate rules and regulations to require notice in the local land records of the residual radioactive materials which were located at any processing site and notice of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place. For purposes of this subsection, the term "site" does not include any property described in section 7911(6)(B) of this title which is in a State which the Secretary has certified has a program which would achieve the purposes of this subsection.

(e) State disposition; terms and conditions; fair market value; offer of sale to prior owner

(1) The terms and conditions of any cooperative agreement with a State under section 7913 of this title shall provide that in the case of any lands or interests therein acquired by the State pursuant to subsection (a), the State, with the concurrence of the Secretary and the Commission, may—

(A) sell such lands and interests,

(B) permanently retain such land and interests in lands (or donate such lands and interests therein to another governmental entity within such State) for permanent use by such State or entity solely for park, recreational, or other public purposes, or

(C) transfer such lands and interests to the United States as provided in subsection (f).

No lands may be sold under subparagraph (A) without the consent of the Secretary and the Commission. No site may be sold under subparagraph (A) or retained under subparagraph (B) if such site is used for the disposition of residual radioactive materials.

(2) Before offering for sale any lands and interests therein which comprise a processing site, the State shall offer to sell such lands and interests at their fair market value to the person from whom the State acquired them.

(f) Transfer of title to Secretary; payment from funds for administrative and legal costs; custody of property; compliance with health and environmental standards for uranium mill

tailings; transfer of title restriction

(1) Each agreement under section 7913 of this title shall provide that title to—

(A) the residual radioactive materials subject to the agreement, and

(B) any lands and interests therein which have been acquired by the State, under subsection (a) or (b), for the disposition of such materials,

shall be transferred by the State to the Secretary when the Secretary (with the concurrence of the Commission) determines that remedial action is completed in accordance with the requirements imposed pursuant to this subchapter. No payment shall be made in connection with the transfer of such property from funds appropriated for purposes of this chapter other than payments for any administrative and legal costs incurred in carrying out such transfer.

(2) Custody of any property transferred to the United States under this subsection shall be assumed by the Secretary or such Federal agency as the President may designate. Notwithstanding any other provision of law, upon completion of the remedial action program authorized by this subchapter, such property and minerals shall be maintained pursuant to a license issued by the Commission in such manner as will protect the public health, safety, and the environment. The Commission may, pursuant to such license or by rule or order, require the Secretary or other Federal agency having custody of such property and minerals to undertake such monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions as the Commission deems necessary to comply with the standards of section 2022(a) of this title. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring and emergency measures under this subsection, but shall take no other action pursuant to such license, rule or order with respect to such property and minerals unless expressly authorized by Congress after November 8, 1978. The United States shall not transfer title to property or interest therein acquired under this subsection to any person or State, except as provided in subsection (h).

(g) Reimbursement; fair market value; deposits in Treasury

Each agreement under section 7913 of this title which permits any sale described in subsection (e)(1)(A) shall provide for the prompt reimbursement to the Secretary from the proceeds of such sale. Such reimbursement shall be in an amount equal to the lesser of—

(1) that portion of the fair market value of the lands or interests therein which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State to such lands or interest therein bears to the total cost of such acquisition, or

(2) the total amount paid by the Secretary with respect to such acquisition.

The fair market value of such lands or interest shall be determined by the Secretary as of the date of the sale by the State. Any amounts received by the Secretary under this subchapter shall be deposited in the Treasury of the United States as miscellaneous receipts.

(h) Subsurface mineral rights; sale, lease, or other disposition; restoration costs for disturbance of residual radioactive materials

No provision of any agreement under section 7913 of this title shall prohibit the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, from disposing of any subsurface mineral rights by sale or lease (in accordance with laws of the United States applicable to the sale, lease, or other disposal of such rights) which are associated with land on which residual radioactive materials are disposed and which are transferred to the United States as required under this section if the Secretary of the Interior takes such action as the Commission deems necessary pursuant to a license issued by the Commission to assure that the residual radioactive materials will not be disturbed by reason of any activity carried on following such disposition. If any such materials are disturbed by any such activity, the Secretary of the Interior shall insure, prior to the disposition of the minerals, that such materials will be restored to a safe and environmentally sound condition as determined by the Commission, and that the costs of such restoration will be borne by the person acquiring such rights from the Secretary of the Interior or from his successor or assign.

(Pub. L. 95–604, title I, §104, Nov. 8, 1978, 92 Stat. 3025; Pub. L. 104–259, §4(a), Oct. 9, 1996, 110

Stat. 3174.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (f)(1), was in the original "this Act", meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note under section 7901 of this title and Tables.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–259 inserted at end "For purposes of this subsection, the term 'site' does not include any property described in section 7911(6)(B) of this title which is in a State which the Secretary has certified has a program which would achieve the purposes of this subsection."

§7915. Indian tribe cooperative agreements

(a) Authority of Secretary; priorities for remedial action; use of Indian personnel; terms and conditions

After notifying the Indian tribe of the designation pursuant to section 7912 of this title, the Secretary, in consultation with the Secretary of the Interior, is authorized to enter into a cooperative agreement, subject to section 7923 of this title, with any Indian tribe to perform remedial action at a designated processing site located on land of such Indian tribe. The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. In performing any remedial action under this section and in carrying out any continued monitoring or maintenance respecting residual radioactive materials associated with any site subject to a cooperative agreement under this section, the Secretary shall make full use of any qualified members of Indian tribes resident in the vicinity of any such site. Each such agreement shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter. Such terms and conditions shall require the following:

(1) The Indian tribe and any person holding any interest in such land shall execute a waiver (A) releasing the United States of any liability or claim thereof by such tribe or person concerning such remedial action and (B) holding the United States harmless against any claim arising out of the performance of any such remedial action.

(2) The remedial action shall be selected and performed in accordance with section 7918 of this title by the Secretary or such person as he may designate.

(3) The Secretary, the Commission, and the Administrator and their authorized representatives shall have a permanent right of entry at any time to inspect such processing site in furtherance of the provisions of this subchapter, to carry out such agreement, and to enforce any rules prescribed under this chapter.

Each agreement under this section shall take effect only upon concurrence of the Commission with the terms and conditions thereof.

(b) Disposition and stabilization sites for residual radioactive materials; transfer to Secretary of the Interior

When the Secretary with the concurrence of the Commission determines removal of residual radioactive materials from a processing site on lands described in subsection (a) to be appropriate, he shall provide, consistent with other applicable provisions of law, a site or sites for the permanent disposition and stabilization in a safe and environmentally sound manner of such residual radioactive materials. Such materials shall be transferred to the Secretary (without payment therefor by the Secretary) and permanently retained and maintained by the Secretary under the conditions established in a license issued by the Commission, subject to section 7914(f)(2) and (h) of this title.

(Pub. L. 95–604, title I, §105, Nov. 8, 1978, 92 Stat. 3028.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note under section 7901 of this title and Tables.

§7916. Acquisition of land by Secretary; transfer of public lands by Secretary of the Interior to Secretary; consultations with Governor; consent of Governor; transfer from Federal agency to Secretary

Where necessary or appropriate in order to consolidate in a safe and environmentally sound manner the location of residual radioactive materials which are removed from processing sites under cooperative agreements under this subchapter, or where otherwise necessary for the permanent disposition and stabilization of such materials in such manner—

(1) the Secretary may acquire land and interests in land for such purposes by purchase, donation, or under any other authority of law or

(2) the Secretary of the Interior may transfer permanently to the Secretary to carry out the purposes of this chapter, public lands under the jurisdiction of the Bureau of Land Management in the vicinity of processing sites in the following counties:

(A) Apache County in the State of Arizona;

(B) Mesa, Gunnison, Moffat, Montrose, Garfield, and San Miguel Counties in the State of Colorado;

(C) Boise County in the State of Idaho;

(D) Billings and Bowman Counties in the State of North Dakota;

(E) Grand and San Juan Counties in the State of Utah;

(F) Converse and Fremont Counties in the State of Wyoming; and

(G) Any other county in the vicinity of a processing site, if no site in the county in which a processing site is located is suitable.

Any permanent transfer of lands under the jurisdiction of the Bureau of Land Management by the Secretary of the Interior to the Secretary shall not take place until the Secretary complies with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) with respect to the selection of a site for the permanent disposition and stabilization of residual radioactive materials. Section 1714 of title 43 shall not apply to this transfer of jurisdiction. Prior to acquisition of land under paragraph (1) or (2) of this subsection [1] in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this subchapter or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this chapter without the concurrence of the chief administrative officer of such agency.

(Pub. L. 95–604, title I, §106, Nov. 8, 1978, 92 Stat. 3029; Pub. L. 100–616, §2, Nov. 5, 1988, 102 Stat. 3192.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

The National Environmental Policy Act, referred to in text, probably means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1988—Par. (2). Pub. L. 100–616 added par. (2) and concluding provisions and struck out former par. (2) and concluding provisions which read as follows:

"(2) the Secretary of the Interior may make available public lands administered by him for such purposes in accordance with other applicable provisions of law.

Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this subchapter or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this chapter without the concurrence of the chief administrative officer of such agency."

[1] *So in original. Probably should be "section".*

§7917. Financial assistance

(a) Federal and non-Federal funds; administrative costs

In the case of any designated processing site for which an agreement is executed with any State for remedial action at such site, the Secretary shall pay 90 per centum of the actual cost of such remedial action, including the actual costs of acquiring such site (and any interest therein) or any disposition site (and any interest therein) pursuant to section 7913 of this title, and the State shall pay the remainder of such costs from non-Federal funds. The Secretary shall not pay the administrative costs incurred by any State to develop, prepare, and carry out any cooperative agreement executed with such State under this subchapter, except the proportionate share of the administrative costs associated with the acquisition of lands and interests therein acquired by the State pursuant to this subchapter.

(b) Indian land processing sites

In the case of any designated processing site located on Indian lands, the Secretary shall pay the entire cost of such remedial action.

(Pub. L. 95–604, title I, §107, Nov. 8, 1978, 92 Stat. 3029.)

§7918. Remedial action and mineral recovery activities

(a) General standards for remedial action; Federal performance and State participation; use of technology; promulgation of standards

(1) The Secretary or such person as he may designate shall select and perform remedial actions at designated processing sites and disposal sites in accordance with the general standards prescribed by the Administrator pursuant to section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)]. The State shall participate fully in the selection and performance of a remedial action for which it pays part of the cost. Such remedial action shall be selected and performed with the concurrence of the Commission and in consultation, as appropriate, with the Indian tribe and the Secretary of the Interior. Residual radioactive material from a processing site designated under this subchapter may be disposed of at a facility licensed under title II under the administrative and technical requirements of such title. Disposal of such material at such a site in accordance with such requirements shall be considered to have been done in accordance with the administrative and technical requirements of this subchapter.

(2) The Secretary shall use technology in performing such remedial action as will insure

compliance with the general standards promulgated by the Administrator under section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)] and will assure the safe and environmentally sound stabilization of residual radioactive materials, consistent with existing law.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, after October 31, 1982, if the Administrator has not promulgated standards under section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)] in final form by such date, remedial action taken by the Secretary under this subchapter shall comply with the standards proposed by the Administrator under such section 275 a. until such time as the Administrator promulgates the standards in final form.

(b) Mineral concentration evaluation; terms and conditions for mineral recovery; payment of Federal and State share of net profits; recovery costs; licenses

Prior to undertaking any remedial action at a designated site pursuant to this subchapter, the Secretary shall request expressions of interest from private parties regarding the remilling of the residual radioactive materials and the site and, upon receipt of any expression of interest, the Secretary shall evaluate among other things the mineral concentration of the residual radioactive materials at each designated processing site to determine whether, as a part of any remedial action program, recovery of such minerals is practicable. The Secretary, with the concurrence of the Commission, may permit the recovery of such minerals, under such terms and conditions as he may prescribe to carry out the purposes of this subchapter. No such recovery shall be permitted unless such recovery is consistent with remedial action. Any person permitted by the Secretary to recover such mineral shall pay to the Secretary a share of the net profits derived from such recovery, as determined by the Secretary. Such share shall not exceed the total amount paid by the Secretary for carrying out remedial action at such designated site. After payment of such share to the United States under this subsection, such person shall pay to the State in which the residual radioactive materials are located a share of the net profits derived from such recovery, as determined by the Secretary. The person recovering such minerals shall bear all costs of such recovery. Any person carrying out mineral recovery activities under this paragraph shall be required to obtain any necessary license under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or under State law as permitted under section 274 of such Act [42 U.S.C. 2021].

(Pub. L. 95–604, title I, §108, Nov. 8, 1978, 92 Stat. 3029; Pub. L. 97–415, §18(b), Jan. 4, 1983, 96 Stat. 2078; Pub. L. 104–259, §4(b), Oct. 9, 1996, 110 Stat. 3174.)

EDITORIAL NOTES

REFERENCES IN TEXT

Title II, referred to in subsec. (a)(1), is title II (§§201–209) of Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3033, which enacted sections 2022, 2113, and 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–259 inserted at end "Residual radioactive material from a processing site designated under this subchapter may be disposed of at a facility licensed under title II under the administrative and technical requirements of such title. Disposal of such material at such a site in accordance with such requirements shall be considered to have been done in accordance with the administrative and technical requirements of this subchapter."

1983—Subsec. (a)(2). Pub. L. 97–415, §18(b)(2), struck out provision that no such remedial action could be undertaken under this section before the promulgation by the Administrator of general standards pursuant to section 275 a. of the Atomic Energy Act of 1954.

Subsec. (a)(3). Pub. L. 97–415, §18(b)(1), added par. (3).

§7919. Rules

The Secretary may prescribe such rules consistent with the purposes of this chapter as he deems appropriate pursuant to title V of the Department of Energy Organization Act [42 U.S.C. 7191 et seq.].

(Pub. L. 95–604, title I, §109, Nov. 8, 1978, 92 Stat. 3030.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note under section 7901 of this title and Tables.

The Department of Energy Organization Act, referred to in text, is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565. Title V of the Department of Energy Organization Act is classified generally to subchapter V (§7191 et seq.) of chapter 84 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§7920. Enforcement

(a) Civil penalty; appellate review; action to recover civil penalty; sovereign immunity; equitable remedies

(1) Any person who violates any provision of this subchapter or any cooperative agreement entered into pursuant to this subchapter or any rule prescribed under this chapter concerning any designated processing site, disposition site, or remedial action shall be subject to an assessment by the Secretary of a civil penalty of not more than $1,000 per day per violation. Such assessment shall be made by order after notice and an opportunity for a public hearing, pursuant to section 554 of title 5.

(2) Any person against whom a penalty is assessed under this section may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review. Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this section.

(4) No civil penalty may be assessed against the United States or any State or political subdivision of a State or any official or employee of the foregoing.

(5) Nothing in this section shall prevent the Secretary from enforcing any provision of this subchapter or any cooperative agreement or any such rule by injunction or other equitable remedy.

(b) Atomic energy licensing requirements

Subsection (a) shall not apply to any licensing requirement under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]. Such licensing requirements shall be enforced by the Commission as provided in such Act.

(Pub. L. 95–604, title I, §110, Nov. 8, 1978, 92 Stat. 3030.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this Act", meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note under section 7901 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§7921. Public participation; public hearings

In carrying out the provisions of this subchapter, including the designation of processing sites, establishing priorities for such sites, the selection of remedial actions, and the execution of cooperative agreements, the Secretary, the Administrator, and the Commission shall encourage public participation and, where appropriate, the Secretary shall hold public hearings relative to such matters in the States where processing sites and disposal sites are located.

(Pub. L. 95–604, title I, §111, Nov. 8, 1978, 92 Stat. 3031.)

§7922. Termination of authority of Secretary

(a) Exceptions; "byproduct material" defined

(1) The authority of the Secretary to perform remedial action under this subchapter shall terminate on September 30, 1998, except that—

(A) the authority of the Secretary to perform groundwater restoration activities under this subchapter is without limitation, and

(B) the Secretary may continue operation of the disposal site in Mesa County, Colorado (known as the Cheney disposal cell) for receiving and disposing of residual radioactive material from processing sites and of byproduct material from property in the vicinity of the uranium milling site located in Monticello, Utah, until the Cheney disposal cell has been filled to the capacity for which it was designed, or September 30, 2031, whichever comes first.

(2) For purposes of this subsection, the term "byproduct material" has the meaning given that term in section 2014(e)(2) of this title.

(b) Authorization of appropriations

The amounts authorized to be appropriated to carry out the purposes of this subchapter by the Secretary, the Administrator, the Commission, and the Secretary of the Interior shall not exceed such amounts as are established in annual authorization Acts for fiscal year 1979 and each fiscal year thereafter applicable to the Department of Energy. Any sums appropriated for the purposes of this subchapter shall be available until expended.

(Pub. L. 95–604, title I, §112, Nov. 8, 1978, 92 Stat. 3031; Pub. L. 100–616, §3, Nov. 5, 1988, 102 Stat. 3193; Pub. L. 102–486, title X, §1031, Oct. 24, 1992, 106 Stat. 2951; Pub. L. 104–259, §2, Oct. 9, 1996, 110 Stat. 3173; Pub. L. 116–260, div. Z, title XI, §11002, Dec. 27, 2020, 134 Stat. 2612.)

EDITORIAL NOTES

AMENDMENTS

2020—Subsec. (a)(1)(B). Pub. L. 116–260 substituted "September 30, 2031" for "September 30, 2023".

1996—Subsec. (a). Pub. L. 104–259 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The authority of the Secretary to perform remedial action under this subchapter shall terminate on September 30, 1996, except that the authority of the Secretary to perform groundwater restoration activities under this subchapter is without limitation."

1992—Subsec. (a). Pub. L. 102–486 substituted "1996" for "1994".

1988—Subsec. (a). Pub. L. 100–616 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The authority of the Secretary to perform remedial action under this subchapter shall terminate on the date seven years after the date of promulgation by the Administrator of general standards applicable to such remedial action unless such termination date is specifically extended by an Act of Congress enacted after November 8, 1978."

§7923. Limitation of contractual authority

The authority under this subchapter to enter into contracts or other obligations requiring the United States to make outlays may be exercised only to the extent provided in advance in annual authorization and appropriation Acts.

(Pub. L. 95–604, title I, §113, Nov. 8, 1978, 92 Stat. 3031.)

§7924. Reports to Congress

(a) Information; consultations; separate official views; partial report concerning uranium mill tailings provisions

Beginning on January 1, 1980, and each year thereafter until January 1, 1986, the Secretary shall submit a report to the Congress with respect to the status of the actions required to be taken by the Secretary, the Commission, the Secretary of the Interior, the Administrator, and the States and Indian tribes under this chapter and any amendments to other laws made by this Act. Each report shall—

(1) include data on the actual and estimated costs of the program authorized by this subchapter;

(2) describe the extent of participation by the States and Indian tribes in this program;

(3) evaluate the effectiveness of remedial actions, and describe any problems associated with the performance of such actions; and

(4) contain such other information as may be appropriate.

Such report shall be prepared in consultation with the Commission, the Secretary of the Interior, and the Administrator and shall contain their separate views, comments, and recommendations, if any. The Commission shall submit to the Secretary and Congress such portion of the report under this subsection as relates to the authorities of the Commission under title II of this Act.

(b) Identification of sites; Federal agency jurisdiction; contents; duplication prohibition; use and cooperation respecting other Federal agency information

Not later than July 1, 1979, the Secretary shall provide a report to the Congress which identifies all sites located on public or acquired lands of the United States containing residual radioactive materials and other raidoactive [1] waste (other than waste resulting from the production of electric energy) and specifies which Federal agency has jurisdiction over such sites. The report shall include the identity of property and other structures in the vicinity of such site that are contaminated or may be contaminated by such materials and the actions planned or taken to remove such materials. The report shall describe in what manner such sites are adequately stabilized and otherwise controlled to prevent radon diffusion from such sites into the environment and other environmental harm. If any site is not so stabilized or controlled, the report shall describe the remedial actions planned for such site and the time frame for performing such actions. In preparing the reports under this section, the Secretary shall avoid duplication of previous or ongoing studies and shall utilize all information available from other departments and agencies of the United States respecting the subject matter of such report. Such agencies shall cooperate with the Secretary in the preparation of such report and furnish such information as available to them and necessary for such report.

(c) Uranium mine wastes hazards elimination program

Not later than January 1, 1980, the Administrator, in consultation with the Commission, shall provide a report to the Congress which identifies the location and potential health, safety, and

environmental hazards of uranium mine wastes together with recommendations, if any, for a program to eliminate these hazards.

(d) Reports to Congressional committees

Copies of the reports required by this section to be submitted to the Congress shall be separately submitted to the Committees on Interior and Insular Affairs and on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(e) Documentation of information; public availability; trade secrets and other disclosure exempt information

The Commission, in cooperation with the Secretary, shall ensure that any relevant information, other than trade secrets and other proprietary information otherwise exempted from mandatory disclosure under any other provision of law, obtained from the conduct of each of the remedial actions authorized by this subchapter and the subsequent perpetual care of those residual radioactive materials is documented systematically, and made publicly available conveniently for use.

(Pub. L. 95–604, title I, §114, Nov. 8, 1978, 92 Stat. 3032; H. Res. 549, Mar. 25, 1980.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter and this Act, referred to in subsec. (a), mean Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

Title II of this Act, referred to in subsec. (a), is title II (§§201–209) of Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3033, which enacted sections 2022, 2113, and 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

[1] So in original. Probably should be "radioactive".

§7925. Active operations; liability for remedial action

(a) No amount may be expended under this subchapter with respect to any site licensed by the Commission under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021] at which production of any uranium product from ores (other than from residual radioactive materials) takes place. This subsection does not prohibit the disposal of residual radioactive material from a processing site under this subchapter at a site licensed under title II or the expenditure of funds under this subchapter for such disposal.

(b) In the case of each processing site designated under this subchapter, the Attorney General shall

conduct a study to determine the identity and legal responsibility which any person (other than the United States, a State, or Indian tribe) who owned or operated or controlled (as determined by the Attorney General) such site before November 8, 1978, may have under any law or rule of law for reclamation or other remedial action with respect to such site. The Attorney General shall publish the results of such study, and provide copies thereof to the Congress, as promptly as practicable following November 8, 1978. The Attorney General, based on such study, shall, to the extent he deems it appropriate and in the public interest, take such action under any provision of law in effect when uranium was produced at such site to require payment by such person of all or any part of the costs incurred by the United States for such remedial action for which he determines such person is liable.

(Pub. L. 95–604, title I, §115, Nov. 8, 1978, 92 Stat. 3033; Pub. L. 104–259, §4(c), Oct. 9, 1996, 110 Stat. 3174.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Title II, referred to in subsec. (a), is title II (§§201–209) of Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3033, which enacted sections 2022, 2113, 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–259 inserted at end "This subsection does not prohibit the disposal of residual radioactive material from a processing site under this subchapter at a site licensed under title II or the expenditure of funds under this subchapter for such disposal."

SUBCHAPTER II—STUDY AND DESIGNATION OF TWO MILL TAILING SITES IN NEW MEXICO

§7941. Study of authority for regulation and control of residual radioactive materials at New Mexico sites for protection of public health, safety, and the environment; report to Congress and Secretary; basis for determination of inadequacy of authority; interim regulation pending completion of study

The Commission, in consultation with the Attorney General and the Attorney General of the State of New Mexico, shall conduct a study to determine the extent and adequacy of the authority of the Commission and the State of New Mexico to require, under the Atomic Energy Act of 1954 (as amended by title II of this Act) [42 U.S.C. 2011 et seq.] or under State authority as permitted under section 274 of such Act [42 U.S.C. 2021] or under other provision of law, the owners of the following active uranium mill sites to undertake appropriate action to regulate and control all residual radioactive materials at such sites to protect public health, safety, and the environment: the former Homestake-New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailings site near Bluewater, New Mexico. Such study shall be completed and a report thereof submitted to the Congress and to the Secretary within one year after November 8, 1978, together with such recommendations as may be appropriate. If the Commission determines that such authority is not adequate to regulate and control such materials at such sites in the manner provided in the first sentence of this section, the Commission shall include in the report a statement of the

basis for such determination. Nothing in this chapter shall be construed to prevent or delay action by a State as permitted under section 274 of the Atomic Energy Act of 1954 [42 U.S.C. 2021] or under any other provision of law or by the Commission to regulate such residual radioactive materials at such sites prior to completion of such study.

(Pub. L. 95–604, title III, §301, Nov. 8, 1978, 92 Stat. 3042.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note under section 7901 of this title and Tables.

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Title II of this Act, referred to in text, is title II (§§201–209) of Pub. L. 95–604, Nov. 8, 1978, 92 Stat. 3033, which enacted sections 2022, 2113, 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

§7942. Designation by Secretary as processing sites for subchapter I purposes

(a) New Mexico cooperative agreement respecting certain residual radioactive materials; submission to Congressional committees

Within ninety days from the date of his receipt of the report and recommendations submitted by the Commission under section 7941 of this title, notwithstanding the limitations contained in section 7911(6)(A) and in section 7925(a) of this title, if the Commission determines, based on such study, that such sites cannot be regulated and controlled by the State or the Commission in the manner described in section 7941 of this title, the Secretary may designate either or both of the sites referred to in section 7941 of this title as a processing site for purposes of subchapter I. Following such designation, the Secretary may enter into cooperative agreements with New Mexico to perform remedial action pursuant to such subchapter I concerning only the residual radioactive materials at such site resulting from uranium produced for sale to a Federal agency prior to January 1, 1971, under contract with such agency. Any such designation shall be submitted by the Secretary, together with his estimate of the cost of carrying out such remedial action at the designated site, to the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.

(b) Effective date

(1) [1] No designation under subsection (a) shall take effect before the expiration of one hundred and twenty calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) after receipt by such Committees of such designation.

(c) Subchapter I provisions applicable

Except as otherwise specifically provided in subsection (a) of this section, any remedial action under subchapter I with respect to any sites designated under this subchapter shall be subject to the provisions of subchapter I (including the authorization of appropriations referred to in section 7922(b) of this title).

(Pub. L. 95–604, title III, §302, Nov. 8, 1978, 92 Stat. 3042; H. Res. 549, Mar. 25, 1980.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

[1] *So in original. Subsec. (b) enacted without a par. (2).*

CHAPTER 89—CONGREGATE HOUSING SERVICES

Sec.

8001. Congressional findings.
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8012. Hope for elderly independence.
8013. Supportive housing for persons with disabilities.

§8001. Congressional findings

The Congress finds that—

(1) congregate housing, coordinated with the delivery of supportive services, offers an innovative, proven, and cost-effective means of enabling temporarily disabled or handicapped individuals to maintain their dignity and independence and to avoid costly and unnecessary institutionalization;

(2) a large and growing number of elderly and handicapped residents of public housing projects and of nonprofit projects for the elderly and handicapped face premature and unnecessary institutionalization because of the absence of or deficiencies in the availability, adequacy, coordination, or delivery of the supportive services required for the successful development of adequate numbers of congregate housing projects; and

(3) supplemental supportive services, available on a secure and continuing basis, are essential to a successful congregate housing program.

(Pub. L. 95–557, title IV, §402, Oct. 31, 1978, 92 Stat. 2104.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 111–374, §1(a), Jan. 4, 2011, 124 Stat. 4089, provided that: "This Act [amending section 8013 of

this title and enacting provisions set out as a note under section 8013 of this title] may be cited as the 'Frank Melville Supportive Housing Investment Act of 2010'."

SHORT TITLE

Pub. L. 95–557, title IV, §401, Oct. 31, 1978, 92 Stat. 2104, provided that: "This title [enacting this chapter and amending section 1437e of this title] may be cited as the 'Congregate Housing Services Act of 1978'."

§8002. Definitions

For the purpose of this chapter—

(1) the term "congregate housing" means (A) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (B) low-rent housing constructed after, but not under construction prior to, January 1, 1979, connected with which there is a central dining facility to provide wholesome and economical meals for such occupants;

(2) the term "congregate services programs" means programs to be undertaken by a public housing agency or a nonprofit corporation to provide assistance, including personal assistance and nutritional meals, to eligible project residents who, with such assistance, can remain independent and avoid unnecessary institutionalization;

(3) the term "elderly" means sixty-two years of age or over;

(4) the term "eligible project resident" means elderly handicapped individuals, nonelderly handicapped individuals, or temporarily disabled individuals, who are residents of congregate housing projects administered by a public housing agency or by a nonprofit corporation;

(5) the term "handicapped" means having an impairment which (A) is expected to be of long-continued and indefinite duration, and (B) substantially impedes an individual's ability to live independently unless the individual receives supportive congregate services; such impairment may include a functional disability or frailty which is a normal consequence of the human aging process;

(6) the term "personal assistance" means service provided under this chapter which may include, but is not limited to, aid given to eligible project residents in grooming, dressing, and other activities which maintain personal appearance and hygiene;

(7) the term "professional assessment committee" means a group of at least three persons appointed by a local public housing agency or a nonprofit corporation and shall include qualified medical professionals and other persons professionally competent to appraise the functional abilities of elderly or permanently disabled adult persons, or both, in relation to the performance of the normal tasks of daily living;

(8) the term "temporarily disabled" means an impairment which (A) is expected to be of no more than six months' duration, and (B) substantially impedes an individual's ability to live independently unless the individual receives supportive congregate services; and

(9) the term "nonprofit corporation" means any corporation responsible for a housing project assisted under section 1701q of title 12.

(Pub. L. 95–557, title IV, §403, Oct. 31, 1978, 92 Stat. 2105.)

§8003. Contracts to provide congregate services programs

The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to enter into contracts with local public housing agencies under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] (hereinafter referred to as "public housing agencies") and with nonprofit corporations, utilizing sums appropriated under this chapter, to provide congregate services programs for eligible project residents in order to promote and encourage maximum independence within a home environment for such residents capable of self-care with appropriate supportive congregate services. Each contract between the Secretary and a public housing agency or nonprofit corporation shall be for a term of not less than three years or more than five years and shall be

renewable at the expiration of such term. Each public housing agency or nonprofit corporation entering into such a contract shall be reserved a sum equal to its total approved contract amount from the moneys authorized and appropriated for the fiscal year in which the notification date of funding approval falls.

(Pub. L. 95–557, title IV, §404, Oct. 31, 1978, 92 Stat. 2106.)

EDITORIAL NOTES

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

§8004. Congregate services program

(a) Essential services for maintaining independent living

Congregate services programs assisted under this chapter must include full meal service adequate to meet nutritional needs, and may also include housekeeping aid, personal assistance, and other services essential for maintaining independent living.

(b) Duplication of services

No services funded under this chapter may duplicate services which are already affordable, accessible, and sufficiently available on a long-term basis to eligible project residents under programs administered by or receiving appropriations through any department, agency, or instrumentality of the Federal Government or any other public or private department, agency, or organization.

(c) Consultation with Area Agency on Aging or other appropriate State agency

A public housing agency or nonprofit corporation applying for assistance to provide congregate services to elderly residents shall consult with the Area Agency on Aging (or, where no Area Agency on Aging exists, with the appropriate State agency under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]) in determining the means of providing services under this chapter and in identifying alternative available sources of funding for such services.

(d) Submission of proposed application to Area Agency on Aging or other appropriate State agency

Prior to the submission of a final application for either new or renewed funding under this chapter for the provision of congregate services to elderly residents, a public housing agency and a nonprofit corporation shall present a copy of a proposed application to the Area Agency on Aging (or, where no Area Agency on Aging exists to the appropriate State agency under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]) for review and comment. Such agency and nonprofit corporation shall consider such review and comment in the development of any final application for either new or renewed funding under this chapter.

(e) Nonelderly handicapped individuals as eligible project residents

(1) A public housing agency or nonprofit corporation applying for assistance to provide congregate services to nonelderly handicapped residents shall consult with the appropriate agency, if any, designated by applicable State law as having responsibility for the development, provision, or identification of social services to permanently disabled adults, for the purpose of determining the means of providing services under this chapter and of identifying alternative available sources of funding for such services.

(2) Such public housing agency and nonprofit corporation shall also, prior to the submission of a final application for either new or renewed funding under this chapter, present a copy of the

proposed application to such appropriate agency for review and comment. The public housing agency and nonprofit corporation shall consider such review and comment in the development of any final application for either new or renewed funding under this chapter.

(f) Manner of providing congregate services

Any nonprofit corporation or public housing agency receiving assistance under this chapter may provide congregate services directly to eligible project residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(g) Amount of annual contributions of receiving agency

Nonprofit corporations and public housing agencies receiving assistance for congregate services programs under this chapter shall be required to maintain the same dollar amount of annual contribution which they were making, if any, in support of the provision of services eligible for assistance under this chapter before the date of the submission of the application for such assistance unless the Secretary determines that the waiver of this requirement is necessary for the maintenance of adequate levels of services to eligible project residents. If any contract or lease entered into by a public housing agency or nonprofit corporation pursuant to subsection (f) of this section provides for adjustments in payments for services to reflect changes in the cost of living, then the amount of annual contribution required to be maintained by such public agency or nonprofit corporation under the preceding sentence shall be readjusted in the same manner.

(h) Fees for meal and other services

Each nonprofit corporation and public housing agency shall establish fees for meal service and other appropriate services provided to eligible project residents. These fees shall be reasonable, may not exceed the cost of providing the service, and shall be calculated on a sliding scale related to income which permits the provision of services to such residents who cannot afford meal and service fees. When meal services are provided to other project residents, fees shall be reasonable and may not exceed the cost of providing the meal service.

(i) Standards for provision of services

The Secretary shall establish standards for the provision of services under this chapter, and, in developing such service standards, the Secretary shall consult with the Secretary of Health and Human Services and with appropriate organizations representing the elderly and handicapped, as determined by the Secretary.

(Pub. L. 95–557, title IV, §405, Oct. 31, 1978, 92 Stat. 2106; Pub. L. 96–399, title II, §208, Oct. 8, 1980, 94 Stat. 1634; Pub. L. 98–479, title II, §201(j), Oct. 17, 1984, 98 Stat. 2228.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (c) and (d), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

1984—Subsec. (i). Pub. L. 98–479 substituted "Health and Human Services" for "the Department of Health, Education, and Welfare".

1980—Subsecs. (c), (d). Pub. L. 96–399, §208(a), (b), inserted reference to congregate services to elderly residents.

Subsec. (e). Pub. L. 96–399, §208(c), in par. (1) substituted "A public housing agency or nonprofit corporation applying for assistance to provide congregate services to nonelderly handicapped residents shall consult with the appropriate agency" for "When nonelderly handicapped individuals are included among the eligible project residents, the public housing agency and nonprofit corporation shall consult with the appropriate local agency", and in par. (2) substituted "appropriate agency" for "appropriate local agency".

§8005. Eligibility for services

(a) Professional assessment committee for determination of eligibility

The identification of project residents eligible to participate in a congregate services program assisted under this chapter, and the designation of the services appropriate to their individual functional abilities and needs, shall be made by a professional assessment committee. Such committee shall utilize procedures which insure that the process of determining eligibility of individuals for services under this title shall accord such individuals fair treatment and due process and a right of appeal of such determination of eligibility, and shall also assure the confidentiality of personal and medical records.

(b) Participation of other residents in meal services program

Other residents may participate in a congregate meal service program assisted under this chapter if the local public housing agency or nonprofit corporation determines that the participation of these individuals will not adversely affect the cost-effectiveness or operation of the program.

(c) Notification of change in membership of professional assessment committee

Any public housing agency or nonprofit corporation receiving assistance under this chapter shall notify the Secretary of any change in the membership of the professional assessment committee within thirty days of such change. Such notification shall list the names and professional qualifications of new members of the committee.

(d) Procedure for changes in membership of professional assessment committee

Procedures shall be established to insure that changes in the membership of the professional assessment committee are consistent with the requirements of section 8002(7) of this title.

(Pub. L. 95–557, title IV, §406, Oct. 31, 1978, 92 Stat. 2107.)

§8006. Application procedure for assistance

(a) Matters included in application

An application for assistance under this chapter shall include—

(1) a plan specifying the types and priorities of the basic services the public housing agency or nonprofit corporation proposes to provide during the term of the contract; such plan must be related to the needs and characteristics of the eligible project residents and, to the maximum extent practicable, provide for the changing needs and characteristics of all project residents; such plan shall be determined after consultation with eligible project residents and with the professional assessment committee;

(2) a list of names and professional qualifications of the members of the professional assessment committee;

(3) the fee schedule established pursuant to section 8004(h) of this title;

(4) any comment received in connection with any review of a proposed application pursuant to section 8004(d) or 8004(e)(2) of this title; and

(5) a statement affirming (A) that the nonprofit corporation or public housing agency has followed the consultation procedures required in subsections (c), (d), and (e) of section 8004 of this title, and (B) that such application complies with subsection (b) of such section.

(b) Deadlines for submission of application

The Secretary shall establish appropriate deadlines for each fiscal year for the submission of applications for funding under this chapter and shall notify any public housing agency and nonprofit corporation applying for assistance under this chapter of acceptance or rejection of its application within ninety days of such submission.

(c) Review of performance of services program prior to submission of application for renewed funding

Within twelve months prior to the submission of an application for renewed funding under this chapter, each nonprofit corporation and public housing agency shall review the performance, appropriateness, and fee schedules of their congregate services program with eligible project residents and with the professional assessment committee. The results of such review shall be included in any application for renewal and shall be considered in the development of the application for renewal by the nonprofit corporation or public housing agency and in its evaluation by the Secretary.

(Pub. L. 95–557, title IV, §407, Oct. 31, 1978, 92 Stat. 2108.)

§8007. Evaluation of applications and programs

(a) Application evaluations

In evaluating applications for assistance under this chapter, the Secretary shall consider—

(1) the types and priorities of the basic services proposed to be provided, and the relationship of such proposal to the needs and characteristics of the eligible residents of the projects where the services are to be provided;

(2) how quickly services will be established following approval of the application;

(3) the degree to which local social services are adequate for the purpose of assisting eligible project residents to maintain independent living and avoid unnecessary institutionalization;

(4) the professional qualifications of the members of the professional assessment committee; and

(5) the reasonableness of fee schedules established for each congregate service.

(b) Program evaluations

In evaluating programs receiving assistance under this chapter, the Secretary shall—

(1) establish procedures for the review and evaluation of the performance of nonprofit corporations and public housing agencies receiving assistance under this chapter, including provisions for the submission of an annual report, by each such nonprofit corporation and public housing agency, which evaluates the impact and effectiveness of its congregate services program; and

(2) publish annually and submit to the Congress, a report on and evaluation of the impact and effectiveness of congregate services programs assisted under this chapter. Such report and evaluation shall be based, in part, on the evaluations required to be submitted pursuant to paragraph (1).

(c) Report to Congress

(1) The Secretary shall contract with a university or qualified research institution to produce a report—

(A) documenting the number of elderly living in federally assisted housing at risk of institutionalization;

(B) studying and comparing alternative delivery systems in the States, including the congregate housing services program, to provide services to older persons in assisted congregate housing;

(C) assessing existing and potential financial resources at the Federal, State, and local levels for the support of congregate housing services; and

(D) making legislative recommendations as to the feasibility of permitting State housing agencies and other appropriate State agencies to participate and operate the program on a matching grant basis.

(2) The Secretary shall submit the report to the Congress not later than September 30, 1988.

(Pub. L. 95–557, title IV, §408, Oct. 31, 1978, 92 Stat. 2108; Pub. L. 98–181, title I [title II, §224(a)], Nov. 30, 1983, 97 Stat. 1191; Pub. L. 100–242, title I, §163(b), (c), Feb. 5, 1988, 101 Stat. 1860.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–242 added subsec. (c) and struck out former subsec. (c) which required Secretary to prepare and submit a report to Congress evaluating the congregate housing services program, not later than March 15, 1984.

1983—Subsec. (c). Pub. L. 98–181 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b)(2) of this section relating to submitting the annually published report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 106 of House Document No. 103–7.

§8008. Funding procedures

(a) The Secretary shall establish procedures—

(1) to assure timely payments to nonprofit corporations and public housing agencies for approved assisted congregate services programs with provision made for advance funding sufficient to meet necessary startup costs;

(2) to permit reallocation of funds approved for the establishment of congregate services in existing public housing projects and projects assisted under section 1701q of title 12 if the services are not established within six months of the notification date of funding approval;

(3) to assure that where such funding has been approved for the establishment of congregate services for public housing projects and projects assisted under section 1701q of title 12 under construction or approved for construction, these services shall be in place at the start of the project's occupancy by tenants requiring such services for maintaining independent living;

(4) to establish accounting and other standards in order to prevent any fraudulent or inappropriate use of funds under this chapter; and

(5) to assure that no more than 1 per centum of the funds appropriated under this chapter for any fiscal year may be used by public housing agencies and nonprofit corporations for evaluative purposes as required by section 8007(b)(1) of this title.

(b) The Secretary shall establish a reserve fund, not to exceed 10 per centum of the funds appropriated in each fiscal year for the provision of services under this chapter, in order to supplement grants awarded to public housing agencies and nonprofit corporations under this chapter when, in the determination of the Secretary, such supplemental adjustments are required to maintain adequate levels of services to eligible project residents.

(Pub. L. 95–557, title IV, §409, Oct. 31, 1978, 92 Stat. 2109.)

§8009. Miscellaneous provisions

(a) Utilization of elderly and permanently disabled adult persons

Each public housing agency and nonprofit corporation shall, to the maximum extent practicable, utilize elderly and permanently disabled adult persons who are residents of public housing projects or projects assisted under section 1701q of title 12, but who are not eligible project residents, to participate in providing the services assisted under this chapter. Such persons shall be paid wages which shall not be lower than whichever is the highest of—

(1) the minimum wage which would be applicable to the employee under the Fair Labor

Standards Act of 1938 [29 U.S.C. 201 et seq.], if section 6(a)(1) of such Act [29 U.S.C. 206(a)(1)] applied to the resident and if he or she were not exempt under section 13 [29 U.S.C. 213] thereof;

(2) the State or local minimum wage for the most nearly comparable covered employment; or

(3) the prevailing rates of pay for persons employed in similar public occupations by the same employer.

(b) Tax treatment of services received

No service provided to a public housing resident or to a resident of a housing project assisted under section 1701q of title 12 under this chapter, except for wages paid under subsection (a) of this section, may be treated as income for the purpose of any other program or provision of State or Federal law.

(c) Individuals receiving aid considered residents of own household

Individuals receiving services assisted under this chapter shall be deemed to be residents of their own households, and not to be residents of a public institution, for the purpose of any other program or provision of State or Federal law.

(d) Regulations

The Secretary may issue regulations to carry out the provisions of this chapter.

(Pub. L. 95–557, title IV, §410, Oct. 31, 1978, 92 Stat. 2109.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (a)(1), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

§8010. Authorization of appropriations

(a) There are authorized to be appropriated to carry out this chapter $10,000,000 for each of the fiscal years 1988 and 1989.

(b) Sums appropriated pursuant to this section shall remain available until expended.

(Pub. L. 95–557, title IV, §411, Oct. 31, 1978, 92 Stat. 2110; Pub. L. 98–181, title I [title II, §224(b)], Nov. 30, 1983, 97 Stat. 1191; Pub. L. 98–479, title I, §102(f), Oct. 17, 1984, 98 Stat. 2222; Pub. L. 100–242, title I, §163(a), Feb. 5, 1988, 101 Stat. 1860.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–242 amended subsec. (a) generally, substituting provisions authorizing appropriations to carry out this chapter for fiscal years 1988 and 1989, for provisions authorizing appropriations to carry out this chapter for fiscal years 1979 through 1982, 1984, and 1985.

1984—Subsec. (a)(4). Pub. L. 98–479 inserted a semicolon at end.

1983—Subsec. (a)(5), (6). Pub. L. 98–181 added pars. (5) and (6).

§8011. Revised congregate housing services program

(a) Findings and purposes

(1) Findings

The Congress finds that—

(A) the effective provision of congregate services may require the redesign of units and

buildings to meet the special physical needs of the frail elderly persons and the creation of congregate space to accommodate services that enhance independent living;

(B) congregate housing, coordinated with the delivery of supportive services, offers an innovative, proven, and cost-effective means of enabling frail older persons and persons with disabilities to maintain their dignity and independence;

(C) independent living with assistance is a preferable housing alternative to institutionalization for many frail older persons and persons with disabilities;

(D) 365,000 persons in federally assisted housing experience some form of frailty, and the number is expected to increase as the general population ages;

(E) an estimated 20 to 30 percent of older adults living in federally assisted housing experience some form of frailty;

(F) a large and growing number of frail elderly residents face premature or unnecessary institutionalization because of the absence of or deficiencies in the availability, adequacy, coordination, or delivery of supportive services;

(G) the support service needs of frail residents of assisted housing are beyond the resources and experience that housing managers have for meeting such needs;

(H) supportive services would promote the invaluable option of independent living for nonelderly persons with disabilities in federally assisted housing;

(I) approximately 25 percent of congregate housing services program sites provide congregate services to young individuals with disabilities;

(J) to the extent that institutionalized older adults do not need the full costly support provided by such care, public moneys could be more effectively spent providing the necessary services in a noninstitutional setting; and

(K) the Congregate Housing Services Program, established by Congress in 1978, and similar programs providing in-home services have been effective in preventing unnecessary institutionalization and encouraging deinstitutionalization.

(2) Purposes

The purposes of this section are—

(A) to provide assistance to retrofit individual dwelling units and renovate public and common areas in eligible housing to meet the special physical needs of eligible residents;

(B) to create and rehabilitate congregate space in or adjacent to such housing to accommodate supportive services that enhance independent living;

(C) to improve the capacity of management to assess the service needs of eligible residents, coordinate the provision of supportive services that meet the needs of eligible residents and ensure the long-term provision of such services;

(D) to provide services in federally assisted housing to prevent premature and inappropriate institutionalization in a manner that respects the dignity of the elderly and persons with disabilities;

(E) to provide readily available and efficient supportive services that provide a choice in supported living arrangements by utilizing the services of an on-site coordinator, with emphasis on maintaining a continuum of care for the vulnerable elderly;

(F) to improve the quality of life of older Americans living in federally assisted housing;

(G) to preserve the viability of existing affordable housing projects for lower-income older residents who are aging in place by assisting managers of such housing with the difficulties and challenges created by serving older residents;

(H) to develop partnerships between the Federal Government and State governments in providing services to the frail elderly and persons with disabilities; and

(I) to utilize Federal and State funds in a more cost-effective and humane way in serving the needs of older adults.

(b) Contracts for congregate services programs

(1) In general

The Secretary of Housing and Urban Development and the Secretary of Agriculture (through

Administrator of the Farmers Home Administration) shall enter into contracts with States, Indian tribes, units of general local government and local nonprofit housing sponsors, utilizing any amounts appropriated under subsection (n)—

(A) to provide congregate services programs for eligible project residents to promote and encourage maximum independence within a home environment for such residents capable of self-care with appropriate supportive services; or

(B) to adapt housing to better accommodate the physical requirements and service needs of eligible residents.

(2) Term of contracts

Each contract between the Secretary concerned and a State, Indian tribe, or unit of general local government, or local nonprofit housing sponsor, shall be for a term of 5 years and shall be renewable at the expiration of the term, except as otherwise provided in this section.

(c) Reservation of amounts

For each State, Indian tribe, unit of general local government, and nonprofit housing sponsor, receiving a contract under this subsection,[1] the Secretary concerned shall reserve a sum equal to the total approved contract amount from the amount authorized and appropriated for the fiscal year in which the notification date of funding approval occurs.

(d) Eligible activities

(1) In general

A congregate services program under this section shall provide meal and other services for eligible project residents (and other residents and nonresidents, as provided in subsection (e)), as provided in this section, that are coordinated on site.

(2) Meal services

Congregate services programs assisted under this section shall include meal service adequate to meet at least one-third of the daily nutritional needs of eligible project residents, as follows:

(A) Supplemental nutrition assistance program benefits and agricultural commodities

In providing meal services under this paragraph, each congregate services program—

(i) shall—

(I) apply for approval as a retail food store under section 2018 of title 7; and

(II) if approved under such section, accept benefits as payment from individuals to whom such meal services are provided; and

(ii) shall request, and use to provide such meal services, agricultural commodities made available without charge by the Secretary of Agriculture.

(B) Preference for nutrition providers

In contracting for or otherwise providing for meal services under this paragraph, each congregate services program shall give preference to any provider of meal services who—

(i) receives assistance under title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.]; or

(ii) has experience, according to standards as the Secretary shall require, in providing meal services in a housing project under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] or any other program for congregate services.

(3) Retrofit and renovation

Assistance under this section may be provided with respect to eligible housing for the elderly for—

(A) retrofitting of individual dwelling units to meet the special physical needs of current or future residents who are or are expected to be eligible residents, which retrofitting may include—

(i) widening of doors to allow passage by persons with disabilities in wheelchairs into and within units in the project;

(ii) placement of light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(iii) installation of grab bars in bathrooms or the placement of reinforcements in bathroom walls to allow later installation of grab bars;

(iv) redesign of usable kitchens and bathrooms to permit a person in a wheelchair to maneuver about the space; and

(v) such other features of adaptive design that the Secretary finds are appropriate to meet the special needs of such residents;

(B) such renovation as is necessary to ensure that public and common areas are readily accessible to and usable by eligible residents;

(C) renovation, conversion, or combination of vacant dwelling units to create congregate space to accommodate the provision of supportive services to eligible residents;

(D) renovation of existing congregate space to accommodate the provision of supportive services to eligible residents; and

(E) construction or renovation of facilities to create conveniently located congregate space to accommodate the provision of supportive services to eligible residents.

For purposes of this paragraph, the term "congregate space" shall include space for cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities.

(4) Service coordinator

Assistance under this section may be provided with respect to the employment of one or more individuals (hereinafter referred to as "service coordinator") who may be responsible for—

(A) working with the professional assessment committee established under subsection (f) [2] on an ongoing basis to assess the service needs of eligible residents;

(B) working with service providers and the professional assessment committee to tailor the provision of services to the needs and characteristics of eligible residents;

(C) mobilizing public and private resources to ensure that the qualifying supportive services identified pursuant to subsection (d) can be funded over the time period identified under such subsection;

(D) monitoring and evaluating the impact and effectiveness of any supportive service program receiving capital or operating assistance under this section; and

(E) performing such other duties and functions that the Secretary deems appropriate to enable frail elderly persons residing in federally assisted housing to live with dignity and independence.

The Secretary shall establish such minimum qualifications and standards for the position of service coordinator that the Secretary deems necessary to ensure sound management. Such qualifications and standards shall include requiring each service coordinator to be trained in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues. The Secretary may fund the employment of service coordinators by using amounts appropriated under this section and by permitting owners to use existing sources of funds, including excess project reserves.

(5) Other services

Congregate services programs assisted under this section may include services for transportation, personal care, dressing, bathing, toileting, housekeeping, chore assistance, nonmedical counseling, assessment of the safety of housing units, group and socialization

activities, assistance with medications (in accordance with any applicable State law), case management, personal emergency response, and other services to prevent premature and unnecessary institutionalization of eligible project residents.

(6) Determination of needs

In determining the services to be provided to eligible project residents under a congregate services program assisted under this section, the program shall provide for consideration of the needs and wants of eligible project residents.

(7) Fees

(A) Eligible project residents

The owner of each eligible housing project shall establish fees for meals and other services provided under a congregate services program to eligible project residents, which shall be sufficient to provide 10 percent of the costs of the services provided. The Secretary concerned shall provide for the waiver of fees under this paragraph for individuals whose incomes are insufficient to provide for any payment. The fees for meals shall be in the following amounts:

(i) Full meal services

The fees for residents receiving more than 1 meal per day, 7 days per week, shall be reasonable and shall equal between 10 and 20 percent of the adjusted income of the project resident (as such income is determined under section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]), or the cost of providing the services, whichever is less.

(ii) Less than full meal services

The fees for residents receiving meal services less frequently than as described in the preceding sentence shall be in an amount equal to 10 percent of such adjusted income of the project resident or the cost of providing the services, whichever is less.

(B) Other residents and nonresidents

Fees shall be established under this paragraph for residents of eligible housing projects (other than eligible project residents) and for nonresidents that receive services from a congregate services program pursuant to subsection (e). Such fees shall be in an amount equal to the cost of providing the services.

(8) Direct and indirect provision of services

Any State, Indian tribe, unit of general local government, or nonprofit housing sponsor that receives assistance under this section may provide congregate services directly to eligible project residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(e) Eligibility for services

(1) Eligible project residents

Any eligible resident who is a resident of an eligible housing project (or who with deinstitutionalization and appropriate supportive services under this section could become a resident of eligible federally assisted housing) shall be eligible for services under a congregate services program assisted under this section.

(2) Economic need

In providing services under a congregate services program, the program shall give consideration to serving eligible project residents with the greatest economic need.

(3) Identification

(A) In general

A professional assessment committee under subparagraph (B) shall identify eligible project residents under paragraph (1) and shall designate services appropriate to the functional abilities and needs of each eligible project resident. The committee shall utilize procedures that ensure

that the process of determining eligibility of individuals for congregate services shall accord such individuals fair treatment and due process and a right of appeal of the determination of eligibility, and shall also ensure the confidentiality of personal and medical records.

(B) Professional assessment committee

A professional assessment committee under this section shall consist of not less than 3 individuals, who shall be appointed to the committee by the officials of the eligible housing project responsible for the congregate services program, and shall include qualified medical and other health and social services professionals competent to appraise the functional abilities of the frail elderly and persons with disabilities in relation to the performance of tasks of daily living.

(4) Eligibility of other residents

The elderly and persons with disabilities who reside in an eligible housing project other than eligible project residents under paragraph (1) may receive services from a congregate services program under this section if the housing managers, congregate service coordinators, and the professional assessment committee jointly determine that the participation of such individuals will not negatively affect the provision of services to eligible project residents. Residents eligible for services under this paragraph shall pay fees as provided under subsection (d).

(5) Eligibility of nonresidents

The Secretary may permit the provision of services to elderly persons and persons with disabilities who are not residents if the participation of such persons will not adversely affect the cost-effectiveness or operation of the program or add significantly to the need for assistance under this section.

(f) Eligible contract recipients and distribution of assistance

The Secretary concerned may provide assistance under this section and enter into contracts under subsection (b) with—

(1) owners of eligible housing;

(2) States that submit applications in behalf of owners of eligible housing; and

(3) Indian tribes and units of general local government that submit applications on behalf of owners of eligible housing.

(g) Applications

The funds made available under this section shall be allocated by the Secretary among approvable applications submitted by or on behalf of owners. Applications for assistance under this section shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. Applications for assistance shall contain—

(1) a description of the type of assistance the applicant is applying for;

(2) in the case of an application involving rehabilitation or retrofit, a description of the activities to be carried out, the number of elderly persons to be served, the costs of such activities, and evidence of a commitment for the services to be associated with the project;

(3) a description of qualifying supportive services that can reasonably be expected to be made available to eligible residents over a 5-year period;

(4) a firm commitment from one or more sources of assistance ensuring that some or all of the qualifying supportive services identified under paragraph (3) will be provided for not less than 1 year following the completion of activities assisted under subsection (d);

(5) a description of public or private sources of assistance that are likely to fund or provide qualifying supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including for-profit and nonprofit organizations);

(6) a certifications [3] from the appropriate State or local agency (as determined by the Secretary) that—

(A) the provision of the qualifying supportive services identified under paragraph (3) will

enable eligible residents to live independently and avoid unnecessary institutionalization,

(B) there is a reasonable likelihood that such services will be funded or provided for the entire period specified under paragraph (3), and

(C) the agency and the applicant will, during the term of the contract, actively seek assistance for such services from other sources;

(7) a description of any fees that would be established pursuant to subsection (d); and

(8) such other information or certifications that the Secretary determines to be necessary or appropriate to achieve the purposes of this section.

The Secretary shall act on each application within 60 days of its submission.

(h) Selection and evaluation of applications and programs

(1) In general

Each Secretary concerned shall establish criteria for selecting States, Indian tribes, units of general local government, and local nonprofit housing sponsors to receive assistance under this section, and shall select such entities to receive assistance. The criteria for selection shall include consideration of—

(A) the extent to which the activities described in subsection (d)(3) will foster independent living and the provision of such services;

(B) the types and priorities of the basic services proposed to be provided, the appropriateness of the targeting of services, the methods of providing for deinstitutionalized older individuals and individuals with disabilities, and the relationship of the proposal to the needs and characteristics of the eligible residents of the projects where the services are to be provided;

(C) the schedule for establishment of services following approval of the application;

(D) the degree to which local social services are adequate for the purpose of assisting eligible project residents to maintain independent living and avoid unnecessary institutionalization;

(E) the professional qualifications of the members of the professional assessment committee;

(F) the reasonableness and application of fees schedules established for congregate services;

(G) the adequacy and accuracy of the proposed budgets; and

(H) the extent to which the owner will provide funds from other services in excess of that required by this section.

(2) Evaluation of provision of congregate services programs

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, by regulation under subsection (n),[4] establish procedures for States, Indian tribes, and units of general local government receiving assistance under this section—

(A) to review and evaluate the performance of the congregate services programs of eligible housing projects receiving assistance under this section in such State; and

(B) to submit annually, to the Secretary concerned, a report evaluating the impact and effectiveness of congregate services programs in the entity assisted under this section.

(i) Congregate services program funding

(1) Cost distribution

(A) Contribution requirement

In providing contracts under subsection (b), each Secretary concerned shall provide for the cost of providing the congregate services program assisted under this section to be distributed as follows:

(i) Each State, Indian tribe, unit of general [5] government, or nonprofit housing sponsor that receives amounts under a contract under subsection (b) shall supplement any such amount with amounts sufficient to provide 50 percent of the cost of providing the congregate services program. Any monetary or in-kind contributions received by a congregate services program under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] may be

considered for purposes of fulfilling the requirement under this clause. The Secretary concerned shall encourage owners to use excess residual receipts to the extent available to supplement funds for retrofit and supportive services under this section.

(ii) The Secretary concerned shall provide 40 percent of the cost, with amounts under contracts under subsection (b).

(iii) Fees under subsection (d)(7) shall provide 10 percent of the cost.

(B) Exceptions

(i) For any congregate services program that was receiving assistance under a contract under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] on November 28, 1990,[6] the unit of general local government or nonprofit housing sponsor, in coordination with a local government with respect to such program shall not be subject to the requirement to provide supplemental contributions under subparagraph (A)(i) (for such program) for the 6-year period beginning on the expiration of the contract for such assistance. The Secretary concerned shall require each such program to maintain, for such 6-year period, the same dollar amount of annual contributions in support of the services eligible for assistance under this section as were contributed to such program during the year preceding November 28, 1990.[6]

(ii) To the extent that the limitations under subsection (d)(7) regarding the percentage of income eligible residents may pay for services will result in collected fees for any congregate services program of less than 10 percent of the cost of providing the program, 50 percent of such remaining costs shall be provided by the recipient of amounts under the contract and 50 percent of such remaining costs shall be provided by the Secretary concerned under such contract.

(C) Eligible supplemental contributions

If provided by the State, Indian tribe, unit of general local government, or local nonprofit housing sponsor, any salary paid to staff from governmental sources to carry out the program of the recipient and salary paid to residents employed by the program (other than from amounts under a contract under subsection (b) of this section), and any other in-kind contributions from governmental sources shall be considered as supplemental contributions for purposes of meeting the supplemental contribution requirement under subparagraph (A)(i), except that the amount of in-kind contributions considered for purposes of fulfilling such contribution requirement may not exceed 10 percent of the total amount to be provided by the State, Indian tribe, local government, or local nonprofit housing sponsor.

(D) Prohibition of substitution of funds

The Secretary concerned shall require each State, Indian tribe, unit of general local government, and local nonprofit housing sponsor, that receives assistance under this section to maintain the same dollar amount of annual contribution that such State, Indian tribe, local government, or sponsor was making, if any, in support of services eligible for assistance under this section before the date of the submission of the application for such assistance.

(E) Limitation

For purposes of complying with the requirement under subparagraph (A)(i), the appropriate Secretary concerned may not consider any amounts contributed or provided by any local government to any State receiving assistance under this section that exceed 10 percent of the amount required of the State under subparagraph (A)(i).

(2) Consultation

The Secretary shall consult with the Secretary of Health and Human Services regarding the availability of assistance from other Federal programs to support services under this section and shall make information available to applicants for assistance under this section.

(j) Miscellaneous provisions

(1) Use of residents in providing services

Each housing project that receives assistance under this section shall, to the maximum extent practicable, utilize the elderly and persons with disabilities who are residents of the housing project, but who are not eligible project residents, to participate in providing the services provided under congregate services programs under this section. Such individuals shall be paid wages that shall not be lower than the higher of—

(A) the minimum wage that would be applicable to the employee under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], if section 6(a)(1) of such Act [29 U.S.C. 206(a)(1)] applied to the resident and if the resident were not exempt under section 13 of such Act [29 U.S.C. 213];

(B) the State of [7] local minimum wage for the most nearly comparable covered employment; or

(C) the prevailing rates of pay for persons employed in similar public occupations by the same employer.

(2) Effect of services

Except for wages paid under paragraph (1) of this subsection, services provided to a resident of an eligible housing project under a congregate services program under this section may not be considered as income for the purpose of determining eligibility for or the amount of assistance or aid furnished under any Federal, federally assisted, or State program based on need.

(3) Eligibility and priority for 1978 Act recipients

Notwithstanding any other provision of this section, any public housing agency, housing assisted under section 1701q of title 12, or nonprofit corporation that was receiving assistance under a contract under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] on November 5, 1990,[6] shall (subject to approval and allocation of sufficient amounts under the Congregate Housing Services Act of 1978 and appropriations Acts under such Act) receive assistance under the Congregate Housing Services Act of 1978 for the remainder of the term of the contract for assistance for such agency or corporation under such Act, and shall receive priority for assistance under this section after the expiration of such period.

(4) Administrative cost limitation

A recipient of assistance under this section may not use more than 10 percent of the sum of such assistance and the contribution amounts required under subsection (i)(1)(A)(i) for administrative costs and shall ensure that any entity to which the recipient distributes amounts from such sum may not expend more than a reasonable amount from such distributed amounts for administrative costs. Administrative costs may not include any capital expenses.

(k) Definitions

For purposes of this section:

(1) The term "activity of daily living" means an activity regularly necessary for personal care and includes bathing, dressing, eating, getting in and out of bed and chairs, walking, going outdoors, and using the toilet.

(2) The term "case management" means assessment of the needs of a resident, ensuring access to and coordination of services for the resident, monitoring delivery of services to the resident, and periodic reassessment to ensure that services provided are appropriate to the needs and wants of the resident.

(3) The term "congregate housing" means low-rent housing that is connected to a central dining facility where wholesome and economical meals can be served to the residents.

(4) The term "congregate services" means services described in subsection (d) of this section.

(5) The term "congregate services program" means a program assisted under this section undertaken by an eligible housing project to provide congregate services to eligible residents.

(6) The term "eligible housing project" means—

(A) public housing (as such term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]) and lower income housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing

authority under title II [8] of the United States Housing Act of 1937;

(B) housing assisted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] with a contract that is attached to the structure under subsection (d)(2) of such section or with a contract entered into in connection with the new construction or moderate rehabilitation of the structure under section 8(b)(2) of the United States Housing Act,[8] as such section existed before October 1, 1983;

(C) housing assisted under section 1701q of title 12;

(D) housing assisted under section 1715l(d) or 1715z–1 of title 12, with respect to which the owner has made a binding commitment to the Secretary of Housing and Urban Development not to prepay the mortgage or terminate the insurance contract under section 1715t of title 12 (unless the binding commitments have been made to extend the low-income use restrictions relating to such housing for the remaining useful life of the housing);

(E) housing assisted under section 1484 or 1485 of this title, with respect to which the owner has made a binding commitment to the Secretary of Agriculture not to prepay or refinance the mortgage (unless the binding commitments have been made to extend the low-income use restrictions relating to such housing for not less than the 20-year period under section 1472(c)(4) of this title); and

(F) housing assisted under section 1486 of this title.

(7) The term "eligible resident" means a person residing in eligible housing for the elderly who qualifies under the definition of frail elderly, person with disabilities (regardless of whether the person is elderly), or temporarily disabled.

(8) The term "frail elderly" means an elderly person who is unable to perform at least 3 activities of daily living adopted by the Secretary for purposes of this program. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

(9) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(10) The term "instrumental activity of daily living" means a regularly necessary home management activity and includes preparing meals, shopping for personal items, managing money, using the telephone, and performing light or heavy housework.

(11) The term "local nonprofit housing sponsor" includes public housing agencies (as such term is defined in section 3(b)(6) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(6)].[9]

(12) The term "nonprofit", as applied to an organization, means no part of the net earnings of the organization inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term "elderly person" means a person who is at least 62 years of age.

(14) The term "person with disabilities" has the meaning given the term by section 8013 of this title.

(15) The term "professional assessment committee" means a committee established under subsection (e)(3)(B).

(16) The term "qualifying supportive services" means new or significantly expanded services that the Secretary deems essential to enable eligible residents to live independently and avoid unnecessary institutionalization. Such services may include but not be limited to (A) meal service adequate to meet nutritional need; (B) housekeeping aid; (C) personal assistance (which may include, but is not limited to, aid given to eligible residents in grooming, dressing, and other activities which maintain personal appearance and hygiene); (D) transportation services; (E) health-related services; and (F) personal emergency response systems; the owner may provide the qualifying services directly to eligible residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(17) The term "Secretary concerned" means—

(A) the Secretary of Housing and Urban Development, with respect to eligible federally assisted housing administered by such Secretary; and

(B) the Secretary of Agriculture, with respect to eligible federally assisted housing administered by the Administrator of the Farmers Home Administration.

(18) The term "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(19) The term "temporarily disabled" means having an impairment that—

(A) is expected to be of no more than 6 months duration; and

(B) impedes the ability of the individual to live independently unless the individual receives congregate services.

(20) The term "unit of general local government"—

(A) means any city, town, township, county, parish, village, or other general purpose political subdivision of a State; and

(B) includes a unit of general government acting as an applicant for assistance under this section in cooperation with a nonprofit housing sponsor and a nonprofit housing sponsor acting as an applicant for assistance under this section in cooperation with a unit of general local government, as provided under subsection (g)(1)(B).[10]

(l) Reports to Congress

(1) In general

Each Secretary concerned shall submit to the Congress, for each fiscal year for which assistance is provided for congregate services programs under this section, an annual report—

(A) describing the activities being carried out with assistance under this section and the population being served by such activities;

(B) evaluating the effectiveness of the program of providing assistance for congregate services under this section, and a comparison of the effectiveness of the program under this section with the HOPE for Elderly Independence Program under section 8012 of this title; and

(C) containing any other information that the Secretary concerned considers helpful to the Congress in evaluating the effectiveness of this section.

(2) Submission of data to Secretary concerned

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall provide, by regulation under subsection (m), for the submission of data by recipients of assistance under this section to be used in the repeat [11] required by paragraph (1).

(m) Regulations

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, not later than the expiration of the 180-day period beginning on November 28, 1990, jointly issue any regulations necessary to carry out this section.

(n) Authorization of appropriations

(1) Authorization and use

There are authorized to be appropriated to carry out this section $21,000,000 for fiscal year 1993, and $21,882,000 for fiscal year 1994, of which not more than—

(A) the amount of such sums appropriated that, with respect to the total amount appropriated, represents the ratio of the total number of units of eligible federally assisted housing for elderly individuals assisted by programs administered by the Secretary of Housing and Urban Development to the total number of units assisted by programs administered by such Secretary and the Secretary of Agriculture, shall be used for assistance for congregate services programs

in eligible federally assisted housing administered by the Secretary of Housing and Urban Development: [12] and

(B) the amount of such sums appropriated that, with respect to the total amount appropriated, represents the ratio of the total number of units of eligible federally assisted housing for elderly individuals assisted by programs administered by the Secretary of Agriculture to the total number of units assisted by programs administered by such Secretary and the Secretary of Housing and Urban Development, shall be used for assistance for congregate services programs in eligible federally assisted housing administered by the Secretary of Agriculture (through the Administrator of the Farmers Home Administration).

(2) Availability

Any amounts appropriated under this subsection shall remain available until expended.

(o) Reserve fund

The Secretary may reserve not more than 5 percent of the amounts made available in each fiscal year to supplement grants awarded to owners under this section when, in the determination of the Secretary, such supplemental adjustments are required to maintain adequate levels of services to eligible residents.

(Pub. L. 101–625, title VIII, §802, Nov. 28, 1990, 104 Stat. 4304; Pub. L. 102–550, title VI, §§604(a), (b), 672, Oct. 28, 1992, 106 Stat. 3805, 3826; Pub. L. 110–234, title IV, §§4002(b)(1)(B), (N), (2)(LL), 4115(c)(1)(A)(i), (B)(vi), (2)(I), May 22, 2008, 122 Stat. 1096, 1098, 1109, 1110; Pub. L. 110–246, §4(a), title IV, §§4002(b)(1)(B), (N), (2)(LL), 4115(c)(1)(A)(i), (B)(vi), (2)(I), June 18, 2008, 122 Stat. 1664, 1857–1859, 1870, 1871.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (d)(2)(B)(i), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218. Title III of the Act is classified generally to subchapter III (§3021 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Congregate Housing Services Act of 1978, referred to in subsecs. (d)(2)(B)(ii), (i)(1)(A)(i), (B)(i), and (j)(3), is title IV of Pub. L. 95–557, Oct. 31, 1978, 92 Stat. 2104, which is classified principally to this chapter (§8001 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 8001 of this title and Tables.

The Fair Labor Standards Act of 1938, referred to in subsec. (j)(1)(A), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified principally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

The United States Housing Act of 1937, referred to in subsec. (k)(6)(A), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653. Title II of the Act, which was classified generally to subchapter II (§1437aa et seq.) of chapter 8 of this title, was repealed by Pub. L. 104–330, title V, §501(a), Oct. 26, 1996, 110 Stat. 4041. For complete classification of this Act to the Code, see Short title note set out under section 1437 of this title and Tables.

Section 8(b)(2) of the United States Housing Act, referred to in subsec. (k)(6)(B), probably means section 8(b)(2) of the United States Housing Act of 1937, which was classified to section 1437f(b)(2) of this title and was repealed by Pub. L. 98–181, title I [title II, §209(a)(2)], Nov. 30, 1983, 97 Stat. 1183.

The Alaska Native Claims Settlement Act, referred to in subsec. (k)(9), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Congregate Housing Services Act of 1978 which comprises this chapter.

Section is comprised of section 802 of Pub. L. 101–625. Subsec. (p) of section 802 of Pub. L. 101–625 amended section 1437g of this title.

November 28, 1990, referred to in subsecs. (i)(1)(B)(i) and (m), was in the original "the date of the enactment of this Act" and November 5, 1990, referred to in subsec. (j)(3), was in the original "the date of the enactment of this section", see Effective Date note below.

AMENDMENTS

2008—Subsec. (d)(2)(A). Pub. L. 110–246, §4002(b)(1)(N), (2)(LL), substituted "Supplemental nutrition assistance program benefits" for "Food stamps" in heading.

Subsec. (d)(2)(A)(i)(I). Pub. L. 110–246, §4002(b)(1)(B), (2)(LL), made technical amendment to reference in original act which appears in text as reference to section 2018 of title 7.

Subsec. (d)(2)(A)(i)(II). Pub. L. 110–246, §4115(c)(2)(I), struck out "(as defined in section 2012(e) of title 7)" after "benefits".

Pub. L. 110–246, §4115(c)(1)(A)(i), (B)(vi), substituted "benefits" for "coupons".

1992—Subsec. (d)(4). Pub. L. 102–550, §672, inserted after first sentence of concluding provisions "Such qualifications and standards shall include requiring each service coordinator to be trained in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues."

Subsec. (i)(1)(B)(i). Pub. L. 102–550, §604(b), substituted "6-year" for "3-year" in two places.

Subsec. (n)(1). Pub. L. 102–550, §604(a), in introductory provisions, substituted provisions authorizing appropriations for fiscal years 1993 and 1994 for provisions authorizing appropriations of $25,000,000 for fiscal year 1991 and $26,100,000 for fiscal year 1992.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by sections 4002(b)(1)(B), (N), (2)(LL) and 4115(c)(1)(A)(i), (B)(vi), (2)(I) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE

This section was enacted as part of Pub. L. 101–625, which was approved Nov. 28, 1990. However, this section was deemed enacted as of Nov. 5, 1990, by Pub. L. 101–507, title II, Nov. 5, 1990, 104 Stat. 1358, set out as an Effective Date of 1990 Amendment note under section 1701q of Title 12, Banks and Banking.

REGULATIONS

Pub. L. 102–550, title VI, §604(c), Oct. 28, 1992, 106 Stat. 3805, provided that:

"(1) INTERIM REGULATIONS.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development and the Secretary of Agriculture shall submit to the Congress a copy of proposed interim regulations implementing section 802 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8011] with respect to eligible federally assisted housing (as such term is defined in section 802(k) of such Act) administered by each such Secretary. Not later than the expiration of the 45-day period beginning on the date of the enactment of this Act, but not before the expiration of the 15-day period beginning upon the submission of the proposed interim regulations to the Congress, each such Secretary shall publish interim regulations implementing such section 802, which shall take effect upon publication.

"(2) FINAL REGULATIONS.—Not later than the expiration of the 90-day period beginning upon the publication of interim regulations under paragraph (1), each such Secretary shall issue final regulations implementing section 802 of the Cranston-Gonzalez National Affordable Housing Act after notice and

opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment under such section 553 shall be not less than 60 days, and the final regulations shall take effect upon issuance.

"(3) FAILURE UNDER 1990 ACT.—This subsection may not be construed to authorize any failure to comply with the requirements of section 802(m) of the Cranston-Gonzalez National Affordable Housing Act."

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] So in original. Probably should be "section,".

[2] So in original. Probably should be subsection "(e)".

[3] So in original. Probably should be "certification".

[4] So in original. Probably should be subsection "(m),".

[5] So in original. Probably should be "general local".

[6] See Codification note below.

[7] So in original. Probably should be "or".

[8] See References in Text note below.

[9] So in original. Probably should be preceded by a closing parenthesis.

[10] So in original. Probably should be subsection "(h)(1)(B)."

[11] So in original. Probably should be "report".

[12] So in original. The colon probably should be a semicolon.

§8012. Hope for elderly independence

(a) Purpose

The purpose of this section is to establish a demonstration program to test the effectiveness of combining housing certificates and vouchers with supportive services to assist frail elderly persons to continue to live independently. The demonstration program under this section shall terminate upon the expiration of the 5-year period determined by the Secretary.

(b) Housing assistance

In connection with this demonstration, the Secretary of Housing and Urban Development may enter into contracts with public housing agencies to provide not more than 1,500 incremental vouchers and certificates under sections 1437f(b) and 1437f(o) of this title. A public housing agency may not require that a frail elderly person live in a particular structure or unit, but the agency may restrict the program under this section to a geographic area, where necessary to ensure that the provision of supportive services is feasible. At the end of the demonstration period, the public

housing agency shall give each frail elderly person the option to continue to receive assistance under the housing certificate or voucher program of the agency. In the demonstration, the Secretary may also provide for supportive services in connection with existing contracts for housing assistance under sections 1437f(b) and 1437f(o) of this title.

(c) Supportive services requirements and matching funding

(1) Federal, PHA and,[1] individual contributions

The amount estimated by the public housing agency and approved by the Secretary as necessary to provide the supportive services for the demonstration period shall be funded as follows:

(A) The Secretary shall provide 40 percent, using amounts appropriated under this section.

(B) The public housing agency shall ensure the provision of at least 50 percent from sources other than under this section.

(C) Notwithstanding any other provision of law, each frail elderly person shall pay 10 percent of the costs of the supportive services that the person receives, except that a frail elderly person may not be required to pay an amount that exceeds 20 percent of the adjusted income (as the term is defined in section 1437a(b)(5) of this title) of such person and the Secretary shall provide for the waiver of the requirement to pay costs under this subparagraph for persons whose income is determined to be insufficient to provide for any payment.

(D) To the extent that the limitation under subparagraph (C) regarding the percentage of income frail elderly persons may pay for services will result in collected amounts for any public housing agency of less than 10 percent of the cost of providing the services, 50 percent of such remaining costs shall be provided by the public housing agency and 50 percent of such remaining costs shall be provided by the Secretary from amounts appropriated under this section.

(2) Provision of services for entire demonstration

Each public housing agency shall ensure that supportive services appropriate to the needs of the frail elderly persons to be served under this demonstration are provided throughout the demonstration period. Expenditures for supportive services need not be made in equal amounts for each year, but may vary depending on the needs of the frail elderly persons assisted under this section. A public housing agency may use up to 20 percent of the Federal assistance provided for supportive services in each year of this demonstration and any amounts from any prior year in which the public housing agency did not use 20 percent of the available Federal assistance.

(3) Calculation of match

In determining compliance with paragraph (1)(B), an agency may include the value of such items as the Secretary determines to be appropriate, which may include the salary paid to staff to provide supportive services, if such items have a readily discernible market value.

(d) Applications

An application under this section shall be submitted by a public housing agency in such form and in accordance with such procedures as the Secretary shall establish. The Secretary shall require that an application contain at a minimum—

(1) an application for housing assistance under section 1437f of this title, if necessary, and a description of any such assistance already made available that will be used in the demonstration;

(2) a description of the size and characteristics of the population of frail elderly persons and of their housing and supportive services needs;

(3) a description of the proposed method of determining whether a person qualifies as a frail elderly person (specifying any additional eligibility requirements proposed by the agency), and of selecting frail elderly persons to participate;

(4) a statement that the public housing agency will create a professional assessment committee or will work with another entity which will assist the public housing agency in identifying and providing only services that each frail elderly person needs to remain living independently;

(5) a description of the mechanisms for developing housing and supportive services plans for

each person and for monitoring the person's progress in meeting that plan;

(6) the identity of the proposed service providers and a statement of qualifications;

(7) a description of the supportive services the public housing agency proposes to make available for the frail elderly persons to be served, the estimated costs of such services, a description of the resources that are expected to be made available to cover the portion of the costs required by subsection (c)(1);

(8) assurances satisfactory to the Secretary that the supportive services will be provided for the demonstration period;

(9) the plan for coordinating the provision of housing assistance and supportive services;

(10) a description of how the public housing agency will ensure that the service providers are providing supportive services, at a reasonable cost, adequate to meet the needs of the persons to be served;

(11) a plan for continuing supportive services to frail elderly persons that continue to receive housing assistance under section 1437f of this title after the end of the demonstration period; and

(12) a statement that the application has been developed in consultation with the area agency on aging under title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.] and that the public housing agency will periodically consult with the area agency during the demonstration.

(e) Selection

(1) Criteria

The Secretary shall establish selection criteria for a national competition for assistance under this section, which shall include—

(A) the ability of the public housing agency to develop and operate the proposed housing assistance and supportive services program;

(B) the need for a program providing both housing assistance and supportive services for frail elderly persons in the area to be served;

(C) the quality of the proposed program for providing supportive services;

(D) the extent to which the proposed funding for the supportive services is or will be available;

(E) the extent to which the program would meet the needs of the frail elderly persons proposed to be served by the program; and

(F) such other factors as the Secretary specifies to be appropriate for purposes of carrying out the demonstration program established by this section in an effective and efficient manner.

(2) Consultation with HHS

In reviewing the applications, the Secretary shall consult with the Secretary of Health and Human Services with respect to the supportive services aspects.

(3) Funding limitations

No more than 10 percent of the assistance made available under this section may be used for programs located within any one unit of general local government.

(f) Required agreements

The Secretary may not approve any assistance for any program under this section unless the public housing agency agrees—

(1) to operate the proposed program in accordance with the program requirements established by the Secretary;

(2) to conduct an ongoing assessment of the housing assistance and supportive services required by each frail elderly person participating in the program;

(3) to ensure the adequate provision of supportive services, at a reasonable cost, to each frail elderly person participating in the program; and

(4) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the program in an effective and efficient manner.

(g) Definitions

For purposes of this section:

(1) The term "demonstration period" means the 5-year period referred to in subsection (a).

(2) The term "elderly person" means a person who is at least 62 years of age.

(3) The term "frail elderly person" means an elderly person who is unable to perform at least 3 activities of daily living adopted by the Secretary for purposes of this program. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

(4) The term "professional assessment committee" means a group of at least 3 persons appointed by a public housing agency which shall include at least 1 qualified medical professional and other persons professionally competent to appraise the functional abilities of the frail elderly in relation to the performance of activities of daily living.

(5) The term "public housing agency" has the meaning given such term in section 1437a(b)(6) of this title. The term includes an Indian Housing Authority, as defined in section 1437a(b)(11) [2] of this title.

(6) The term "Secretary" means the Secretary of Housing and Urban Development.

(7) The term "supportive services"—

(A) means assistance, that the Secretary determines—

(i) addresses the special needs of frail elderly persons; and

(ii) provides appropriate supportive services or assists such persons in obtaining appropriate services, including personal care, case management services, transportation, meal services, counseling, supervision, and other services essential for achieving and maintaining independent living; and

(B) does not include medical services, as determined by the Secretary.

(h) Multifamily project demonstration

(1) In general

In addition to the demonstration program authorized by the preceding provisions of this section, the Secretary shall conduct a demonstration in one Federal region, subject to the terms and conditions of this subsection, to determine the feasibility of using housing assistance under section 1437f of this title to assist elderly persons who may become frail to live independently in housing specifically designed for occupancy by such persons in sufficient proportion to achieve economies of scale in the provision of services and facilities.

(2) Section 1437f allocation

From amounts provided pursuant to subsection (j) and subject to availability in appropriation Acts, the Secretary shall enter into a contract with a public housing agency to provide housing assistance under section 1437f(b) of this title to assist elderly persons in at least 75 percent of the units in a single housing project with more than 100 units.

(3) Section 1437f terms

The assistance payment contract under section 1437f of this title shall be attached to the structure and shall be in an initial term of 5 years. The contract shall (at the option of the public housing agency and subject to availability of amounts approved in appropriations Acts) be renewable for 3 additional 5-year terms. Rents for units in the project assisted pursuant to this subsection shall be subject to the rent limitations in effect for the area under section 1437f of this title for projects for the elderly receiving loans under section 1701q of title 12.

(4) Supportive services

The Secretary shall allocate, for the project assisted pursuant to this subsection, a reasonable portion of the amounts appropriated pursuant to the authorization for funds for supportive services in subsection (k), based on the estimated number of project residents who will be frail elderly individuals during the 5-year period beginning on the date of initial occupancy of the project. Grants for supportive services may be used to assist any occupant in the demonstration project

who is a frail elderly individual. Grants for supportive services under this subsection shall be subject to the other terms and conditions specified in this section.

(5) Applications

An application for assistance under this subsection may be submitted by any unit of general local government with a population under 50,000 and shall contain such information as the Secretary deems appropriate.

(6) Selection

The Secretary shall select one application for funding under this subsection based on the following criteria:

(A) The number of elderly persons residing in the applicant's jurisdiction.

(B) The extent of existing housing constructed prior to 1940 in the applicant's jurisdiction.

(C) The number of elderly persons living in adjacent projects to whom the services and facilities provided by the project would be available.

(D) The level of State and local contributions toward the cost of developing the project and of providing supportive services.

(E) The project's contribution to neighborhood improvement.

(i) Report

The Secretary shall submit to Congress an annual report evaluating the effectiveness of the demonstrations under this section. The report shall include a statement of the number of persons served, the types of services provided, the cost of providing such services, and any other information the Secretary considers appropriate in evaluating the demonstration.

(j) Section 1437f funding

The budget authority available under section 1437c(c) of this title for assistance under sections 1437f(b) and 1437f(o) of this title is authorized to be increased by $38,288,000 on or after October 1, 1992, and by $39,896,096 on or after October 1, 1993. The amounts made available under this subsection shall be used only in connection with the demonstration under this section.

(k) Funding for services

There are authorized to be appropriated for the Secretary to carry out the responsibilities for supportive services under the demonstrations under this section $10,000,000 to become available in fiscal year 1993, and $10,420,000 to become available in fiscal year 1994. Any such amounts appropriated under this subsection shall remain available until expended.

(l) Implementation

Not later than the expiration of the 180-day period beginning on the date that funds authorized for the demonstrations under this section first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the demonstration programs authorized under this section.

(Pub. L. 101–625, title VIII, §803, Nov. 28, 1990, 104 Stat. 4317; Pub. L. 102–550, title VI, §605, Oct. 28, 1992, 106 Stat. 3806.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (d)(12), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218. Title III of the Act is classified generally to subchapter III (§3021 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Section 1437a(b)(11) of this title, referred to in subsec. (g)(5), was repealed by Pub. L. 104–330, title V, §501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new section 1437a(b)(11), defining "public housing agency plan", was enacted by Pub. L. 105–276, title V, §506(4), Oct. 21, 1998, 112 Stat. 2524.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Congregate Housing Services Act of 1978 which comprises this chapter.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, §605(c)(1), substituted "determined by the Secretary" for "beginning on November 28, 1990".

Subsec. (g)(1). Pub. L. 102–550, §605(c)(2), added par. (1) and struck out former par. (1) which read as follows: "The term 'demonstration period' means the period beginning on November 28, 1990, and ending upon the termination date under subsection (a)."

Subsec. (j). Pub. L. 102–550, §605(a), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "The Secretary may provide assistance under sections 1437f(b) and 1437f(o) of this title in connection with the demonstrations under this section, in an amount not to exceed $34,000,000 for fiscal year 1991, and $35,500,000 for fiscal year 1992, subject to the approval of sufficient amounts in appropriations Acts under section 1437c of this title."

Subsec. (k). Pub. L. 102–550, §605(b), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "There are authorized to be appropriated for the Secretary to carry out the responsibilities for supportive services under the demonstrations under this section, $10,000,000 to become available in fiscal year 1991, and $10,400,000 to become available in fiscal year 1992, and remain available until expended."

[1] So in original. The comma probably should precede "and".

[2] See References in Text note below.

§8013. Supportive housing for persons with disabilities

(a) Purpose

The purpose of this section is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that—

(1) is designed to accommodate the special needs of such persons;

(2) makes available supportive services that address the individual health, mental health, and other needs of such persons; and

(3) promotes and facilitates community integration for people with significant and long-term disabilities.

(b) Authority to provide assistance

The Secretary is authorized to take the following actions:

(1) Tenant-based assistance

To provide tenant-based rental assistance to eligible persons with disabilities, in accordance with subsection (d)(4).

(2) Capital advances

To provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities, which shall be provided as—

(A) capital advances in accordance with subsection (d)(1), and

(B) contracts for project rental assistance in accordance with subsection (d)(2);

assistance under this paragraph may be used to finance the acquisition, acquisition and moderate rehabilitation, construction, reconstruction, or moderate or substantial rehabilitation of housing, including the acquisition from the Resolution Trust Corporation, to be used as supportive housing for persons with disabilities and may include real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

(3) Project rental assistance

(A) In general

To offer additional methods of financing supportive housing for non-elderly adults with disabilities, the Secretary shall make funds available for project rental assistance pursuant to subparagraph (B) for eligible projects under subparagraph (C). The Secretary shall provide for State housing finance agencies and other appropriate entities to apply to the Secretary for such project rental assistance funds, which shall be made available by such agencies and entities for dwelling units in eligible projects based upon criteria established by the Secretary. The Secretary may not require any State housing finance agency or other entity applying for such project rental assistance funds to identify in such application the eligible projects for which such funds will be used, and shall allow such agencies and applicants to subsequently identify such eligible projects pursuant to the making of commitments described in subparagraph (C)(ii).

(B) Contract terms

(i) Contract terms

Project rental assistance under this paragraph shall be provided—

(I) in accordance with subsection (d)(2); and

(II) under a contract having an initial term of not less than 180 months that provides funding for a term 60 months, which funding shall be renewed upon expiration, subject to the availability of sufficient amounts in appropriation Acts.

(ii) Limitation on units assisted

Of the total number of dwelling units in any multifamily housing project containing any unit for which project rental assistance under this paragraph is provided, the aggregate number that are provided such project rental assistance, that are used for supportive housing for persons with disabilities, or to which any occupancy preference for persons with disabilities applies, may not exceed 25 percent of such total.

(iii) Prohibition of capital advances

The Secretary may not provide a capital advance under subsection (d)(1) for any project for which assistance is provided under this paragraph.

(iv) Eligible population

Project rental assistance under this paragraph may be provided only for dwelling units for extremely low-income persons with disabilities and extremely low-income households that include at least one person with a disability.

(C) Eligible projects

An eligible project under this subparagraph is a new or existing multifamily housing project for which—

(i) the development costs are paid with resources from other public or private sources; and

(ii) a commitment has been made—

(I) by the applicable State agency responsible for allocation of low-income housing tax credits under section 42 of title 26, for an allocation of such credits;

(II) by the applicable participating jurisdiction that receives assistance under the HOME Investment Partnership [1] Act [42 U.S.C. 12721 et seq.], for assistance from such jurisdiction; or

(III) by any Federal agency or any State or local government, for funding for the project from funds from any other sources.

(D) State agency involvement

Assistance under this paragraph may be provided only for projects for which the applicable State agency responsible for health and human services programs, and the applicable State agency designated to administer or supervise the administration of the State plan for medical

assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], have entered into such agreements as the Secretary considers appropriate—

(i) to identify the target populations to be served by the project;

(ii) to set forth methods for outreach and referral; and

(iii) to make available appropriate services for tenants of the project.

(E) Use requirements

In the case of any project for which project rental assistance is provided under this paragraph, the dwelling units assisted pursuant to subparagraph (B) shall be operated for not less than 30 years as supportive housing for persons with disabilities, in accordance with the application for the project approved by the Secretary, and such dwelling units shall, during such period, be made available for occupancy only by persons and households described in subparagraph (B)(iv).

(F) Report

Not later than 3 years after January 4, 2011, and again 2 years thereafter, the Secretary shall submit to Congress a report—

(i) describing the assistance provided under this paragraph;

(ii) analyzing the effectiveness of such assistance, including the effectiveness of such assistance compared to the assistance program for capital advances set forth under subsection (d)(1) (as in effect pursuant to the amendments made by such Act); [2] and

(iii) making recommendations regarding future models for assistance under this section.

(c) General requirements

The Secretary shall take such actions as may be necessary to ensure that—

(1) assistance made available under this section will be used to meet the housing and community-based services needs of persons with disabilities by providing a variety of housing options, ranging from group homes and independent living facilities to dwelling units in multifamily housing developments, condominium housing, and cooperative housing; and

(2) supportive housing for persons with disabilities assisted under this section shall—

(A) make available voluntary supportive services that address the individual needs of persons with disabilities occupying such housing;

(B) provide such persons with opportunities for optimal independent living and participation in normal daily activities; and

(C) facilitate access by such persons to the community at large and to suitable employment opportunities within such community.

(d) Forms of assistance

(1) Capital advances

A capital advance provided pursuant to subsection (b)(1) shall bear no interest and its repayment shall not be required so long as the housing remains available for very-low-income persons with disabilities in accordance with this section. Such advance shall be in an amount calculated in accordance with the development cost limitation established in subsection (h).

(2) Project rental assistance

(A) Initial project rental assistance contract

Contracts for project rental assistance shall comply with subsection (e)(2) and shall obligate the Secretary to make monthly payments to cover any part of the costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income persons with disabilities that is not met from project income. The amount provided under the contract for each year covered by the contract for any project shall not exceed the sum of the initial annual project rentals for all units and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the amount provided

under the contract for each year covered by the contract if the sum of the project income and the amount of assistance payments available under this paragraph are inadequate to provide for reasonable project costs. In the case of an intermediate care facility which is the residence of persons assisted under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], project income under this paragraph shall include the same amount as if such person were being assisted under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

(B) Renewal of and increases in contract amounts

(i) Expiration of contract term

Upon the expiration of each contract term, subject to the availability of amounts made available in appropriation Acts, the Secretary shall adjust the annual contract amount to provide for reasonable project costs, including adequate reserves and service coordinators as appropriate, except that any contract amounts not used by a project during a contract term shall not be available for such adjustments upon renewal.

(ii) Emergency situations

In the event of emergency situations that are outside the control of the owner, the Secretary shall increase the annual contract amount, subject to reasonable review and limitations as the Secretary shall provide.

(3) Rent contribution

A very low-income person shall pay as rent for a dwelling unit assisted under subsection (b)(2) the higher of the following amounts, rounded to the nearest dollar: (A) 30 percent of the person's adjusted monthly income, (B) 10 percent of the person's monthly income, or (C) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated; except that the gross income of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall be the same amount as if the person were being assisted under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

(4) Tenant-based rental assistance

(A) In general

Tenant-based rental assistance provided under subsection (b)(1) shall be provided under section 1437f(o) of this title.

(B) Conversion of existing assistance

There is authorized to be appropriated for tenant-based rental assistance under section 1437f(o) of this title for persons with disabilities an amount not less than the amount necessary to convert the number of authorized vouchers and funding under an annual contributions contract in effect on January 4, 2011. Such converted vouchers may be administered by the entity administering the vouchers prior to conversion. For purposes of administering such converted vouchers, such entities shall be considered a "public housing agency" authorized to engage in the operation of tenant-based assistance under section 1437f of this title.

(C) Requirements upon turnover

The Secretary shall develop and issue, to public housing agencies that receive voucher assistance made available under this subsection and to public housing agencies that received voucher assistance under section 1437f(o) of this title for non-elderly disabled families pursuant to appropriation Acts for fiscal years 1997 through 2002 or any other subsequent appropriations for incremental vouchers for non-elderly disabled families, guidance to ensure that, to the maximum extent possible, such vouchers continue to be provided upon turnover to qualified persons with disabilities or to qualified non-elderly disabled families, respectively.

(e) Program requirements

(1) Use restrictions

(A) Term

Any project for which a capital advance is provided under subsection (d)(1) shall be operated for not less than 40 years as supportive housing for persons with disabilities, in accordance with the application for the project approved by the Secretary and shall, during such period, be made available for occupancy only by very low-income persons with disabilities.

(B) Conversion

If the owner of a project requests the use of the project for the direct benefit of very low-income persons with disabilities and, pursuant to such request the Secretary determines that a project is no longer needed for use as supportive housing for persons with disabilities, the Secretary may approve the request and authorize the owner to convert the project to such use.

(2) Contract terms

The initial term of a contract entered into under subsection (d)(2) shall be 240 months, except that, in the case of the sponsor of a project assisted with any low-income housing tax credit pursuant to section 42 of title 26 or with any tax-exempt housing bonds, the contract shall have an initial term of not less than 360 months and shall provide funding for a term of 60 months. The Secretary shall, to the extent approved in appropriation Acts, upon expiration of a contract (or any renewed contract), renew such contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

(3) Limitation on use of funds

No assistance received under this section (or any State or local government funds used to supplement such assistance) may be used to replace other State or local funds previously used, or designated for use, to assist persons with disabilities.

(4) Multifamily projects

(A) Limitation

Except as provided in subparagraph (B), of the total number of dwelling units in any multifamily housing project (including any condominium or cooperative housing project) containing any unit for which assistance is provided from a capital grant under subsection (d)(1) made after January 4, 2011, the aggregate number that are used for persons with disabilities, including supportive housing for persons with disabilities, or to which any occupancy preference for persons with disabilities applies, may not exceed 25 percent of such total.

(B) Exception

Subparagraph (A) shall not apply in the case of any project that is a group home or independent living facility.

(f) Applications

Funds made available under subsection (b)(2) shall be allocated by the Secretary among approvable applications submitted by private nonprofit organizations. Applications for assistance under subsection (b)(2) shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. Such applications shall contain—

(1) a description of the proposed housing;

(2) a description of the assistance the applicant seeks under this section;

(3) a supportive service plan that contains—

(A) a description of the needs of persons with disabilities that the housing is expected to serve;

(B) assurances that persons with disabilities occupying such housing will be offered supportive services based on their individual needs;

(C) evidence of the applicant's experience in—

(i) providing such supportive services; or

(ii) creating and managing structured partnerships with service providers for the delivery of appropriate community-based services;

(D) a description of the manner in which such services will be provided to tenants; and

(E) identification of the extent of other Federal, and State and local funds available to assist in the provision of such services;

(4) a certification from the appropriate State or local agency (as determined by the Secretary) that the provision of the services identified in paragraph (3) are well designed to serve the housing and community-based services needs of persons with disabilities;

(5) reasonable assurances that the applicant will own or have control of an acceptable site for the proposed housing not later than 6 months after notification of an award for assistance;

(6) a certification from the public official responsible for submitting a housing strategy for the jurisdiction to be served in accordance with section 12705 of this title that the proposed housing is consistent with the approved housing strategy; and

(7) such other information or certifications that the Secretary determines to be necessary or appropriate to achieve the purposes of this section.

(g) Selection criteria and processing

(1) Selection criteria

The Secretary shall establish selection criteria for assistance under subsection (b)(2), which shall include—

(A) the ability of the applicant to develop and operate the proposed housing;

(B) the need for housing for persons with disabilities in the area to be served;

(C) the extent to which the proposed design of the housing will meet the special needs of persons with disabilities;

(D) the extent to which the applicant has demonstrated that appropriate supportive services will be made available on a consistent, long-term basis;

(E) the extent to which the location and design of the proposed project will facilitate the provision of community-based supportive services and address other basic needs of persons with disabilities, including access to appropriate and accessible transportation, access to community services agencies, public facilities, and shopping;

(F) the extent to which the per-unit cost of units to be assisted under this section will be supplemented with resources from other public and private sources;

(G) the extent to which the applicant has control of the site of the proposed housing; and

(H) such other factors as the Secretary determines to be appropriate to ensure that funds made available under subsection (b)(2) are used effectively.

(2) Delegated processing

(A) In issuing a capital advance under subsection (d)(1) for any multifamily project (but not including any project that is a group home or independent living facility) for which financing for the purposes described in the last sentence of subsection (b) is provided by a combination of the capital advance and sources other than this section, within 30 days of award of the capital advance, the Secretary shall delegate review and processing of such projects to a State or local housing agency that—

(i) is in geographic proximity to the property;

(ii) has demonstrated experience in and capacity for underwriting multifamily housing loans that provide housing and supportive services;

(iii) may or may not be providing low-income housing tax credits in combination with the capital advance under this section; and

(iv) agrees to issue a firm commitment within 12 months of delegation.

(B) The Secretary shall retain the authority to process capital advances in cases in which no State or local housing agency is sufficiently qualified to provide delegated processing pursuant to

this paragraph or no such agency has entered into an agreement with the Secretary to serve as a delegated processing agency.

(C) The Secretary shall—

(i) develop criteria and a timeline to periodically assess the performance of State and local housing agencies in carrying out the duties delegated to such agencies pursuant to subparagraph (A); and

(ii) retain the authority to review and process projects financed by a capital advance in the event that, after a review and assessment, a State or local housing agency is determined to have failed to satisfy the criteria established pursuant to clause (i).

(D) An agency to which review and processing is delegated pursuant to subparagraph (A) may assess a reasonable fee which shall be included in the capital advance amounts and may recommend project rental assistance amounts in excess of those initially awarded by the Secretary. The Secretary shall develop a schedule for reasonable fees under this subparagraph to be paid to delegated processing agencies, which shall take into consideration any other fees to be paid to the agency for other funding provided to the project by the agency, including bonds, tax credits, and other gap funding.

(E) Under such delegated system, the Secretary shall retain the authority to approve rents and development costs and to execute a capital advance within 60 days of receipt of the commitment from the State or local agency. The Secretary shall provide to such agency and the project sponsor, in writing, the reasons for any reduction in capital advance amounts or project rental assistance and such reductions shall be subject to appeal.

(h) Development cost limitations

(1) Group homes

The Secretary shall periodically establish development cost limitations by market area for group homes of supportive housing for persons with disabilities by publishing a notice of the cost limitations in the Federal Register. The cost limitations shall reflect—

(A) the cost of acquisition, construction, reconstruction, or rehabilitation of supportive housing for persons with disabilities that (i) meets applicable State and local housing and building codes; and (ii) conforms with the design characteristics of the neighborhood in which it is to be located;

(B) the cost of movables necessary to the basic operation of the housing, as determined by the Secretary;

(C) the cost of special design features necessary to make the housing accessible to persons with disabilities;

(D) the cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities;

(E) if the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title; and

(F) the cost of land, including necessary site improvement.

In establishing development cost limitations for a given market area, the Secretary shall use data that reflect currently prevailing costs of acquisition, construction, reconstruction, or rehabilitation, and land acquisition in the area. Neither this section nor any other provision of law may be construed as prohibiting or preventing the location and operation, in a project assisted under this section, of commercial facilities for the benefit of residents of the project and the community in which the project is located, except that assistance made available under this section may not be used to subsidize any such commercial facility.

(2) RTC properties

In the case of existing housing and related facilities from the Resolution Trust Corporation under section 1441a(c) [2] of title 12, the cost limitations shall include—

(A) the cost of acquiring such housing,

(B) the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and

(C) the cost of the land on which the housing and related facilities are located.

(3) Annual adjustments

The Secretary shall adjust the cost limitation established pursuant to paragraph (1) not less than once annually to reflect changes in the general level of acquisition, construction, reconstruction, or rehabilitation costs.

(4) Incentives for savings

(A) Special project account

The Secretary shall use the development cost limitations established under paragraph (1) to calculate the amount of financing to be made available to individual owners. Owners which incur actual development costs that are less than the amount of financing shall be entitled to retain 50 percent of the savings in a special project account. Such percentage shall be increased to 75 percent for owners which add energy efficiency features which (i) exceed the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title; (ii) substantially reduce the life-cycle cost of the housing; (iii) reduce gross rent requirements; and (iv) enhance tenant comfort and convenience.

(B) Uses

The special project account established under subparagraph (A) may be used (i) to supplement services provided to residents of the housing or funds set-aside for replacement reserves, or (ii) for such other purposes as determined by the Secretary.

(5) Funds from other sources

An owner shall be permitted voluntarily to provide funds from sources other than this section for amenities and other features of appropriate design and construction suitable for supportive housing for persons with disabilities if the cost of such amenities is (A) not financed with the advance, and (B) is not taken into account in determining the amount of Federal assistance or of the rent contribution of tenants. Notwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant.

(6) Applicability of home program cost limitations

(A) In general

The provisions of section 212(e) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12742(e)) and the cost limits established by the Secretary pursuant to such section with respect to the amount of funds under subtitle A of title II of such Act [42 U.S.C. 12741 et seq.] that may be invested on a per unit basis, shall apply to supportive housing assisted with a capital advance under subsection (d)(1) and the amount of funds under such subsection that may be invested on a per unit basis.

(B) Waivers

The Secretary may provide for waiver of the cost limits applicable pursuant to subparagraph (A)—

(i) in the cases in which the cost limits established pursuant to section 212(e) of the Cranston-Gonzalez National Affordable Housing Act may be waived; and

(ii) to provide for—

(I) the cost of special design features to make the housing accessible to persons with disabilities;

(II) the cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities; and

(III) the cost of providing the housing in a location that is accessible to public transportation and community organizations that provide supportive services to persons

with disabilities.

(i) Admission and occupancy

(1) Tenant selection

(A) Procedures

An owner shall adopt written tenant selection procedures that are satisfactory to the Secretary as (i) consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and (ii) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(B) Requirement for occupancy

Occupancy in dwelling units provided assistance under this section shall be available only to persons with disabilities and households that include at least one person with a disability.

(C) Availability

Except only as provided in subparagraph (D), occupancy in dwelling units in housing provided with assistance under this section shall be available to all persons with disabilities eligible for such occupancy without regard to the particular disability involved.

(D) Limitation on occupancy

Notwithstanding any other provision of law, the owner of housing developed under this section may, with the approval of the Secretary, limit occupancy within the housing to persons with disabilities who can benefit from the supportive services offered in connection with the housing.

(2) Tenant protections

(A) Lease

The lease between a tenant and an owner of housing assisted under this section shall be for not less than one year, and shall contain such terms and conditions as the Secretary shall determine to be appropriate.

(B) Termination of tenancy

An owner may not terminate the tenancy or refuse to renew the lease of a tenant of a rental dwelling unit assisted under this section except—

(i) for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause; and

(ii) by providing the tenant, not less than 30 days before such termination or refusal to renew, with written notice specifying the grounds for such action.

(C) Voluntary participation in services

A supportive service plan for housing assisted under this section shall permit each resident to take responsibility for choosing and acquiring their own services, to receive any supportive services made available directly or indirectly by the owner of such housing, or to not receive any supportive services.

(j) Miscellaneous provisions

(1) Technical assistance

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under this section.

(2) Civil rights compliance

Each owner shall certify, to the satisfaction of the Secretary, that assistance made available under this section will be conducted and administered in conformity with title VI of the Civil

Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.] and other Federal, State, and local laws prohibiting discrimination and promoting equal opportunity; and [3]

(3) Site control

An applicant may obtain ownership or control of a suitable site different from the site specified in the initial application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for assistance, the assistance shall be recaptured and reallocated.

(4) Notice of appeal

The Secretary shall notify an owner not less than 30 days prior to canceling any reservation of assistance provided under this section. During the 30-day period following the receipt of a notice under the preceding sentence, an owner may appeal the proposed cancellation. Such appeal, including review by the Secretary, shall be completed not later than 45 days after the appeal is filed.

(5) Labor standards

(A) In general

The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40.

(B) Exemption

Subparagraph (A) shall not apply to any individual who—

(i) performs services for which the individual volunteered;

(ii)(I) does not receive compensation for such services; or

(II) is paid expenses, reasonable benefits, or a nominal fee for such services; and

(iii) is not otherwise employed at any time in the construction work.

(6) Use of project reserves

Amounts for project reserves for a project assisted under this section may be used for costs, subject to reasonable limitations as the Secretary determines appropriate, for reducing the number of dwelling units in the project. Such use shall be subject to the approval of the Secretary to ensure that the use is designed to retrofit units that are currently obsolete or unmarketable.

(7) Carbon monoxide alarms

Each dwelling unit assisted under this section shall contain installed carbon monoxide alarms or detectors that meet or exceed—

(A) the standards described in chapters 9 and 11 of the 2018 publication of the International Fire Code, as published by the International Code Council; or

(B) any other standards as may be adopted by the Secretary, including any relevant updates to the International Fire Code, through a notice published in the Federal Register.

(8) Qualifying smoke alarms

(A) In general

Each dwelling unit assisted under this section shall contain qualifying smoke alarms that are installed in accordance with applicable codes and standards published by the International Code Council or the National Fire Protection Association and the requirements of the National Fire Protection Association Standard 72, or any successor standard, in each level and in or near each sleeping area in such dwelling unit, including in basements but excepting crawl spaces and unfinished attics, and in each common area in a project containing such a dwelling unit.

(B) Definitions

For purposes of this paragraph, the following definitions shall apply:

(i) Smoke alarm defined

The term "smoke alarm" has the meaning given the term "smoke detector" in section 2225(d) of title 15.

(ii) Qualifying smoke alarm defined

The term "qualifying smoke alarm" means a smoke alarm that—

(I) in the case of a dwelling unit built before December 29, 2022, and not substantially rehabilitated after December 29, 2022—

(aa)(AA) is hardwired; or

(BB) uses 10-year non rechargeable, nonreplaceable primary batteries and is sealed, is tamper resistant, and contains silencing means; and

(bb) provides notification for persons with hearing loss as required by the National Fire Protection Association Standard 72, or any successor standard; or

(II) in the case of a dwelling unit built or substantially rehabilitated after December 29, 2022, is hardwired.

(k) Definitions

As used in this section—

(1) The term "group home" means a single family residential structure designed or adapted for occupancy by not more than 8 persons with disabilities, which provides a separate bedroom for each tenant of the residence. The Secretary may waive the project size limitation contained in the previous sentence if the applicant demonstrates that local market conditions dictate the development of a larger project. Not later than the date of the exercise of any waiver permitted under the previous sentence, the Secretary shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the waiver or the intention to exercise the waiver, together with a detailed explanation of the reason for the waiver. Not more than 1 home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

(2) The term "person with disabilities" means a household composed of one or more persons who is 18 years of age or older and less than 62 years of age, and who has a disability. A person shall be considered to have a disability if such person is determined, pursuant to regulations issued by the Secretary to have a physical, mental, or emotional impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if such person has a developmental disability as defined in section 15002 of this title. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility of families and persons for admission to and occupancy of housing assisted under this section. Notwithstanding the preceding provisions of this paragraph, the term "person with disabilities" includes two or more persons with disabilities living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary) to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this paragraph who were living, in a unit assisted under this section, with the deceased member of the household at the time of his or her death.

(3) The term "supportive housing for persons with disabilities" means dwelling units that—

(A) are designed to meet the permanent housing needs of very low-income persons with disabilities; and

(B) are located in housing that make available supportive services that address the individual health, mental health, or other needs of such persons.

(4) The term "independent living facility" means a project designed for occupancy by not more than 24 persons with disabilities (or such higher number of persons as permitted under criteria that the Secretary shall prescribe) in separate dwelling units where each dwelling unit includes a kitchen and a bath. Not later than the date that the Secretary prescribes a limit exceeding the 24 person limit in the previous sentence, the Secretary shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the limit or the intention to prescribe a limit in excess of 24 persons, together with a detailed explanation of the reason for the new limit.

(5) The term "owner" means a private nonprofit organization that receives assistance under this section to develop and operate supportive housing for persons with disabilities.

(6) The term "private nonprofit organization" means any institution or foundation—

(A) that has received, or has temporary clearance to receive, tax-exempt status under section 501(c)(3) of title 26;

(B) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(C) which has a governing board (i) the membership of which is selected in a manner to assure that there is significant representation of the views of persons with disabilities, and (ii) which is responsible for the operation of the housing assisted under this section; and

(D) which is approved by the Secretary as to financial responsibility.

Such term includes a for-profit limited partnership the sole general partner of which is an organization meeting the requirements under subparagraphs (A), (B), (C), and (D) or a corporation controlled by an organization meeting the requirements under subparagraphs (A), (B), (C), and (D).

(7) The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(8) The term "Secretary" means the Secretary of Housing and Urban Development.

(9) The term "very low-income" has the same meaning as given the term "very low-income families" under section 1437a(b)(2) of this title.

(l) Allocation of funds

(1) Minimum allocation for multifamily projects

The Secretary shall establish a minimum percentage of the amount made available for each fiscal year for capital advances under subsection (d)(1) that shall be used for multifamily projects subject to subsection (e)(4).

(2) Capital advances

Of any amounts made available for assistance under subsection (b), such sums as may be necessary shall be available for funding capital advances in accordance with subsection (d)(1). Such amounts, the repayments from such advances, and the proceeds from notes or obligations issued under this section prior to November 28, 1990,[4] shall constitute a revolving fund to be used by the Secretary in carrying out this section.

(3) Project rental assistance

Of any amounts made available for assistance under subsection (b), such sums as may be necessary shall be available for funding project rental assistance in accordance with subsection (d)(2).

(m) Authorization of appropriations

There are authorized to be appropriated for providing assistance pursuant to this section $300,000,000 for each of fiscal years 2011 through 2015.

(n) Effective date and applicability

(1) In general

The amendments made by this section shall take effect on October 1, 1991, with respect to projects approved on or after such date. The Secretary shall issue regulations for such purpose after notice and public comment.

(2) Earlier applicability

The Secretary shall, upon the request of an owner, apply the provisions of this section to any housing for which a loan reservation was made under section 1701q of title 12 before November 28, 1990,[4] but for which no loan has been executed and recorded. In the absence of such a request, any housing identified under the preceding sentence shall continue to be subject to the provisions of section 1701q of title 12 as they were in effect when such assistance was made or reserved.

(3) Coordination

When responding to an owner's request under paragraph (1), the Secretary shall, notwithstanding any other provision of law, apply such portion of amounts obligated at the time of loan reservation, including amounts reserved with respect to such housing under section 1437f of this title, as are required for the owner's housing under the provisions of this section and shall make any remaining portion available for other housing under this section.

(Pub. L. 101–625, title VIII, §811, Nov. 28, 1990, 104 Stat. 4324; Pub. L. 102–27, title II, Apr. 10, 1991, 105 Stat. 150; Pub. L. 102–550, title VI, §§601(d), 603, 623(a), title IX, §913(b), Oct. 28, 1992, 106 Stat. 3803, 3805, 3818, 3877; Pub. L. 106–74, title V, §§512, 524(a), Oct. 20, 1999, 113 Stat. 1101, 1106; Pub. L. 106–402, title IV, §401(b)(11), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 106–569, title VIII, §§822, 841–845, Dec. 27, 2000, 114 Stat. 3020, 3022, 3023; Pub. L. 111–374, §§2(a), 3–6, Jan. 4, 2011, 124 Stat. 4089–4098; Pub. L. 116–260, div. Q, title I, §101(d), Dec. 27, 2020, 134 Stat. 2164; Pub. L. 117–328, div. AA, title VI, §601(c), Dec. 29, 2022, 136 Stat. 5545.)

EDITORIAL NOTES

REFERENCES IN TEXT

The HOME Investment Partnerships Act, referred to in subsec. (b)(3)(C)(ii)(II), is title II of Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4094, which is classified principally to subchapter II (§12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Social Security Act, referred to in subsecs. (b)(3)(D) and (d)(2), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVI and XIX of the Act are classified generally to subchapters XVI (§1381 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The amendments made by such Act, referred to in subsec. (b)(3)(F)(ii), probably means the amendments made by Pub. L. 111–374, Jan. 4, 2011, 124 Stat. 4089, known as the Frank Melville Supportive Housing Investment Act of 2010, which amended this section. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 8001 of this title and Tables.

Section 1441a of title 12, referred to in subsec. (h)(2), was repealed by Pub. L. 111–203, title III, §364(b), July 21, 2010, 124 Stat. 1555.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (h)(6)(A), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Subtitle A of title II of the Act is classified generally to part A (§12741 et seq.) of subchapter II of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (j)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (j)(2), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, which is classified principally to subchapter I of chapter 45 (§3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Congregate Housing Services Act of 1978 which comprises this chapter.

In subsec. (j)(6)(A), "sections 3141–3144, 3146, and 3147 of title 40" substituted for "the Act of March 3, 1931 (commonly known as the Davis-Bacon Act)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

November 28, 1990, referred to in subsecs. (l)(2) and (n)(2), was in the original "the enactment of this Act" and "the date of enactment of this Act", respectively, see Enactment of Section note below.

AMENDMENTS

2022—Subsec. (j)(8). Pub. L. 117–328 added par. (8).

2020—Subsec. (j)(7). Pub. L. 116–260 added par. (7).

2011—Subsec. (a)(2). Pub. L. 111–374, §5(1)(B)(i), substituted "makes available" for "provides".

Subsec. (a)(3). Pub. L. 111–374, §5(1)(A), (B)(ii), (C), added par. (3).

Subsec. (b). Pub. L. 111–374, §4(1), substituted "is authorized to take the following actions:" for "is authorized—" in introductory provisions.

Subsec. (b)(1). Pub. L. 111–374, §4(2), inserted heading and substituted "To provide tenant-based" for "to provide tenant-based" and a period for "; and".

Subsec. (b)(2). Pub. L. 111–374, §4(3), inserted heading and substituted "To provide assistance" for "to provide assistance".

Subsec. (b)(3). Pub. L. 111–374, §4(4), added par. (3).

Subsec. (c)(1). Pub. L. 111–374, §5(2)(A), substituted "housing and community-based services" for "special".

Subsec. (c)(2)(A). Pub. L. 111–374, §5(2)(B)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: "provide persons with disabilities occupying such housing with supportive services that address their individual needs;".

Subsec. (c)(2)(B). Pub. L. 111–374, §5(2)(B)(ii), substituted "activities;" for "activities,".

Subsec. (d)(1). Pub. L. 111–374, §5(3), substituted "provided pursuant to subsection (b)(1) shall bear" for "provided under subsection (b)(2) shall bear".

Subsec. (d)(2). Pub. L. 111–374, §3(a)(1), designated existing provisions as subpar. (A), inserted heading and "comply with subsection (e)(2) and shall" before "obligate" in first sentence, substituted "amount provided under the contract for each year covered by the contract" for "annual contract amount" in two places, and added subpar. (B).

Subsec. (d)(4). Pub. L. 111–374, §2(a), amended par. (4) generally. Prior to amendment, par. (4) related to tenant-based rental assistance provided through a public housing agency or a private nonprofit organization.

Subsec. (e). Pub. L. 111–374, §3(b)(1)(A), substituted "Program requirements" for "Term of commitment" in heading.

Subsec. (e)(1). Pub. L. 111–374, §3(b)(1)(B), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "All units in housing assisted under subsection (b)(2) shall be made available for occupancy by very low-income persons with disabilities for not less than 40 years."

Subsec. (e)(2). Pub. L. 111–374, §3(a)(2), inserted ", except that, in the case of the sponsor of a project assisted with any low-income housing tax credit pursuant to section 42 of title 26 or with any tax-exempt housing bonds, the contract shall have an initial term of not less than 360 months and shall provide funding for a term of 60 months" after "240 months" and substituted "upon expiration of a contract (or any renewed contract), renew such contract" for "extend any expiring contract".

Subsec. (e)(3), (4). Pub. L. 111–374, §3(b)(1)(C), added pars. (3) and (4).

Subsec. (f)(3)(B). Pub. L. 111–374, §5(4)(A)(i), substituted "be offered" for "receive".

Subsec. (f)(3)(C). Pub. L. 111–374, §5(4)(A)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows: "evidence of the applicant's (or a designated service provider's) experience in providing such supportive services;".

Subsec. (f)(3)(D). Pub. L. 111–374, §5(4)(A)(iii), substituted "tenants" for "such persons, including evidence of such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of such services".

Subsec. (f)(3)(E). Pub. L. 111–374, §5(4)(A)(iv), inserted "other Federal, and" before "State".

Subsec. (f)(4). Pub. L. 111–374, §5(4)(B), substituted "housing and community-based services" for "special".

Subsec. (g). Pub. L. 111–374, §3(c), substituted "Selection criteria and processing" for "Selection criteria" in subsec. heading, designated existing provisions as par. (1), inserted par. heading, redesignated former pars. (1) to (5), (6), and (7) as subpars. (A) to (E), (G), and (H), respectively, of par. (1), and added par. (2).

Subsec. (g)(1)(D). Pub. L. 111–374, §5(5)(A), substituted "appropriate supportive services will be made available" for "the necessary supportive services will be provided".

Subsec. (g)(1)(E). Pub. L. 111–374, §5(5)(B), added subpar. (E) and struck out former subpar. (E) which read as follows: "the extent to which the proposed design of the housing will accommodate the provision of such services;".

Subsec. (g)(1)(F). Pub. L. 111–374, §3(d), added subpar. (F).

Subsec. (h)(1). Pub. L. 111–374, §3(f)(1), substituted "Group homes" for "In general" in heading and "group homes" for "various types and sizes" in introductory provisions, redesignated subpars. (F) and (G) as (E) and (F), respectively, and struck out former subpar. (E) which read as follows: "the cost of congregate space necessary to accommodate the provision of supportive services to persons with disabilities;".

Subsec. (h)(3). Pub. L. 111–374, §3(f)(2), inserted "established pursuant to paragraph (1)" after "cost limitation".

Subsec. (h)(6). Pub. L. 111–374, §3(f)(3), added par. (6).

Subsec. (i). Pub. L. 111–374, §3(e), added subsec. (i) and struck out former subsec. (i) which related to tenant selection.

Subsec. (j)(4) to (7). Pub. L. 111–374, §5(6), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4). Prior to amendment, text of par. (4) read as follows: "The Secretary may require an owner to deposit an amount not to exceed $10,000 in a special escrow account to assure the owner's commitment to the housing."

Subsec. (k)(1). Pub. L. 111–374, §5(7)(A), inserted ", which provides a separate bedroom for each tenant of the residence" before period at end of first sentence.

Pub. L. 111–374, §3(g)(1), inserted after second sentence "Not later than the date of the exercise of any waiver permitted under the previous sentence, the Secretary shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the waiver or the intention to exercise the waiver, together with a detailed explanation of the reason for the waiver."

Subsec. (k)(2). Pub. L. 111–374, §5(7)(B), substituted "The term 'person with disabilities' means a household composed of one or more persons who is 18 years of age or older and less than 62 years of age, and who has a disability." for "The term 'person with disabilities' means a household composed of one or more persons at least one of whom is an adult who has a disability."

Subsec. (k)(3). Pub. L. 111–374, §5(7)(C), added par. (3) and struck out former par. (3) which read as follows: "The term 'supportive housing for persons with disabilities' means housing that—

"(A) is designed to meet the special needs of persons with disabilities, and

"(B) provides supportive services that address the individual health, mental health or other special needs of such persons."

Subsec. (k)(4). Pub. L. 111–374, §3(g)(2), substituted "prescribe)" for "prescribe, subject to the limitation under subsection (h)(6))" and inserted at end "Not later than the date that the Secretary prescribes a limit exceeding the 24 person limit in the previous sentence, the Secretary shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the limit or the intention to prescribe a limit in excess of 24 persons, together with a detailed explanation of the reason for the new limit."

Subsec. (k)(5). Pub. L. 111–374, §5(7)(D), struck out "a project for" before "supportive housing".

Subsec. (k)(6). Pub. L. 111–374, §5(7)(E)(ii), which directed striking out "wholly owned and" in the matter inserted by the amendment made by subparagraph (A) of this paragraph, was executed by striking out "wholly owned and" after "corporation" in concluding provisions as inserted by section 5(7)(E)(i) of Pub. L. 111–374, to reflect the probable intent of Congress. See below.

Pub. L. 111–374, §5(7)(E)(i), inserted as concluding provisions the matter directed to be inserted as concluding provisions after section 811(k)(6)(D) of the Housing Act of 1959 by section 841 of Pub. L. 106–569. See 2000 Amendment note below.

Subsec. (l)(1). Pub. L. 111–374, §3(h), amended par. (1) generally. Prior to amendment, text read as follows: "Of any amount made available for assistance under this section in any fiscal year, an amount shall be used for assistance under subsection (b)(2) that is not less than the amount made available in appropriation Acts for such assistance in the preceding year."

Subsec. (l)(2). Pub. L. 111–374, §5(8)(A), substituted "subsection (d)(1)" for "subsection (c)(1)".

Subsec. (l)(3). Pub. L. 111–374, §5(8)(B), substituted "subsection (d)(2)" for "subsection (c)(2)".

Subsec. (l)(4). Pub. L. 111–374, §3(b)(2), struck out par. (4). Text read as follows: "Of any amounts made available for any fiscal year and used for capital advances or project rental assistance under paragraphs (1) and (2) of subsection (d), not more than 25 percent may be used for supportive housing which contains more than

24 separate dwelling units."

Subsec. (m). Pub. L. 111–374, §6, amended subsec. (m) generally, substituting authorization of appropriations for fiscal years 2011 through 2015 for authorization of appropriations for fiscal years 2001, 2002, and 2003.

2000—Subsec. (d)(4). Pub. L. 106–569, §843(1), added par. (4) and struck out heading and text of former par. (4). Text read as follows: "Tenant-based rental assistance provided under subsection (b)(1) may be provided only through a public housing agency that has submitted, and had approved, an allocation plan under section 1437e(f) of this title, and a public housing agency shall be eligible to apply under this section only for the purposes of providing such assistance. Such assistance shall be made available to eligible persons with disabilities and administered under the same rules that govern rental assistance made available under section 1437f of this title. In determining the amount of assistance provided under subsection (b)(1) for a public housing agency, the Secretary shall consider the needs of the agency as described in the allocation plan."

Subsec. (h)(1). Pub. L. 106–569, §845, inserted at end of concluding provisions "Neither this section nor any other provision of law may be construed as prohibiting or preventing the location and operation, in a project assisted under this section, of commercial facilities for the benefit of residents of the project and the community in which the project is located, except that assistance made available under this section may not be used to subsidize any such commercial facility."

Subsec. (h)(5). Pub. L. 106–569, §842, substituted "sources other than this section" for "non-Federal sources" and inserted at end "Notwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant."

Subsec. (j)(7). Pub. L. 106–569, §844, added par. (7).

Subsec. (k)(2). Pub. L. 106–402 substituted "as defined in section 15002 of this title" for "as defined in section 6001(7) of this title" in third sentence.

Subsec. (k)(6). Pub. L. 106–569, §841, which directed insertion of concluding provisions after section 811(k)(6)(D) of the Housing Act of 1959, could not be executed because there is no section 811 of the Housing Act of 1959.

Subsec. (l)(1). Pub. L. 106–569, §843(2), substituted "subsection (b)(2)" for "subsection (b)" and struck out before period at end ", and the remainder shall be available for tenant-based assistance under subsection (n)".

Subsec. (m). Pub. L. 106–569, §822, added subsec. (m) and struck out heading and text of former subsec. (m). Text read as follows: "There is authorized to be appropriated for providing assistance under this section $201,000,000 for fiscal year 2000."

1999—Subsec. (k)(4). Pub. L. 106–74, §524(a)(1), inserted ", subject to the limitation under subsection (h)(6)" after "prescribe".

Subsec. (l)(4). Pub. L. 106–74, §524(a)(2), added par. (4).

Subsecs. (m), (n). Pub. L. 106–74, §512, added subsec. (m) and redesignated former subsec. (m) as (n).

1992—Pub. L. 102–550, §623(a)(1), reenacted section catchline without change.

Subsec. (b). Pub. L. 102–550, §623(a)(2), added heading, introductory provisions, and pars. (1) and (2) and struck out former heading "General authority", introductory provisions, and pars. (1) and (2) which authorized assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities, which assistance would be provided as capital advances and contracts for project rental assistance, and, in concluding provisions, realigned margin and substituted "assistance under this paragraph" for "Such assistance".

Subsec. (d)(1). Pub. L. 102–550, §623(a)(3)(A), which directed the substitution of "subsection (b)(2)" for "this section", was executed by making the substitution the first place appearing in first sentence, to reflect the probable intent of Congress.

Subsec. (d)(3). Pub. L. 102–550, §623(a)(3)(A), substituted "subsection (b)(2)" for "this section".

Subsec. (d)(4). Pub. L. 102–550, §623(a)(3)(B), added par. (4).

Subsec. (e)(1). Pub. L. 102–550, §623(a)(4), substituted "subsection (b)(2)" for "this section".

Subsec. (f). Pub. L. 102–550, §623(a)(5), substituted "subsection (b)(2)" for "this section" in first and second sentences.

Subsec. (g). Pub. L. 102–550, §623(a)(6), which directed the substitution of "subsection (b)(2)" for "this section", was executed by making the substitution in the introductory provisions and in par. (7), to reflect the probable intent of Congress.

Subsec. (j)(6). Pub. L. 102–550, §913(b), designated existing provisions as subpar. (A), inserted subpar. heading, substituted "with 12 or more units assisted under this section" for "assisted under this section and designed for dwelling use by 12 or more persons with disabilities", inserted "commonly known as" before "the Davis-Bacon Act", struck out before period at end "; but the Secretary may waive the application of this paragraph in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the

construction of such housing, voluntarily donate their services without full compensation for the purposes of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction", and added subpar. (B).

Subsec. (k)(6). Pub. L. 102–550, §603, struck out "incorporated private" before "institution" in introductory provisions, added subpar. (A), and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Subsec. (l). Pub. L. 102–550, §601(d)(1), substituted "Allocation of funds" for "Authorizations" in heading.

Subsec. (l)(1). Pub. L. 102–550, §601(d)(5), added par. (1). Former par. (1) redesignated (2).

Pub. L. 102–550, §601(d)(2), inserted first sentence, struck out former first sentence which authorized an appropriation of $271,000,000 for fiscal year 1992 for the purpose of funding capital advances in accordance with subsection (d)(1) of this section, and in second sentence, substituted "Such amounts" for "Amounts so appropriated".

Subsec. (l)(2). Pub. L. 102–550, §601(d)(4), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pub. L. 102–550, §601(d)(3), added par. (2) and struck out former par. (2) which read as follows: "For the purpose of funding contracts for project rental assistance in accordance with subsection (d)(2) of this section, the Secretary may, to the extent approved in an appropriations Act, reserve authority to enter into obligations aggregating $246,000,000 for fiscal year 1992."

Subsec. (l)(3). Pub. L. 102–550, §601(d)(4), redesignated par. (2) as (3).

1991—Subsec. (k)(4). Pub. L. 102–27 substituted "24 persons with disabilities (or such higher number of persons as permitted under criteria that the Secretary shall prescribe)" for "20 persons with disabilities".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–328 effective 2 years after Dec. 29, 2022, see section 601(h) of div. AA of Pub. L. 117–328, set out as a note under section 1701q of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116–260 effective 2 years after Dec. 27, 2020, see section 101(h) of div. Q of Pub. L. 116–260, set out as a note under section 1701q of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by title VIII of Pub. L. 106–569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106–569, set out as a note under section 1701q of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

ENACTMENT OF SECTION

This section was enacted as part of Pub. L. 101–625, which was approved Nov. 28, 1990. However, this section was deemed enacted as of Nov. 5, 1990, by Pub. L. 101–507, title II, Nov. 5, 1990, 104 Stat. 1358, set out as an Effective Date of 1990 Amendment note under section 1701q of Title 12, Banks and Banking.

CONSTRUCTION OF 2022 AMENDMENT

Nothing in amendment made by Pub. L. 117–328 to be construed to preempt or limit applicability of certain State or local laws relating to smoke alarms, see section 601(i) of div. AA of Pub. L. 117–328, set out as a note under section 1701q of Title 12, Banks and Banking.

CONSTRUCTION OF 2020 AMENDMENT

Nothing in amendment made by Pub. L. 116–260 to be construed to preempt or limit applicability of certain State or local laws relating to carbon monoxide devices, see section 101(j) of div. Q of Pub. L. 116–260, set out as a note under section 1437a of this title.

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by section 623(a) of Pub. L. 102–550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian

housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

PROVISION OF TECHNICAL ASSISTANCE

Pub. L. 111–374, §2(b), Jan. 4, 2011, 124 Stat. 4090, provided that: "The Secretary is authorized to the extent amounts are made available in future appropriations Acts, to provide technical assistance to public housing agencies and other administering entities to facilitate using vouchers to provide permanent supportive housing for persons with disabilities, help States reduce reliance on segregated restrictive settings for people with disabilities to meet community care requirements, end chronic homelessness, as 'chronically homeless' is defined in section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361), and for other related purposes."

RENTAL ASSISTANCE CONTRACT OBLIGATIONS

Pub. L. 111–117, div. A, title II, Dec. 16, 2009, 123 Stat. 3088, as amended by Pub. L. 112–10, div. B, title XII, §2256, Apr. 15, 2011, 125 Stat. 197, provided in part: "That amounts obligated for initial project rental assistance contracts from amounts appropriated in fiscal year 2003 and thereafter shall remain available for the purpose of paying such obligations incurred prior to the expiration of such amounts for a 10 year period following such expiration".

[1] So in original. Probably should be "Partnerships".

[2] See References in Text note below.

[3] So in original. The word "opportunity" probably should be followed by a period.

[4] See Codification note below.

CHAPTER 90—NEIGHBORHOOD AND CITY REINVESTMENT, SELF-HELP AND REVITALIZATION

SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

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8101. Congressional findings and declaration of purpose.
8102. Neighborhood Reinvestment Corporation.
8103. Board of Directors.
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8105. Powers and duties of corporation.
8106. Reports and audits.
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SUBCHAPTER II—NEIGHBORHOOD SELF-HELP DEVELOPMENT

8121 to 8124. Repealed.

SUBCHAPTER III—LIVABLE CITIES

8141. Congressional findings.
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SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

§8101. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the neighborhood housing services demonstration of the Urban Reinvestment Task Force has proven its worth as a successful program to revitalize older urban neighborhoods by mobilizing public, private, and community resources at the neighborhood level; and

(2) the demand for neighborhood housing services programs in cities throughout the United States warrants the creation of a public corporation to institutionalize and expand the neighborhood housing services program and other programs of the present Urban Reinvestment Task Force.

(b) The purpose of this subchapter is to establish a public corporation which will continue the joint efforts of the Federal financial supervisory agencies and the Department of Housing and Urban Development to promote reinvestment in older neighborhoods by local financial institutions working cooperatively with community people and local government, and which will continue the nonbureaucratic approach of the Urban Reinvestment Task Force, relying largely on local initiative for the specific design of local programs.

(Pub. L. 95–557, title VI, §602, Oct. 31, 1978, 92 Stat. 2115.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 95–557, title VI, §601, Oct. 31, 1978, 92 Stat. 2115, provided that: "This title [enacting this subchapter] may be cited as the 'Neighborhood Reinvestment Corporation Act'."

Pub. L. 95–557, title VII, §701, Oct. 31, 1978, 92 Stat. 2119, which provided that such title, which was classified to subchapter II of this chapter, was to be cited as the "Neighborhood Self-Help Development Act of 1978", was repealed by Pub. L. 97–35, title III, §313(a), Aug. 13, 1981, 95 Stat. 398.

Pub. L. 95–557, title VIII, §801, Oct. 31, 1978, 92 Stat. 2122, provided that: "This title [enacting subchapter III of this chapter] may be cited as the 'Livable Cities Act of 1978'."

HOUSING COUNSELING

Pub. L. 117–2, title III, §3204, Mar. 11, 2021, 135 Stat. 60, provided that:

"(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Neighborhood Reinvestment Corporation (in this section referred to as the 'Corporation') for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available until September 30, 2025, for grants to housing counseling intermediaries approved by the Department of Housing and Urban Development, State housing finance agencies, and NeighborWorks organizations for providing housing counseling services, as authorized under the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107) and consistent with the discretion set forth in section 606(a)(5) of such Act (42 U.S.C. 8105(a)(5)) to design and administer grant programs. Of the grant funds made available under this subsection, not less than 40 percent shall be provided to counseling organizations that—

"(1) target housing counseling services to minority and low-income populations facing housing instability; or

"(2) provide housing counseling services in neighborhoods having high concentrations of minority and low-income populations.

"(b) LIMITATION.—The aggregate amount provided to NeighborWorks organizations under this section shall not exceed 15 percent of the total of grant funds made available by subsection (a).

"(c) ADMINISTRATION AND OVERSIGHT.—The Corporation may retain a portion of the amounts provided under this section, in a proportion consistent with its standard rate for program administration in order to cover its expenses related to program administration and oversight.

"(d) HOUSING COUNSELING SERVICES DEFINED.— For the purposes of this section, the term 'housing counseling services' means—

"(1) housing counseling provided directly to households facing housing instability, such as eviction, default, foreclosure, loss of income, or homelessness;

"(2) education, outreach, training, technology upgrades, and other program related support; and

"(3) operational oversight funding for grantees and subgrantees that receive funds under this section."

§8102. Neighborhood Reinvestment Corporation

(a) Establishment

There is established a Neighborhood Reinvestment Corporation (hereinafter referred to as the "corporation") which shall be a body corporate and shall possess the powers, and shall be subject to the direction and limitations specified herein.

(b) Implementation and expansion of demonstration activities

The corporation shall implement and expand the demonstration activities carried out by the Urban Reinvestment Task Force.

(c) Principal office

The corporation shall maintain its principal office in the District of Columbia or at such other place the corporation may from time to time prescribe.

(d) Exemption from taxation

The corporation, including its franchise, activities, assets, and income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(Pub. L. 95–557, title VI, §603, Oct. 31, 1978, 92 Stat. 2115; Pub. L. 96–399, title III, §315(1), Oct. 8, 1980, 94 Stat. 1645.)

EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–399 struck out "National" before "Neighborhood".

§8103. Board of Directors

(a) Membership

The corporation shall be under the direction of a board of directors made up of the following members:

(1) the Chairman of the Federal Home Loan Bank Board or a member of the Federal Home Loan Bank Board to be designated by the Chairman;

(2) the Secretary of Housing and Urban Development;

(3) the Chairman of the Board of Governors of the Federal Reserve System, or a member of the Board of Governors of the Federal Reserve System to be designated by the Chairman;

(4) the Chairman of the Federal Deposit Insurance Corporation or the appointive member of the Board of Directors of the Federal Deposit Insurance Corporation if so designated by the Chairman;

(5) the Comptroller of the Currency; and

(6) the Chairman of the National Credit Union Administration or a member of the Board of the National Credit Union Administration to be designated by the Chairman.

(b) Election of chairman

The Board shall elect from among its members a chairman who shall serve for a term of two years, except that the Chairman of the Federal Home Loan Bank Board shall serve as Chairman of the Board of Directors for the first such two-year term.

(c) Terms of office

Each director of the corporation shall serve ex officio during the period he holds the office to

which he is appointed by the President.

(d) Compensation and expenses

The directors of the corporation, as full-time officers of the United States, shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as directors of the corporation.

(e) Bylaws, policies and administrative provisions

The directors of the corporation shall adopt such bylaws, policies, and administrative provisions as are necessary to the functioning of the corporation and consistent with the provisions of this subchapter.

(f) Director absences; designated representatives

A director who is necessarily absent from a meeting of the board, or of a committee of the board, may participate in such meeting through a duly designated representative who is serving, pursuant to appointment by the President of the United States, by and with the advice and consent of the Senate, in the same department, agency, corporation, or instrumentality as the absent director, or in the case of the Comptroller of the Currency, through a duly designated Deputy Comptroller.

(g) Quorum

The presence of a majority of the board members, or their representatives as provided in subsection (f), shall constitute a quorum.

(h) Application of other laws

The corporation shall be subject to the provisions of section 552 of title 5.

(i) Meetings of board

All meetings of the board of directors will be conducted in accordance with the provisions of section 552b of title 5.

(Pub. L. 95–557, title VI, §604, Oct. 31, 1978, 92 Stat. 2115; Pub. L. 97–320, title VII, §710(a), Oct. 15, 1982, 96 Stat. 1544; Pub. L. 100–242, title V, §520(a), Feb. 5, 1988, 101 Stat. 1938; Pub. L. 100–628, title X, §1085, Nov. 7, 1988, 102 Stat. 3278.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–242, §520(a)(1), inserted "or a member of the Federal Home Loan Bank Board to be designated by the Chairman" before semicolon.

Subsec. (a)(3). Pub. L. 100–242, §520(a)(2), added par. (3) and struck out former par. (3) which read as follows: "a member of the Board of Governors of the Federal Reserve System, to be designated by the Chairman of the Board of Governors of the Federal Reserve System;".

Subsec. (a)(4). Pub. L. 100–242, §520(a)(3), inserted "or the appointive member of the Board of Directors of the Federal Deposit Insurance Corporation if so designated by the Chairman" before semicolon.

Subsec. (a)(6). Pub. L. 100–628 struck out second of the two periods at end.

Pub. L. 100–242, §520(a)(4), substituted "Chairman" for "Administrator" and inserted "or a member of the Board of the National Credit Union Administration to be designated by the Chairman." before period.

1982—Subsecs. (f) to (i). Pub. L. 97–320 added subsec. (f), redesignated former subsecs. (f) to (h) as (g) to (i), respectively, and in subsec. (g) inserted ", or their representatives as provided in subsection (f),".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

§8104. Officers and employees

(a) Employment, compensation and benefits

The board shall have power to select, employ, and fix the salary and benefits of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this subchapter, without regard to the provisions of title 5 governing appointments in the competitive service, classification, and General Schedule pay rates, except that no officer, employee, attorney, or agent of the corporation may be paid salary at a rate in excess of the rate for level IV of the Executive Schedule, except that the board-appointed officers may be paid salary at a rate not to exceed level II of the Executive Schedule. The Corporation shall also apply the provisions of section 5307(a)(1), (b)(1) and (b)(2) of title 5 governing limitations on certain pay as if its employees were Federal employees receiving payments under title 5.

(b) Appointment of executive director

The directors of the corporation shall appoint an executive director who shall serve as chief executive officer of the corporation.

(c) Appointment and removal of employees by executive director

The executive director of the corporation, subject to approval by the board, may appoint and remove such employees of the corporation as he determines necessary to carry out the purposes of the corporation.

(d) Prohibition of political tests and qualifications in selection, etc., of personnel

No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this subchapter.

(e) Employee status; applicability of administrative and cost standards of Office of Management and Budget

Officers and employees of the corporation shall not be considered officers or employees of the United States, and the corporation shall not be considered a department, agency, or instrumentality of the Federal Government. The corporation shall be subject to administrative and cost standards issued by the Office of Management and Budget similar to standards applicable to non-profit grantees and educational institutions.

(Pub. L. 95–557, title VI, §605, Oct. 31, 1978, 92 Stat. 2116; Pub. L. 108–199, div. G, title III,[(1), (2)], Jan. 23, 2004, 118 Stat. 413; Pub. L. 111–117, div. A, title III, Dec. 16, 2009, 123 Stat. 3108.)

EDITORIAL NOTES

REFERENCES IN TEXT

Levels II and IV of the Executive Schedule, referred to in subsec. (a), are set out in sections 5313 and 5315, respectively, of Title 5, Government Organization and Employees.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–117 inserted ", except that the board-appointed officers may be paid salary at a rate not to exceed level II of the Executive Schedule" before period at end of first sentence.

2004—Subsec. (a). Pub. L. 108–199, title III, [(2)], added second sentence.

Pub. L. 108–199, title III, [(1)], which directed the substitution of "salary" for "compensation", was executed by making the substitution both places that "compensation" appeared to reflect the probable intent of Congress.

Pub. L. 108–199, title III, [(1)], which directed substitution of "rate for level IV of the Executive Schedule" for "highest rate provided for GS–18 of the General Schedule under section 5332 of title 5 United States Code", was executed by making the substitution for "highest rate provided for GS–18 of the General Schedule under section 5332 of title 5, United States Code" to reflect the probable intent of Congress.

§8105. Powers and duties of corporation

(a) Continuance of work of Urban Reinvestment Task Force regarding neighborhood housing services programs and preservation projects

(1) The corporation shall continue the work of the Urban Reinvestment Task Force in establishing neighborhood housing services programs in neighborhoods throughout the United States, monitoring their progress, and providing them with grants and technical assistance. For the purpose of this paragraph, a neighborhood housing services program may involve a partnership of neighborhood residents and representatives of local governmental and financial institutions, organized as a State-chartered non-profit corporation, working to bring about reinvestment in one or more neighborhoods through a program of systematic housing inspections, increased public investment, increased private lending, increased resident investment, and a revolving loan fund to make loans available at flexible rates and terms to homeowners not meeting private lending criteria.

(2) The corporation shall continue the work of the Urban Reinvestment Task Force in identifying, monitoring, evaluating, and providing grants and technical assistance to selected neighborhood preservation projects which show promise as mechanisms for reversing neighborhood decline and improving the quality of neighborhood life.

(3) The corporation shall experimentally replicate neighborhood preservation projects which have demonstrated success, and after creating reliable developmental processes, bring the new programs to neighborhoods throughout the United States which in the judgment of the corporation can benefit therefrom, by providing assistance in organizing programs, providing grants in partial support of program costs, and providing technical assistance to ongoing programs.

(4) The corporation shall continue the work of the Urban Reinvestment Task Force in supporting Neighborhood Housing Services of America, a nonprofit corporation established to provide services to local neighborhood housing services programs, with support which may include technical assistance and grants to expand its national loan purchase pool and may contract with it for services which it can perform more efficiently or effectively than the corporation.

(5) The corporation shall, in making and providing the foregoing grants and technical and other assistance, determine the reporting and management restrictions or requirements with which the recipients of such grants or other assistance must comply. In making such determinations, the corporation shall assure that recipients of grants and other assistance make available to the corporation such information as may be necessary to determine compliance with applicable Federal laws.

(b) General administrative powers

To carry out the foregoing purposes and engage in the foregoing activities, the corporation is authorized—

(1) to adopt, alter, and use a corporate seal;

(2) to have succession until dissolved by Act of Congress;

(3) to make and perform contracts, agreements, and commitments;

(4) to sue and be sued, complain and defend, in any State, Federal, or other court;

(5) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation of consultants, without regard to any other law, except as provided in section 8107(d) of this title;

(6) to settle, adjust, and compromise, and with or without compensation or benefit to the corporation to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the corporation;

(7) to invest such funds of the corporation in such investments as the board of directors may prescribe;

(8) to acquire, take, hold, and own, and to deal with and dispose of any property; and

(9) to exercise all other powers that are necessary and proper to carry out the purposes of this subchapter.

(c) Contracting powers

(1) The corporation may contract with the Office of Neighborhood Reinvestment of the Federal home loan banks for all staff, services, facilities, and equipment now or in the future furnished by the Office of Neighborhood Reinvestment to the Urban Reinvestment Task Force, including receiving the services of the Director of the Office of Neighborhood Reinvestment as the corporation's executive director.

(2) The corporation shall have the power to award contracts and grants to—

(A) neighborhood housing services corporations and other nonprofit corporations engaged in neighborhood preservation activities; and

(B) local governmental bodies.

(3) The Secretary of Housing and Urban Development, the Federal Housing Finance Agency and the Federal home loan banks, the Board of Governors of the Federal Reserve System and the Federal Reserve banks, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, the National Credit Union Administration or any other department, agency, or other instrumentality of the Federal Government are authorized to provide funds, services and facilities, with or without reimbursement, necessary to achieve the objectives and to carry out the purposes of this subchapter.

(d) Non-profit nature of corporation

(1) The corporation shall have no power to issue any shares of stocks, or to declare or pay any dividends.

(2) No part of the income or assets of the corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) The corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(Pub. L. 95–557, title VI, §606, Oct. 31, 1978, 92 Stat. 2117; Pub. L. 96–399, title III, §315(2), Oct. 8, 1980, 94 Stat. 1645; Pub. L. 97–320, title VII, §710(b), Oct. 15, 1982, 96 Stat. 1544; Pub. L. 111–203, title III, §374, July 21, 2010, 124 Stat. 1566.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (c)(3). Pub. L. 111–203 substituted "Federal Housing Finance Agency" for "Federal Home Loan Bank Board".

1982—Subsec. (c)(3). Pub. L. 97–320 inserted "funds," after "provide".

1980—Subsec. (a)(1). Pub. L. 96–399 substituted "monitoring" for "supervising".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

§8106. Reports and audits

(a) Annual report to President and Congress

The corporation shall publish an annual report which shall be transmitted by the corporation to the President and the Congress.

(b) Annual audit of accounts

The accounts of the corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(c) Additional audits by Government Accountability Office

In addition to the annual audit, the financial transactions of the corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the Government Accountability Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(d) Audit of grantees and contractors of corporation

For any fiscal year during which Federal funds are available to finance any portion of the corporation's grants or contracts, the Government Accountability Office, in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States, may audit the grantees or contractors of the corporation.

(e) Annual financial audit

The corporation shall conduct or require each grantee or contractor to provide for an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the corporation.

(Pub. L. 95–557, title VI, §607, Oct. 31, 1978, 92 Stat. 2118; Pub. L. 104–66, title II, §2161, Dec. 21, 1995, 109 Stat. 731; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsecs. (c), (d). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1995—Subsec. (c). Pub. L. 104–66 struck out at end "The financial transactions of the corporation shall be audited by the General Accounting Office at least once during each three years."

STATUTORY NOTES AND RELATED SUBSIDIARIES

NATIONAL DEMONSTRATION PROGRAM OF MUTUAL HOUSING ASSOCIATIONS; REPORT TO CONGRESS

Pub. L. 96–399, title III, §316, Oct. 8, 1980, 94 Stat. 1645, directed submission to Congress, not later than Sept. 30, 1981, of report by Neighborhood Reinvestment Corporation, in conjunction with the National Consumer Cooperative Bank and the Secretary of Housing and Urban Development, on the findings, conclusions, and legislative recommendations reached as a result of the national demonstration program of mutual housing associations.

§8107. Appropriations

(a) Authorization

(1) There are authorized to be appropriated to the corporation to carry out this subchapter $29,476,000 for fiscal year 1993 and $30,713,992 for fiscal year 1994. Not more than 15 percent of any amount appropriated under this paragraph for any fiscal year may be used for administrative expenses.

(2) Of the amount appropriated pursuant to this subsection for any fiscal year, amounts appropriated in excess of the amount necessary to continue existing services of the Neighborhood Reinvestment Corporation in revitalizing declining neighborhoods shall be available—

(A) to expand the national neighborhood housing services network and to assist network capacity development, including expansion of rental housing resources;

(B) to expand the loan purchase capacity of the national neighborhood housing services secondary market operated by Neighborhood Housing Services of America;

(C) to make grants to provide incentives to extend low-income housing use in connection with properties subject to prepayment pursuant to the Low-Income Housing Preservation and Resident

Ownership Act of 1990 [12 U.S.C. 4101 et seq.];

(D) to increase the resources available to the national neighborhood housing services network programs for the purchase of multifamily and single-family properties owned by the Secretary of Housing and Urban Development for rehabilitation (if necessary) and sale to low- and moderate-income families; and

(E) to provide matching capital grants, operating subsidies, and technical services to mutual housing associations for the development, acquisition, and rehabilitation of multifamily and single-family properties (including properties owned by the Secretary of Housing and Urban Development) to ensure affordability by low- and moderate-income families.

(b) Availability of funds until expended

Funds appropriated pursuant to this section shall remain available until expended.

(c) Accounting and reporting of non-Federal funds

Non-Federal funds received by the corporation, and funds received by any recipient from a source other than the corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(d) Preparation of business-type budget

The corporation shall prepare annually a business-type budget which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget of the corporation as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual budget required by chapter 11 of title 31. Amendments to the annual budget program may be submitted from time to time.

(Pub. L. 95–557, title VI, §608, Oct. 31, 1978, 92 Stat. 2119; Pub. L. 96–153, title III, §307, Dec. 21, 1979, 93 Stat. 1113; Pub. L. 96–399, title III, §315(3), Oct. 8, 1980, 94 Stat. 1645; Pub. L. 97–35, title III, §314, Aug. 13, 1981, 95 Stat. 398; Pub. L. 98–181, title I [title I, §125], Nov. 30, 1983, 97 Stat. 1175; Pub. L. 98–479, title II, §203(m), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 100–242, title V, §520(b), Feb. 5, 1988, 101 Stat. 1938; Pub. L. 101–625, title IX, §917(c), Nov. 28, 1990, 104 Stat. 4398; Pub. L. 102–550, title VIII, §831, Oct. 28, 1992, 106 Stat. 3851.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Ownership Act of 1990, referred to in subsec. (a)(2)(C), probably means the Low-Income Housing Preservation and Resident Homeownership Act of 1990, title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, which is classified principally to chapter 42 (§4101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550, §831(a), amended first sentence generally, substituting present provisions for provisions authorizing appropriations of $35,000,000 for fiscal year 1991 and $36,500,000 for fiscal year 1992.

Subsec. (a)(2). Pub. L. 102–550, §831(b), substituted "any fiscal year" for "each of the fiscal years 1991 and 1992" in introductory provisions.

1990—Subsec. (a). Pub. L. 101–625 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There are authorized to be appropriated to the corporation to carry out this subchapter $19,000,000 for fiscal year 1988, and $19,000,000 for fiscal year 1989."

1988—Subsec. (a). Pub. L. 100–242 amended subsec. (a) generally, substituting appropriations authorization of $19,000,000 for fiscal years 1988 and 1989 for prior authorizations not to exceed $16,512,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

1984—Subsec. (d). Pub. L. 98–479 substituted "chapter 11 of title 31" for "the Budget and Accounting Act, 1921".

1983—Subsec. (a). Pub. L. 98–181 substituted appropriations authorization not in excess of $16,512,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985 for prior authorization not to exceed $12,500,000, $12,000,000, $13,426,000, and $14,950,000 for fiscal years 1979, 1980, 1981, and 1982, respectively.

1981—Subsec. (a). Pub. L. 97–35 inserted authorized of appropriations for fiscal year 1982.

1980—Subsec. (a). Pub. L. 96–399 authorized appropriations of not to exceed $13,426,000 for fiscal year 1981.

1979—Subsec. (a). Pub. L. 96–153 authorized appropriation of $12,000,000 for fiscal year 1980.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EXPANSION OF NATIONAL NEIGHBORHOOD HOUSING SERVICES NETWORK

Pub. L. 101–625, title IX, §917(a), (b), Nov. 28, 1990, 104 Stat. 4397, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) protecting the existing stock of unsubsidized privately held lower income housing through the rehabilitation and revitalization of declining neighborhoods is essential to a national housing policy that seeks to increase the availability of affordable housing for low- and moderate-income families;

"(2) the Neighborhood Reinvestment Corporation, the anchor of the national neighborhood housing services network, was chartered by Congress more than 10 years ago to revitalize neighborhoods for the benefit of current residents by mobilizing public, private, and community resources at the neighborhood level;

"(3) the national neighborhood housing services network has proven its worth as a successful cost-effective program relying largely on local initiative for the specific design of local programs;

"(4) the national neighborhood housing services network has had more than 10 years of experience in revitalizing declining neighborhoods, creating housing for low- and moderate-income families, and equipping residents with skills and resources required to maintain safe and healthy communities; and

"(5) expanding upon the existing capabilities, resources, and potential of the national neighborhood housing services network is a cost-effective response to the affordable housing and neighborhood revitalization needs confronting the Nation, and is a strong preventive measure in addressing the national tragedy of homelessness.

"(b) PURPOSE.—It is the purpose of this section [amending this section] to authorize appropriations for the Neighborhood Reinvestment Corporation for fiscal years 1991 and 1992 to permit the corporation—

"(1) to carefully expand the capacities of the national neighborhood housing services network;

"(2) to begin to meet the urgent need for neighborhood housing services and mutual housing associations in neighborhoods across the Nation as the effort to preserve affordable housing for low- and moderate-income American families increases;

"(3) to increase and provide ongoing technical and capacity development assistance to neighborhood housing services and related public-private partnership-based nonprofit institutions involved in the revitalization of neighborhoods for the benefit of current residents, rehabilitation, preservation of existing housing stock, and production of additional housing opportunities for low- and moderate-income families;

"(4) to expand the loan purchase capacity of the national neighborhood housing services secondary market, operated by Neighborhood Housing Services of America, for loans made by neighborhood housing services to residents who are unable to meet conventional lending standards, and other loans for community development purposes;

"(5) to provide increased capacity development and matching grants to preserve existing privately held unsubsidized rental housing affordable to low- and moderate-income households and to create flexible strategies effective in the diverse economic and geographic environments of the Nation;

"(6) to make grants to provide incentives to extend low-income housing use in connection with properties subject to prepayment pursuant to the Low-Income Housing Preservation and Resident Ownership [Homeownership] Act of 1990 [12 U.S.C. 4101 et seq.];

"(7) to increase the resources available to neighborhood housing services network programs for the purchase of multifamily and single-family properties owned by the Secretary of Housing and Urban Development for rehabilitation (if necessary) and sale to low- and moderate-income families;

"(8) to expand the national mutual housing association demonstration by providing technical assistance

and matching grants to assist low- and moderate-income families to participate in such associations;

"(9) to increase resources available to neighborhood housing services network programs for foreclosure intervention and prevention; and

"(10) to create additional neighborhood housing services partnership organizations to serve rural communities, Native Americans, Native Hawaiians, and other communities in need."

§8108. Warnings to homeowners of foreclosure rescue scams

(a) Assistance to NRC

Notwithstanding any other provision of law, of any amounts made available for any fiscal year pursuant to section 1701x(a)(4)(F) of title 12 (as added by section 1444),[1] 10 percent shall be used only for assistance to the Neighborhood Reinvestment Corporation for activities, in consultation with servicers of residential mortgage loans, to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes such borrowers aware of the dangers of fraudulent activities associated with foreclosure.

(b) Notice

The Neighborhood Reinvestment Corporation, in consultation with servicers of residential mortgage loans, shall use the amounts provided pursuant to subsection (a) to carry out activities to inform borrowers under residential mortgage loans—

(1) that the foreclosure process is complex and can be confusing;

(2) that the borrower may be approached during the foreclosure process by persons regarding saving their home and they should use caution in any such dealings;

(3) that there are Federal Government and nonprofit agencies that may provide information about the foreclosure process, including the Department of Housing and Urban Development;

(4) that they should contact their lender immediately, contact the Department of Housing and Urban Development to find a housing counseling agency certified by the Department to assist in avoiding foreclosure, or visit the Department's website regarding tips for avoiding foreclosure; and

(5) of the telephone number of the loan servicer or successor, the telephone number of the Department of Housing and Urban Development housing counseling line, and the Uniform Resource Locators (URLs) for the Department of Housing and Urban Development Web sites for housing counseling and for tips for avoiding foreclosure.

(Pub. L. 111–203, title XIV, §1452, July 21, 2010, 124 Stat. 2177.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1444, referred to in subsec. (a), means section 1444 of Pub. L. 111–203.

CODIFICATION

Section was enacted as part of the Expand and Preserve Home Ownership Through Counseling Act and also as part of the Mortgage Reform and Anti-Predatory Lending Act and as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Neighborhood Reinvestment Corporation Act which comprises this subchapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

[1] *See References in Text note below.*

SUBCHAPTER II—NEIGHBORHOOD SELF-HELP DEVELOPMENT

§§8121 to 8124. Repealed. Pub. L. 97–35, title III, §313(a), Aug. 13, 1981, 95 Stat. 398

Section 8121, Pub. L. 95–557, title VII, §702, Oct. 31, 1978, 92 Stat. 2119, set forth congressional findings and statement of purposes for neighborhood self-help development programs.

Section 8122, Pub. L. 95–557, title VII, §703, Oct. 31, 1978, 92 Stat. 2120, defined terms applicable to subchapter.

Section 8123, Pub. L. 95–557, title VII, §704, Oct. 31, 1978, 92 Stat. 2120; Pub. L. 96–153, title I, §107(b), Dec. 21, 1979, 93 Stat. 1104, set forth provisions respecting grants and other forms of assistance.

Section 8124, Pub. L. 95–557, title VII, §705, Oct. 31, 1978, 92 Stat. 2121; Pub. L. 96–153, title I, §107(a), Dec. 21, 1979, 93 Stat. 1104; Pub. L. 96–399, title I, §115, Oct. 8, 1980, 94 Stat. 1623, related to authorization of appropriations for grants.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Sections 8121 to 8124 repealed effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

SUBCHAPTER III—LIVABLE CITIES

§8141. Congressional findings

The Congress finds and declares—

(1) that artistic, cultural, and historic resources, including urban design, constitute an integral part of a suitable living environment for the residents of the Nation's urban areas, and should be available to all residents of such areas, regardless of income;

(2) that the development or preservation of such resources is a significant and necessary factor in restoring and maintaining the vitality of the urban environment, and can serve as a catalyst for improving decaying or deteriorated urban communities and expanding economic opportunities, and for creating a sense of community identity, spirit, and pride; and

(3) that the encouragement and support of local initiatives to develop or preserve such resources, particularly in connection with federally assisted housing or community development activities or in communities with a high proportion of low-income residents, is an appropriate function of the Federal Government.

(Pub. L. 95–557, title VIII, §802, Oct. 31, 1978, 92 Stat. 2122.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

For short title of this subchapter as the "Livable Cities Act of 1978", see section 801 of Pub. L. 95–557, set out as a note under section 8101 of this title.

§8142. Statement of purpose

The primary purpose of this subchapter is to assist the efforts of States, local governments, neighborhood and other organizations to provide a more suitable living environment, expand cultural opportunities, and to the extent practicable, stimulate economic opportunities, primarily for the low and moderate income residents of communities and neighborhoods in need of conservation and revitalization, through the utilization, design or development of artistic, cultural, or historic resources.

(Pub. L. 95–557, title VIII, §803, Oct. 31, 1978, 92 Stat. 2122.)

§8143. Definitions

For the purpose of this subchapter—

(1) the terms "art" and "arts" include, but are not limited to, architecture (including preservation, restoration, or adaptive use of existing structures), landscape architecture, urban design, interior design, graphic arts, fine arts (including painting and sculpture), performing arts (including music, drama, and dance), literature, crafts, photography, communications media and film, as well as other similar activities which reflect the cultural heritage of the Nation's communities and their citizens;

(2) the term "nonprofit organization" means an organization in which no part of its net earnings inures to the benefit of any private stockholder or stockholders, individual or individuals and, if a private entity, which is not disqualified for tax exemption under section 501(c)(3) of title 26 by reason of attempting to influence legislation and does not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office; such organizations may include States and units of local government (including public agencies or special authorities thereof), regional organizations of local governments and nonprofit societies, neighborhood groups, institutions, organizations, associations or museums;

(3) the term "project" means a program or activity intended to carry out the purposes of this subchapter, including programs for neighborhood and community-based arts programs, urban design, user needs design, and the encouragement of the preservation of historic or other structures which have neighborhood or community significance;

(4) the term "Secretary" means the Secretary of Housing and Urban Development;

(5) the term "Chairman" means the Chairman of the National Endowment for the Arts;

(6) the term "Department" means the Department of Housing and Urban Development; and

(7) the term "Endowment" means the National Endowment for the Arts.

(Pub. L. 95–557, title VIII, §804, Oct. 31, 1978, 92 Stat. 2122; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

AMENDMENTS

1986—Par. (2). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

§8144. Grants to or contracts with organizations

(a) Authorization; purposes

The Secretary is authorized to make grants to, or enter into contracts with, nonprofit organizations for the purpose of enabling such organizations to undertake or support in cities, urban communities, or neighborhoods, projects which the Secretary, in consultation with the Chairman, determines will carry out the purposes of this subchapter and which—

(1) have substantial artistic, cultural, historical, or design merit,

(2) represent community or neighborhood initiatives which have a significant potential for conserving or revitalizing communities or neighborhoods, and for enhancing community or neighborhood identity and pride, and

(3) meet the criteria established jointly by the Secretary and the Chairman pursuant to this section.

(b) Establishment of criteria and procedures for evaluation and selection of projects; scope of criteria

The Secretary and the Chairman shall establish jointly criteria and procedures for evaluating and selecting projects to be assisted under this subchapter. Such criteria shall address, but need not be limited to—

(1) artistic, cultural, historical, or design quality;

(2) the degree of broadly based, active involvement of neighborhood residents, community groups, local officials, and persons with expertise in the arts with the proposed project;

(3) the degree of or the potential for utilization or stimulation of assistance or cooperation from other Federal, State, and local public and private sources, including arts organizations;

(4) the feasibility of project implementation, including the capability of the sponsor organization;

(5) the potential contribution to neighborhood revitalization and the creation of a sense of community identity and pride;

(6) the potential for stimulating neighborhood economic and community development, particularly for the benefit of persons of low and moderate income; and

(7) the potential of utilization of the project by neighborhood residents, particularly residents of low and moderate income, senior citizens, and handicapped persons.

(c) Application requirements

No assistance shall be made under this subchapter except upon application therefor submitted to the Secretary in accordance with regulations and procedures established jointly by the Secretary and the Chairman.

(d) Consultation requirements

Prior to the approval of any application for assistance under this subchapter, the Secretary shall consult with the Chairman and, in accordance with regulations and procedures established jointly by the Secretary and the Chairman, seek the recommendations of State and local officials and private citizens who have broad knowledge of, or experience or expertise in, community and economic development and revitalization, and of such officials and citizens who have broad knowledge of, or expertise in, the arts.

(e) Regulations respecting matching requirements; waiver, etc.

The Secretary, in cooperation with the Chairman, shall prescribe regulations which require that specific portions of the cost of any projects assisted under this subchapter shall be provided from sources other than funds made available under this subchapter. Such matching requirements may vary depending on the type of applicant, and the Secretary may reduce or waive such requirements solely in order to take account of the financial capacity of the applicant.

(f) Certification of application

Grants and other assistance may be made available under this subchapter only if the application contains a certification by the unit of general local government in which the project will be located that the project is consistent with and supportive of the objectives of that government for the area in which the project is located.

(g) Available funds not to supplant other public or private funds

Funds made available under this subchapter shall not be used to supplant other public or private funds.

(h) Availability of funds for administrative expenses

No more than 10 per centum of the funds appropriated for any fiscal year under section 8146 of this title shall be available for administrative expenses.

(Pub. L. 95–557, title VIII, §805, Oct. 31, 1978, 92 Stat. 2123.)

§8145. Coordination and development of program with other Federal and non-Federal programs

The Secretary shall coordinate the administration of the provisions of this subchapter in cooperation with other Federal agencies and assure that projects assisted under this subchapter are coordinated with efforts undertaken by State and local public and private entities, including arts organizations.

(Pub. L. 95–557, title VIII, §806, Oct. 31, 1978, 92 Stat. 2124.)

§8146. Authorization of appropriations

There are authorized to be appropriated for carrying out the purposes of this subchapter not to exceed $5,000,000 for fiscal year 1979, and not to exceed $5,000,000 for fiscal year 1980. Any amounts appropriated under this section shall remain available until expended.

(Pub. L. 95–557, title VIII, §807, Oct. 31, 1978, 92 Stat. 2124; Pub. L. 96–153, title I, §108, Dec. 21, 1979, 93 Stat. 1105.)

EDITORIAL NOTES

AMENDMENTS

1979—Pub. L. 96–153 reduced authorization of appropriation for fiscal year 1980 from "$10,000,000" to "$5,000,000".

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SUBCHAPTER I—GENERAL PROVISIONS

§8201. Findings and statement of purposes

(a) Findings

The Congress finds that—

(1) the United States has survived a period of energy shortage and has made significant progress toward improving energy efficiency in all sectors of the economy;

(2) effective measures must continue to be taken by the Federal Government and other users and suppliers of energy to control the rate of growth of demand for energy and the efficiency of its use;

(3) the continuation of this effort will permit the United States to become increasingly independent of the world oil market, less vulnerable to interruption of foreign oil supplies, and more able to provide energy to meet future needs; and

(4) all sectors of the economy of the United States should continue to reduce significantly the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.

(b) Statement of purposes

The purposes of this chapter are to provide for the regulation of interstate commerce, to reduce the growth in demand for energy in the United States, and to conserve nonrenewable energy resources produced in this Nation and elsewhere, without inhibiting beneficial economic growth.

(Pub. L. 95–619, title I, §102, Nov. 9, 1978, 92 Stat. 3208; Pub. L. 99–412, title I, §101, Aug. 28, 1986, 100 Stat. 932.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–412 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Congress finds that—

"(1) the United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand;

"(2) unless effective measures are promptly taken by the Federal Government and other users of energy to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world oil market, increasingly vulnerable to interruptions of foreign oil supplies, and unable to provide the energy to meet future needs; and

"(3) all sectors of our Nation's economy must begin immediately to significantly reduce the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources."

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–615, §1, Nov. 5, 1988, 102 Stat. 3185, provided that: "This Act [enacting section 5001 of Title 15, Commerce and Trade, amending sections 6361 and 8251 to 8259 of this title, omitting sections 8260 and 8261 of this title, and enacting provisions set out as a note under section 8253 of this title] may be cited as the 'Federal Energy Management Improvement Act of 1988'."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–412, §1, Aug. 28, 1986, 100 Stat. 932, provided that: "This Act [enacting sections 8227 to 8229 of this title, amending sections 8201, 8211, 8213 to 8220, and 8226 of this title, repealing sections 8281 to 8281b, 8282 to 8282b, 8283, 8283a, and 8284 of this title, and enacting provisions set out as notes under sections 8211, 8216, 8217, 8281, and 8282 of this title] may be cited as the 'Conservation Service Reform Act of 1986'."

SHORT TITLE

Pub. L. 95–619, title I, §101(a), Nov. 9, 1978, 92 Stat. 3206, provided that: "This Act [enacting this chapter, sections 1490i, 6215, 6311 to 6317, 6344a, 6371, 6371a to 6371j, 6372, 6372a to 6372i, 6373, 6873, and 7141 of this title, and sections 1723f to 1723h of Title 12, Banks and Banking, amending sections 300k–2, 300n–1, 1437c, 1471, 1474, 1483, 6202, 6211, 6233 to 6241, 6243 to 6245, 6272 to 6274, 6291 to 6299, 6303 to 6309, 6321 to 6327, 6341 to 6346, 6361, 6381, 6383, 6392, 6836, 6862, 6863, 6865, and 6872 of this title, sections 1451, 1703, 1709, 1713, 1715z–6, 1717, and 1735f–4 of Title 12, and sections 2006 and 2008 of Title 15, Commerce and Trade, repealing section 6397 of this title, and enacting provisions set out as notes under this section, sections 6321, 6344a, 6345, 6371, and 6372 of this title, section 2006 of Title 15, and section 217 of Title 23, Highways] may be cited as the 'National Energy Conservation Policy Act'."

Pub. L. 95–619, title V, §561, Nov. 9, 1978, 92 Stat. 3280, provided that: "This part [part 4 (§§561–569) of title V of Pub. L. 95–619, enacting sections 8271 to 8278 of this title] may be cited as the 'Federal Photovoltaic Utilization Act'."

SUBCHAPTER II—RESIDENTIAL ENERGY CONSERVATION

PART A—UTILITY PROGRAM

§§8211 to 8229. Omitted

EDITORIAL NOTES

CODIFICATION

Sections were omitted pursuant to section 8229 of this title, which terminated authority under this part June 30, 1989.

Section 8211, Pub. L. 95–619, title II, §210, Nov. 9, 1978, 92 Stat. 3209; Pub. L. 96–294, title V, §§541, 542(a), June 30, 1980, 94 Stat. 741; Pub. L. 99–412, title I, §102(d)(1), (h)(1), Aug. 28, 1986, 100 Stat. 933, 934, defined terms for this part.

Section 8212, Pub. L. 95–619, title II, §211, Nov. 9, 1978, 92 Stat. 3211, related to coverage of this part.

Section 8213, Pub. L. 95–619, title II, §212, Nov. 9, 1978, 92 Stat. 3211; Pub. L. 96–294, title V, §542(b), June 30, 1980, 94 Stat. 741; Pub. L. 99–412, title I, §102(c), (d)(2), (h)(2), Aug. 28, 1986, 100 Stat. 933, 934; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, related to rules of Secretary for submission and approval of plans.

Section 8214, Pub. L. 95–619, title II, §213, Nov. 9, 1978, 92 Stat. 3213; Pub. L. 96–294, title V, §§542(c), 543, 546(b), (c), June 30, 1980, 94 Stat. 742, 744; Pub. L. 99–412, title I, §102(b)(3), (h)(3), Aug. 28, 1986, 100 Stat. 933, 934, related to requirements for State residential energy conservation plans for regulated utilities.

Section 8215, Pub. L. 95–619, title II, §214, Nov. 9, 1978, 92 Stat. 3214; Pub. L. 99–412, title I, §102(h)(4), Aug. 28, 1986, 100 Stat. 934, related to plan requirements for nonregulated utilities and home heating suppliers.

Section 8216, Pub. L. 95–619, title II, §215, Nov. 9, 1978, 92 Stat. 3215; Pub. L. 96–294, title V, §544, June 30, 1980, 94 Stat. 742; Pub. L. 99–412, title I, §102(a)(1), (2)(A), (b)(1), (e), (h)(5)–(7), Aug. 28, 1986, 100 Stat. 932–934, related to utility programs.

Section 8217, Pub. L. 95–619, title II, §216, Nov. 9, 1978, 92 Stat. 3217; Pub. L. 96–294, title V, §§545, 546(a), 547, June 30, 1980, 94 Stat. 743, 744; Pub. L. 99–412, title I, §§102(h)(8), (9), 106(a)–(c), Aug. 28, 1986, 100 Stat. 934, 941, 942; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105–388, §5(c)(2), Nov. 13, 1998, 112 Stat. 3479, related to supply and installation by public utilities.

Section 8218, Pub. L. 95–619, title II, §217, Nov. 9, 1978, 92 Stat. 3219; Pub. L. 99–412, title I, §102(a)(1), (b)(2), Aug. 28, 1986, 100 Stat. 932, 933, related to home heating supplier programs.

Section 8219, Pub. L. 95–619, title II, §218, Nov. 9, 1978, 92 Stat. 3220; Pub. L. 99–412, title I, §102(g), Aug. 28, 1986, 100 Stat. 934, related to temporary programs.

Section 8220, Pub. L. 95–619, title II, §219, Nov. 9, 1978, 92 Stat. 3220; Pub. L. 99–412, title I, §102(f), Aug. 28, 1986, 100 Stat. 933, related to Federal standby authority.

Section 8221, Pub. L. 95–619, title II, §220, Nov. 9, 1978, 92 Stat. 3222; Pub. L. 96–294, title V, §§542(d), 550, June 30, 1980, 94 Stat. 742, 745, provided relationship to other laws.

Section 8222, Pub. L. 95–619, title II, §221, Nov. 9, 1978, 92 Stat. 3223, authorized promulgation of rules.

Section 8223, Pub. L. 95–619, title II, §222, Nov. 9, 1978, 92 Stat. 3223; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, related to product standards.

Section 8224, Pub. L. 95–619, title II, §223, Nov. 9, 1978, 92 Stat. 3223, authorized appropriations.

Section 8225, Pub. L. 95–619, title II, §224, Nov. 9, 1978, 92 Stat. 3223, required report on energy conservation in apartment buildings.

Section 8226, Pub. L. 95–619, title II, §225, Nov. 9, 1978, 92 Stat. 3224; Pub. L. 99–412, title I, §104(a), Aug. 28, 1986, 100 Stat. 939, provided for reports and dissemination of information.

Section 8227, Pub. L. 95–619, title II, §226, as added Pub. L. 99–412, title I, §103(a), Aug. 28, 1986, 100 Stat. 935, related to alternative State plans.

Section 8228, Pub. L. 95–619, title II, §227, as added Pub. L. 99–412, title I, §103(a), Aug. 28, 1986, 100 Stat. 937, related to waiver for regulated and nonregulated utilities.

Section 8229, Pub. L. 95–619, title II, §228, as added Pub. L. 99–412, title I, §105(a), Aug. 28, 1986, 100 Stat. 941, provided that all authority, including authority to enforce any prohibitions, under this part would terminate June 30, 1989, except that such expiration would not affect any action or proceeding based upon an act committed prior to midnight June 30, 1989, and not finally determined by such date.

PART B—MISCELLANEOUS

§8231. Grants for energy conserving improvements; establishment of standards; authorization of appropriations

(1) The Secretary of Housing and Urban Development is authorized to make grants to finance energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 1703(a) of title 12) to projects which are financed with loans under section 1701q of title 12, or which are subject to mortgages insured under section 1715l(d)(3) or section 1715z–1 of title 12. The Secretary shall make assistance available under this section on a priority basis to those projects which are in financial difficulty as a result of high energy costs. In carrying out the program authorized by this section, the Secretary shall issue regulations requiring that any grant made under this section shall be made only on the condition that the recipient of such grant shall take steps (prescribed by the Secretary) to assure that the benefits derived from such grants in terms of lower energy costs shall accrue to tenants in the form of lower rentals or to the Federal Government in the form of a lower operating subsidy if such a subsidy is being paid to such recipient.

(2) The Secretary shall establish minimum standards for energy conserving improvements to multifamily dwelling units to be assisted under this section.

(3) There are authorized to be appropriated to carry out the provisions of this section not to exceed $25,000,000.

(Pub. L. 95–619, title II, §251(b), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 105–388, §5(c)(3), Nov. 13, 1998, 112 Stat. 3479.)

EDITORIAL NOTES

AMENDMENTS

1998—Par. (1). Pub. L. 105–388 inserted closing parenthesis after "section 1703(a) of title 12" and substituted "accrue" for "accure".

§8232. Residential energy efficiency standards study

(a) General authority

The Secretary of Housing and Urban Development (hereinafter in this section referred to as the "Secretary") shall, in coordination with the Secretary of Agriculture, the Secretary of the Treasury, the Secretary of Veterans Affairs, the Secretary of Energy, and such other representatives of Federal, State, and local governments as the Secretary shall designate, conduct a study, utilizing the services of the National Institute of Building Sciences pursuant to appropriate contractual arrangements, for the purpose of determining the need for, the feasibility of, and the problems of requiring, by mandatory Federal action, that all residential dwelling units meet applicable energy efficient standards. The subjects to be examined shall include, but not be limited to, mandatory notification to purchasers, and policies to prohibit exchange or sale, of properties which do not conform to such standards.

(b) Specific factors

In conducting such study, the Secretary shall consider at least the following factors—

(1) the extent to which such requirement would protect a prospective purchaser from the uncertainty of not knowing the energy efficiency of the property he proposes to purchase;

(2) the extent to which such requirement would contribute to the Nation's energy conservation goals;

(3) the extent to which such a requirement would affect the real estate, home building, and mortgage banking industries;

(4) the sanctions which might be necessary to make such a requirement effective and the administrative impediments there might be to enforcement of such sanctions;

(5) the possible impact on sellers and purchasers as a result of the implementation of mandatory Federal actions, taking into account the experience of the Federal Government in imposing mandatory requirements concerning the purchase and sale of real property as occurred under the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and the Federal Disaster Protection Act of 1973;

(6) an analysis of the effect of such a requirement on the economy as a whole and on the Nation's security as compared to the impact on the credit and housing markets caused by such a requirement;

(7) the effect of such a requirement on availability of credit in the housing industry;

(8) the extent to which the imposition of mandatory Federal requirements would temporarily reduce the number of residential dwellings available for sale and the resulting effect of such mandatory actions on the price of those remaining dwelling units eligible for sale; and

(9) the possible uncertainty, during the period of developing the standards, as to what standards might be imposed and any resulting effect on major housing rehabilitation efforts and voluntary efforts for energy conservation.

(c) Comments and findings by Secretary of Energy

The Secretary shall incorporate into such study comments by the Secretary of Energy on the effects on the economy as a whole and on the Nation's security which may result from the requirement described in subsection (a) as compared to the impact on the credit and housing markets likely to be caused by such a requirement. In addition, the Secretary shall incorporate into such study the following findings by the Secretary of Energy:

(1) the savings in energy costs resulting from the requirement described in subsection (a) throughout the estimated remaining useful life of the existing residential buildings to which such requirement would apply; and

(2) the total cost per barrel of oil equivalent, in obtaining the energy savings likely to result from such requirement, computed for each class of existing residential buildings to which such requirement would apply.

(d) Report date

The Secretary shall report, no later than one year after November 9, 1978, to both Houses of the Congress with regard to the findings made as a result of such study along with any recommendations for legislative proposals which the Secretary determines should be enacted with respect to the subject of such study.

(Pub. L. 95–619, title II, §253, Nov. 9, 1978, 92 Stat. 3236; Pub. L. 102–54, §13(q)(12), June 13, 1991, 105 Stat. 281.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b)(5), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

The Federal Disaster Protection Act of 1973, referred to in subsec. (b)(5), probably means the Flood Disaster Protection Act of 1973, Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975, which enacted sections 4002,

4003, 4012a, 4104 to 4107, and 4128 of this title, amended sections 4001, 4013 to 4016, 4026, 4054, 4056, 4101, and 4121 of this title and sections 24 and 1709–1 of Title 12, repealed section 4021 of this title, and enacted a provision set out as a note under section 4001 of this title. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

§8233. Weatherization study

The President shall conduct a study which shall monitor the weatherization activities authorized by this Act and amendments made thereby and those weatherization activities undertaken, independently of this Act and such amendments. The President shall report to the Congress within one year from November 9, 1978, and annually thereafter, concerning—

(1) the extent of progress being made through weatherization activities toward the achievement of national energy conservation goals;

(2) adequacy and costs of materials necessary for weatherization activities; and

(3) the need for and desirability of modifying weatherization activities authorized by this Act, and amendments made thereby and of extending such activities to a broader range of income groups than are being assisted under this Act and such amendments.

(Pub. L. 95–619, title II, §254, Nov. 9, 1978, 92 Stat. 3237.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to the requirement that the President report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 40 of House Document No. 103–7.

PART C—RESIDENTIAL ENERGY EFFICIENCY PROGRAMS

§8235. "Residential building" defined

As used in this part, the term "residential building" means any building used as a residence which is not a new building to which final standards under sections 6833(a) and 6834 [1] of this title apply and which has a system for heating, cooling, or both.

(Pub. L. 95–619, title II, §261, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 746.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6834 of this title, referred to in text, was repealed by Pub. L. 97–35, title X, §1041(b), Aug. 13,

1981, 95 Stat. 621.

STATUTORY NOTES AND RELATED SUBSIDIARIES

STATEMENT OF PURPOSE

Pub. L. 96–294, title V, §561, June 30, 1980, 94 Stat. 746, provided that: "It is the purpose of this subtitle [subtitle C (§§561–563) of title V of Pub. L. 96–294, enacting this part]—

"(1) to establish a program under which the Secretary of Energy may provide assistance to State and local governments to encourage up to four demonstration programs that make energy conservation measures available without charge to residential property owners and tenants under a plan designed to maximize the energy savings available in residential buildings in designated areas; and

"(2) to demonstrate through such program prototype residential energy efficiency plans under which State and local governments, State regulatory authorities, and public utilities may participate in a cooperative manner with public or private entities to install energy conservation measures in the greatest possible number of residential buildings within their respective jurisdictions or service areas."

[1] *See References in Text note below.*

§8235a. Approval of plans for prototype residential energy efficiency programs and provision of financial assistance for such programs

(a) Plan approval

The Secretary may approve any plan developed by a State or local government, for the establishment of a prototype residential energy efficiency program, which is designed to demonstrate the feasibility, economics, and energy conserving potential of such program, if an application for such plan is submitted pursuant to section 8235b of this title, the application is approved pursuant to section 8235c of this title, and the plan provides for—

(1) the entering into a contract by a public utility with one or more persons not under the control of, and not affiliates or subsidiaries of, such utility for the implementation of a program to encourage energy conservation, including the supply and installation of the energy conservation measures as specified in such contract in residential buildings located in the portion of the utility's service area designated by the contract, which contract includes the provisions described in subsection (b);

(2) the selection by the public utility in a fair, open, and nondiscriminatory manner of the person or persons to contract with pursuant to paragraph (1);

(3) the payment by the public utility to the person or persons contracted with under paragraph (1) of a specified price for each unit of energy saved by such utility as a result of the program during the period the contract is in effect, which price is based on the value to the utility of the energy saved;

(4) the determination, by a procedure established by the State or local government developing the plan, of the amount of energy saved by a public utility as a result of the program carried out under the plan, which procedure is described in the contract;

(5) in the case of a regulated public utility, the approval in writing by the State regulatory authority exercising ratemaking authority over such utility of the contract described in paragraph (1), the manner of selection described in paragraph (2), the payment described in paragraph (3), and the procedure described in paragraph (4); and

(6) the enforcement of the provisions of the contract, entered into pursuant to paragraph (1), which are required to be included pursuant to subsection (b).

(b) Contract requirements

Any contract entered into by a public utility under subsection (a)(1) shall require any person or persons entering into such contract with a public utility to offer to the owner or occupant of each residential building in the portion of the utility's service area designated in the contract, without

charge—

(1) an inspection of such building to determine and inform such owner or occupant of—

(A) the energy conservation measures which will be supplied and installed in such residential building pursuant to paragraph (2);

(B) the savings in energy costs that are likely to result from the installation of such energy conservation measures;

(C) suggestions (including suggestions developed by the Secretary) of energy conservation techniques, including adjustments in energy use patterns and modifications in household activities, which can be used by the owner or occupant of the building to save energy and which do not require the installation of energy conservation measures; and

(D) the savings in energy costs that are likely to result from the adoption of such suggested energy conservation techniques;

(2) the supply and installation, with the approval of the owner of the residential building, in such building in a timely manner of the energy conservation measures which are as specified in the contract and which the owner or occupant was informed (pursuant to the inspection under paragraph (1)) would be supplied and installed in such building; and

(3) a written warranty that at a minimum any defect in materials, manufacture, design, or installation of any energy conservation measures supplied and installed pursuant to paragraph (2), found not later than one year after the date of installation, will be remedied without charge and within a reasonable period of time.

(c) Provision of financial assistance

The Secretary may provide financial assistance to any State or local government to carry out any plan for the establishment of a prototype residential energy efficiency program if the plan is approved under subsection (a).

(d) Limitation

The Secretary may approve under subsection (a) not more than 4 plans for the establishment of prototype residential energy efficiency programs.

(Pub. L. 95–619, title II, §262, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 746.)

§8235b. Applications for approval of plans for prototype residential energy efficiency programs

Each application for the approval of a plan under section 8235a(a) of this title for the establishment of a prototype residential energy efficiency program shall be submitted by a State or local government and shall include, at least—

(1) a description of the plan, including the provisions of the plan specified in section 8235a(a) of this title and a description of the portion of the service area of the public utility proposing to enter into a contract under section 8235a(a)(1) of this title which is designated under the contract;

(2) a description of the manner in which the provisions of the plan specified in section 8235a(a) of this title are to be met;

(3) a description of the contract to be entered into pursuant to section 8235a(a)(1) of this title and the manner in which the requirements of the contract contained in section 8235a(b) of this title are to be met;

(4) the record of the public hearing conducted pursuant to section 8235c(a)(2) of this title; and

(5) any other information determined by the Secretary to be necessary to carry out this part.

(Pub. L. 95–619, title II, §263, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 748.)

§8235c. Approval of applications for plans for prototype residential energy

efficiency programs

(a) Approval requirements

The Secretary may approve an application submitted under section 8235b of this title for a plan establishing a prototype residential energy efficiency program only if—

(1) the application is approved in writing—

(A) by the public utility which is to enter into the contract under the plan;

(B) by the State regulatory authority having ratemaking authority over such public utility, in the case of a regulated utility; and

(C) by the Governor (or any State agency specifically authorized under State law to approve such plans) of the State whose government is submitting the application (if the application is submitted by a State government) or of the State in which the local government is located (if the application is submitted by a local government); and

(2) the application has been published, a public hearing on the application has been conducted, after notice to the public, at which representatives of the public utility which is to enter into the contract under the plan, persons engaged in the supply or installation of residential energy conservation measures, and members of the public (including ratepayers of such public utility and other interested individuals) had an opportunity to provide comment on the application, and any amendments to the application, which may be made to take into account the proceedings of the hearing, are made.

(b) Factors in approving applications

The Secretary shall take into consideration in approving an application under subsection (a) for a plan establishing a prototype residential energy efficiency program—

(1) the potential for energy savings from the demonstration of the program;

(2) the likelihood that the value of the energy saved by public utilities under the program will be sufficient to cover the estimated cost of the energy conservation measures to be supplied and installed under the program;

(3) the anticipated effects of the program on competition in the portion of the service area of the public utility designated in the contract entered into under the plan; and

(4) such other factors as the Secretary determines are appropriate.

(Pub. L. 95–619, title II, §264, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 748.)

§8235d. Rules and regulations

(a) Proposed rules and regulations

The Secretary shall issue proposed rules and regulations to carry out this part not later than 120 days after June 30, 1980.

(b) Final rules and regulations

The Secretary shall issue final rules and regulations to carry out this part not later than 90 days after the issuance of proposed rules and regulations under subsection (a).

(Pub. L. 95–619, title II, §265, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 749.)

§8235e. Authority of Federal Energy Regulatory Commission to exempt application of certain laws

The Federal Energy Regulatory Commission may exempt from any provisions in sections 4, 5, and 7 of the Natural Gas Act (15 U.S.C. 717c, 717d, and 717f) and titles II and IV of the Natural Gas Policy Act of 1978 (15 U.S.C. 3341 through 3348 and 3391 through 3394) the sale or transportation, by any public utility, local distribution company, interstate or intrastate pipeline, or any other person,

of any natural gas which is determined (in the case of a regulated utility, company, pipeline, or person) by the State regulatory authority having rate-making authority over such utility, company, pipeline, or person, or (in the case of a nonregulated utility, company, pipeline, or person) by such utility, company, pipeline, or person, to have been conserved because of a prototype residential energy efficiency program which is established under a plan approved under section 8235a(a) of this title, if the Commission determines that such exemption is necessary to make feasible the demonstration of such prototype residential energy efficiency program.

(Pub. L. 95–619, title II, §266, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 749; amended Pub. L. 105–388, §5(c)(4), Nov. 13, 1998, 112 Stat. 3479.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350. Title II of the Natural Gas Policy Act of 1978 was classified generally to subchapter II (§3341 et seq.) of chapter 60 of Title 15, Commerce and Trade, prior to its repeal by Pub. L. 100–42, §2(a), May 21, 1987, 101 Stat. 314. Title IV of the Natural Gas Policy Act of 1978 is classified generally to subchapter IV (§3391 et seq.) of chapter 60 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1998—Pub. L. 105–388 substituted "(15 U.S.C. 717c" for "(17 U.S.C. 717c".

§8235f. Application of other laws

(a) Lack of immunity

No provision contained in this part—

(1) shall restrict any agency of the United States or any State from exercising its powers under any law to prevent unfair methods of competition and unfair or deceptive acts or practices;

(2) shall provide to any person any immunity from civil or criminal liability;

(3) shall create any defenses to actions brought under the antitrust laws; or

(4) shall modify or abridge any private right of action under the antitrust laws.

(b) Utility programs under part A

Any public utility entering into a contract under a plan for the establishment of a prototype residential energy efficiency program approved under section 8235a(a) of this title shall not be required to carry out, with respect to any residential building located in the portion of the utility's service area designated in the contract, the actions required to be contained in such utility's program by subsections (a) and (b) of section 8216 [1] of this title, if the contract requires such actions (or equivalent actions as determined by the Secretary) to be taken.

(c) "Antitrust laws" defined

For purposes of this section, the term "antitrust laws" means—

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and

(5) sections 2, 3, and 4 of the Act entitled "An Act to amend section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes" approved June 19, 1936 (15 U.S.C. 21a, 13a, and 13b, commonly known as the Robinson-Patman Antidiscrimination Act).

(Pub. L. 95–619, title II, §267, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 749.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 8216 of this title, referred to in subsec. (b), was omitted from the Code pursuant to section 8229 of this title, which terminated authority under that section June 30, 1989.

The Sherman Act (15 U.S.C. 1 et seq.), referred to in subsec. (c)(1), is act July 2, 1890, ch. 647, 26 Stat. 209, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act (15 U.S.C. 12 et seq.), referred to in subsec. (c)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in subsec. (c)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

[1] See References in Text note below.

§8235g. Records and reports

(a) Records

Each State and local government submitting any application for a plan which is approved under section 8235a(a) of this title, and each public utility and person or persons entering into a contract under such a plan, shall keep such records and make such reports as the Secretary may require. The Secretary and the Comptroller General of the United States shall have access, at reasonable times and under reasonable conditions, to any books, documents, papers, records, and reports of each such State and local government, utility, and person or persons which the Secretary determines, in consultation with the Comptroller General of the United States, are pertinent to this part.

(b) Reports

The Secretary shall make an annual report to the President on the activities carried out under this part which shall be submitted to the Congress with the annual report on the activities of the Department of Energy required by section 7267 of this title and which shall contain—

(1) an estimate of the total amount of energy saved as a result of the activities carried out under this part;

(2) an estimate of the annual savings in energy anticipated as a result of each prototype residential energy efficiency program established under a plan approved under section 8235a(a) of this title;

(3) an analysis, developed in consultation with the Federal Trade Commission and the Department of Justice, of the impact on competition of each prototype residential energy efficiency program established under a plan approved under section 8235a(a) of this title; and

(4) if the Secretary determines that it is appropriate, an analysis of the impact of expanding the approval of plans under section 8235a(a) of this title to establish prototype residential energy efficiency programs, and the provision of financial assistance to such programs, on a national basis and an assessment of the alternative methods by which such an expansion could be accomplished.

(Pub. L. 95–619, title II, §268, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 750.)

§8235h. Revoking approval of plans and terminating financial assistance

The Secretary shall revoke the approval of any plan under section 8235a(a) of this title for the establishment of a prototype residential energy efficiency program, and shall terminate the provision

of financial assistance under section 8235a(c) of this title to carry out such plan, if the Secretary determines, in consultation with the Federal Trade Commission and after notice and the opportunity for a hearing, that carrying out such plan—

(1) causes unfair methods of competition;

(2) has a substantial adverse effect on competition in the portion of the service area of the public utility designated by the contract entered into under the plan; or

(3) provides a supplier or contractor of energy conservation measures with an unreasonably large share of the contracts for the supply or installation of such measures under such plan in the service area of the public utility designated by the contract entered into under such plan.

(Pub. L. 95–619, title II, §269, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 751.)

§8235i. Authorization of appropriations

(a) Authorization of appropriations

There is authorized to be appropriated to carry out this part—

(1) the sum of $10,000,000 for the fiscal year ending on September 30, 1981; and

(2) the sum equal to $10,000,000 minus the amount appropriated for the fiscal year ending on September 30, 1981, under the authorization contained in this section, for the fiscal year ending on September 30, 1982.

(b) Availability

Any funds appropriated under the authorization contained in this section shall remain available until expended.

(Pub. L. 95–619, title II, §270, as added Pub. L. 96–294, title V, §562, June 30, 1980, 94 Stat. 751.)

PART D—RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

§8236. Voluntary rating guidelines

(a) In general

Not later than 18 months after October 24, 1992, the Secretary, in consultation with the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, representatives of existing home energy rating programs, and other appropriate persons, shall, by rule, issue voluntary guidelines that may be used by State and local governments, utilities, builders, real estate agents, lenders, agencies in mortgage markets, and others, to enable and encourage the assignment of energy efficiency ratings to residential buildings.

(b) Contents of guidelines

The voluntary guidelines issued under subsection (a) shall—

(1) encourage uniformity with regard to systems for rating the annual energy efficiency of residential buildings;

(2) establish protocols and procedures for—

(A) certification of the technical accuracy of building energy analysis tools used to determine energy efficiency ratings;

(B) training of personnel conducting energy efficiency ratings;

(C) data collection and reporting;

(D) quality control; and

(E) monitoring and evaluation;

(3) encourage consistency with, and support for, the uniform plan for Federal energy efficient

mortgages, including that developed under section 946 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12712 note) and pursuant to sections 105 and 106 of the Energy Policy Act of 1992;

(4) provide that rating systems take into account local climate conditions and construction practices, solar energy collected on-site, and the benefits of peak load shifting construction practices, and not discriminate among fuel types; and

(5) establish procedures to ensure that residential buildings can receive an energy efficiency rating at the time of sale and that such rating is communicated to potential buyers.

(Pub. L. 95–619, title II, §271, as added Pub. L. 102–486, title I, §102(a), Oct. 24, 1992, 106 Stat. 2787.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 946 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (b)(3), is section 946 of Pub. L. 101–625, which is set out as a note under section 12712 of this title.

Sections 105 and 106 of the Energy Policy Act of 1992, referred to in subsec. (b)(3), are sections 105 and 106 of Pub. L. 102–486. Section 105 amended section 12704 of this title and provisions set out as a note under section 12712 of this title. Section 106 is classified to section 1701z–16 of Title 12, Banks and Banking.

§8236a. Technical assistance

Not later than 2 years after October 24, 1992, the Secretary shall establish a program to provide technical assistance to State and local organizations to encourage the adoption of and use of residential energy efficiency rating systems consistent with the voluntary guidelines issued under section 8236 of this title.

(Pub. L. 95–619, title II, §272, as added Pub. L. 102–486, title I, §102(a), Oct. 24, 1992, 106 Stat. 2788.)

§8236b. Report

Not later than 3 years after October 24, 1992, the Secretary shall transmit to the President and the Congress a final report containing—

(1) a description of actions taken by the Secretary and other Federal agencies to implement this part;

(2) a description of the action taken by States, local governments, and other organizations to implement the voluntary guidelines issued under section 8236 of this title and any problems encountered in implementing such guidelines; and

(3) recommendations on the feasibility of requiring, as a prerequisite to receiving federally assisted, guaranteed, or insured mortgages, the achievement of a minimum energy efficiency rating.

(Pub. L. 95–619, title II, §273, as added Pub. L. 102–486, title I, §102(a), Oct. 24, 1992, 106 Stat. 2788.)

SUBCHAPTER III—FEDERAL ENERGY INITIATIVE

PART A—DEMONSTRATION OF SOLAR HEATING AND COOLING IN

FEDERAL BUILDINGS

§8241. Definitions

As used in the part—

(1) The term "Federal agency" means—

(A) an Executive agency as defined in section 105 of title 5; and

(B) each entity specified in subparagraphs (B) through (I) of subsection (1) of section 5721 of title 5.

(2) The term "Federal building" means any building or other structure owned in whole or part by the United States or any Federal agency, including any such structure occupied by a Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

(3) The term "solar heating" means, with respect to any Federal building, the use of solar energy to meet all or part of the heating needs of such building (including hot water), or all or part of the needs of such building for hot water.

(4) The term "solar heating and cooling" means the use of solar energy to provide all or part of the heating needs of a Federal building (including hot water) and all or part of the cooling needs of such building, or all or part of the needs of such building for hot water.

(5) The term "solar energy equipment" means equipment for solar heating or solar heating and cooling.

(6) The term "Secretary" means the Secretary of Energy.

(Pub. L. 95–619, title V, §521, Nov. 9, 1978, 92 Stat. 3275; Pub. L. 110–161, div. H, title I, §1303(b), Dec. 26, 2007, 121 Stat. 2242.)

EDITORIAL NOTES

AMENDMENTS

2007—Par. (1)(B). Pub. L. 110–161 substituted "subparagraphs (B) through (I)" for "paragraphs (B) through (H)".

§8242. Federal solar program

The Secretary, in consultation with the Administrator of the General Services Administration, shall develop and carry out a program to demonstrate the application to buildings of solar heating and solar heating and cooling technology in Federal buildings.

(Pub. L. 95–619, title V, §522, Nov. 9, 1978, 92 Stat. 3276.)

§8243. Duties of Secretary

(a) Duties

In exercising the authority provided by section 8242 of this title, the Secretary, in consultation with the Administrator of the General Services Administration, shall—

(1) promulgate, by rule—

(A) requirements under which Federal agencies shall submit proposals for the installation of solar energy equipment in Federal buildings which are under their control and which are selected in accordance with procedures set forth in such rule, and

(B) criteria by which proposals under subparagraph (A) will be evaluated, which criteria shall provide for the inclusion in each proposal of a complete analysis of the present value, as determined by the Secretary, of the costs and benefits of the proposal to the Federal agency, and

for the demonstration, to the maximum extent practicable, of innovative and diverse applications to a variety of types of Federal buildings of solar heating and solar heating and cooling technology, and for location of demonstration projects in areas where a private sector market for solar energy equipment is likely to develop;

(2) evaluate in writing each such proposal pursuant to the criteria promulgated pursuant to paragraph (1)(B), and make such evaluation available to the agency and, upon request, to any person;

(3) provide technical and financial assistance by interagency agreement for implementing a proposal evaluated under paragraph (2) and approved by the Secretary; except that such assistance shall be limited to the design, acquisition, construction, and installation of solar energy equipment;

(4) provide, by rule, that Federal agencies report to the Secretary periodically such information as they acquire respecting maintenance and operation of solar energy equipment for which assistance is provided under paragraph (3);

(5) require that a life cycle cost analysis in accordance with part B be done for any Federal building for which a proposal is submitted under this section and the results of such analysis be included in such proposal; and

(6) if solar energy equipment for which assistance is to be provided under paragraph (3) is not the minimum life-cycle cost alternative, require the Federal agency involved to submit a report to the Secretary stating the amount by which the life-cycle cost of such equipment exceeds the minimum life-cycle cost.

(b) Contents of proposals

Proposals under paragraph (1)(A) of subsection (a) shall include a list of the specific Federal buildings proposed to be provided with solar energy equipment, the funds necessary for the acquisition and installation of such equipment, the proposed implementation schedule, maintenance costs, the estimated savings in fossil fuels and electricity, the estimated payback time, and such other information as may be required by the Secretary.

(c) Initial submission of proposals

Under the requirements established under subsection (a)(1)(A), initial proposals for the installation of solar energy equipment in Federal buildings selected under subsection (a)(1)(A) shall be submitted not later than 180 days after the date of promulgation of the rule under subsection (a)(1).

(d) Program to disseminate information to Federal procurement and loan officers

In order to more widely disseminate information about the program under this part and under part B and the benefits of renewable energy and energy efficiency technology, the Secretary shall establish a program which includes site visits and technical briefings, to disseminate such information to Federal procurement officers and Federal loan officers. The Secretary shall utilize available funds for the program under this subsection.

(Pub. L. 95–619, title V, §523, Nov. 9, 1978, 92 Stat. 3276; Pub. L. 101–218, §8(a), Dec. 11, 1989, 103 Stat. 1868.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (d). Pub. L. 101–218 added subsec. (d).

§8244. Authorization of appropriations

There are authorized to be appropriated to the Secretary through fiscal year ending September 30, 1980, to carry out the purposes of this part not to exceed $100,000,000. Funds so appropriated may be transferred by the Secretary to any Federal agency to the extent necessary to carry out the purposes of section 8243(a)(3) of this title.

(Pub. L. 95–619, title V, §524, Nov. 9, 1978, 92 Stat. 3277.)

PART B—FEDERAL ENERGY MANAGEMENT

§8251. Findings

The Congress finds that—

(1) the Federal Government is the largest single energy consumer in the Nation;

(2) the cost of meeting the Federal Government's energy requirement is substantial;

(3) there are significant opportunities in the Federal Government to conserve and make more efficient use of energy through improved operations and maintenance, the use of new energy efficient technologies, and the application and achievement of energy efficient design and construction;

(4) Federal energy conservation measures can be financed at little or no cost to the Federal Government by using private investment capital made available through contracts authorized by subchapter VII of this chapter; and

(5) an increase in energy efficiency by the Federal Government would benefit the Nation by reducing the cost of government, reducing national dependence on foreign energy resources, and demonstrating the benefits of greater energy efficiency to the Nation.

(Pub. L. 95–619, title V, §541, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3185.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–615 amended Congressional findings provisions generally.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 13123

Ex. Ord. No. 13123, June 3, 1999, 64 F.R. 30851, which directed the Federal Government to reduce greenhouse gas emissions, energy consumption, and water usage and required agencies to develop an annual implementation plan, to request funding necessary to achieve the goals of this order, and to make annual progress reports to the President, was revoked by Ex. Ord. No. 13423, §11(a)(ii), Jan. 24, 2007, 72 F.R. 3923, formerly set out in a note under section 4321 of this title.

EX. ORD. NO. 13221. ENERGY EFFICIENT STANDBY POWER DEVICES

Ex. Ord. No. 13221, July 31, 2001, 66 F.R. 40571, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95–619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq*.), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102–486, 106 Stat. 2776), and section 301 of title 3, United States Code, and in order to further encourage energy conservation by the Federal Government, it is hereby ordered as follows:

SECTION 1. *Energy Efficient Standby Power Devices*. Each agency, when it purchases commercially available, off-the-shelf products that use external standby power devices, or that contain an internal standby power function, shall purchase products that use no more than one watt in their standby power consuming mode. If such products are not available, agencies shall purchase products with the lowest standby power wattage while in their standby power consuming mode. Agencies shall adhere to these requirements, when life-cycle cost-effective and practicable and where the relevant product's utility and performance are not compromised as a result. By December 31, 2001, and on an annual basis thereafter, the Department of Energy,

in consultation with the Department of Defense and the General Services Administration, shall compile a preliminary list of products to be subject to these requirements. The Department of Energy shall finalize the list and may remove products deemed inappropriate for listing.

SEC. 2. *Independent Agencies*. Independent agencies are encouraged to comply with the provisions of this order.

SEC. 3. *Definition*. "Agency" means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered by the Department of Defense.

GEORGE W. BUSH.

§8252. Purpose

It is the purpose of this part to promote the conservation and the efficient use of energy and water, and the use of renewable energy sources, by the Federal Government.

(Pub. L. 95–619, title V, §542, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3185; Pub. L. 102–486, title I, §152(a), Oct. 24, 1992, 106 Stat. 2844.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–486 inserted "and water, and the use of renewable energy sources," after "use of energy".

1988—Pub. L. 100–615 amended section generally, substituting statement of purpose for policy statement declaring it to be United States policy for Federal Government to have the opportunity and responsibility, with participation of industry, to further develop, demonstrate, and promote use of energy conservation, solar heating and cooling, and other renewable energy sources in Federal buildings.

§8253. Energy and water management requirements

(a) Energy performance requirement for Federal buildings

(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2006 through 2015 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2003, by the percentage specified in the following table:

Fiscal Year	Percentage Reduction
2006	2
2007	4
2008	9
2009	12
2010	15
2011	18
2012	21
2013	24
2014	27
2015	30.

(2) An agency may exclude from the requirements of paragraph (1) any building, and the

associated energy consumption and gross square footage, in which energy intensive activities are carried out. Each agency shall identify and list in each report made under section 8258(a) of this title the buildings designated by it for such exclusion.

(3) Not later than December 31, 2014, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2016 through 2025.

(b) Energy and water management requirement for Federal agencies

(1) IN GENERAL.—Each agency shall—

(A) not later than October 1, 2022, to the maximum extent practicable, begin installing in Federal buildings owned by the United States all energy and water conservation measures determined by the Secretary to be life cycle cost-effective (as defined in subsection (f)(1)); and

(B) complete the installation described in subparagraph (A) as soon as practicable after the date referred to in that subparagraph.

(2) EXPLANATION OF NONCOMPLIANCE.—

(A) IN GENERAL.—If an agency fails to comply with paragraph (1), the agency shall submit to the Secretary, using guidelines developed by the Secretary, an explanation of the reasons for the failure.

(B) REPORT TO CONGRESS.—Not later than January 1, 2022, and every 2 years thereafter, the Secretary shall submit to Congress a report that describes any noncompliance by an agency with the requirements of paragraph (1).

(3) This subsection shall not apply to an agency's facilities that generate or transmit electric energy or to the uranium enrichment facilities operated by the Department of Energy.

(4) An agency may participate in the Environmental Protection Agency's "Green Lights" program for purposes of receiving technical assistance in complying with the requirements of this section.

(c) Exclusions

(1)(A) The head of each agency may exclude, from the energy or water performance requirement for a fiscal year established under subsection (a) and the energy or water management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—

(i) compliance with those requirements would be impracticable;

(ii) the agency has completed and submitted all federally required energy or water management reports;

(iii) the agency has achieved compliance with the energy or water efficiency requirements of this chapter, the Energy Policy Act of 1992, Executive orders, and other Federal law; and

(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

(i) the energy or water intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.

(2) Each agency shall identify and list, in each report made under section 8258(a) of this title, the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the standards for exclusion set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse the exclusion. In the case of any such reversal, the agency shall comply with the requirements of subsections (a) and (b)(1) for the building concerned.

(3) Not later than 180 days after August 8, 2005, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).

(d) Implementation steps

The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section, each agency shall—

(1) prepare and submit to the Secretary, not later than December 31, 1993, a plan describing how the agency intends to meet such requirements, including how it will—

(A) designate personnel primarily responsible for achieving such requirements;

(B) identify high priority projects through calculation of payback periods;

(C) take maximum advantage of contracts authorized under subchapter VII of this chapter, of financial incentives and other services provided by utilities for efficiency investment, and of other forms of financing to reduce the direct costs to the Government; and

(D) otherwise implement this part;

(2) perform energy and water surveys of its Federal buildings to the extent necessary and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 8258b of this title;

(3) using such surveys, determine the cost and payback period of energy and water conservation measures likely to achieve the requirements of this section;

(4) install energy and water conservation measures that will achieve the requirements of this section through the methods and procedures established pursuant to section 8254 of this title; and

(5) ensure that the operation and maintenance procedures applied under this section are continued.

(e) Metering of energy and water use

(1) Deadline

By October 1, 2022, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and water and reduction in the cost of electricity and water used in such buildings, be metered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity and water in the Federal buildings of the agency. Not later than October 1, 2016, each agency shall provide for equivalent metering of natural gas and steam, in accordance with guidelines established by the Secretary under paragraph (2). Such data shall be incorporated into existing Federal energy and water tracking systems and made available to Federal facility managers.

(2) Guidelines

(A) In general

Not later than 180 days after August 8, 2005, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, energy efficiency advocacy organizations, national laboratories, universities, Federal facility managers, and any other person the Secretary deems necessary, shall establish guidelines for agencies to carry out paragraph (1).

(B) Requirements for guidelines

The guidelines shall—

(i) take into consideration—

(I) the cost of metering and the reduced cost of operation and maintenance expected to result from metering;

(II) the extent to which metering is expected to result in increased potential for energy and water management, increased potential for energy and water savings and energy and water efficiency improvement, and cost and energy and water savings due to utility contract aggregation; and

(III) the measurement and verification protocols of the Department of Energy;

(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy and water use;

(iii) establish priorities for types and locations of buildings to be metered based on cost-effectiveness and a schedule of one or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy and water use of a Federal building, industrial process, or structure.

(C) Update

Not later than 180 days after December 27, 2020, the Secretary shall update the guidelines established under subparagraph (A) to take into account water efficiency requirements under this section.

(3) Plan

Not later than 180 days after the date on which guidelines are updated under paragraph (2)(C), in a report submitted by the agency under section 8258(a) of this title, each agency shall submit to the Secretary a plan describing the manner in which the agency will implement the requirements of paragraph (1), including—

(A) how the agency will designate personnel primarily responsible for achieving the requirements; and

(B) a demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices (as those terms are used in paragraph (1)), are not practicable.

(4) Best practices report

(A) In general

Not later than 180 days after December 27, 2020, the Secretary of Energy, in consultation with the Secretary of Defense and the Administrator of General Services, shall develop, and issue a report on, best practices for the use of advanced metering of energy and water use in Federal facilities, buildings, and equipment by Federal agencies.

(B) Components

The report shall include, at a minimum—

(i) summaries and analysis of the reports by agencies under paragraph (3);

(ii) recommendations on standard requirements or guidelines for automated energy and water management systems, including—

(I) potential common communications standards to allow data sharing and reporting;

(II) means of facilitating continuous commissioning of buildings and evidence-based maintenance of buildings and building systems; and

(III) standards for sufficient levels of security and protection against cyber threats to ensure systems cannot be controlled by unauthorized persons; and

(iii) an analysis of—

(I) the types of advanced metering and monitoring systems being piloted, tested, or installed in Federal buildings; and

(II) existing techniques used within the private sector or other non-Federal government buildings.

(f) Use of energy and water efficiency measures in Federal buildings

(1) Definitions

In this subsection:

(A) Commissioning

The term "commissioning", with respect to a facility, means a systematic process—

(i) of ensuring, using appropriate verification and documentation, during the period beginning on the initial day of the design phase of the facility and ending not earlier than 1 year after the date of completion of construction of the facility, that all facility systems perform interactively in accordance with—

(I) the design documentation and intent of the facility; and

(II) the operational needs of the owner of the facility, including preparation of operation personnel; and

(ii) the primary goal of which is to ensure fully functional systems that can be properly operated and maintained during the useful life of the facility.

(B) Energy manager

(i) In general

The term "energy manager", with respect to a facility, means the individual who is responsible for—

(I) ensuring compliance with this subsection by the facility; and

(II) reducing energy use at the facility.

(ii) Inclusions

The term "energy manager" may include—

(I) a contractor of a facility;

(II) a part-time employee of a facility; and

(III) an individual who is responsible for multiple facilities.

(C) Facility

(i) In general

The term "facility" means any building, installation, structure, or other property (including any applicable fixtures) owned or operated by, or constructed or manufactured and leased to, the Federal Government.

(ii) Inclusions

The term "facility" includes—

(I) a group of facilities at a single location or multiple locations managed as an integrated operation; and

(II) contractor-operated facilities owned by the Federal Government.

(iii) Exclusions

The term "facility" does not include any land or site for which the cost of utilities is not paid by the Federal Government.

(D) Life cycle cost-effective

The term "life cycle cost-effective", with respect to a measure, means a measure, the estimated savings of which exceed the estimated costs over the lifespan of the measure, as determined in accordance with section 8254 of this title.

(E) Ongoing commissioning

The term "ongoing commissioning" means an ongoing process of commissioning using monitored data, the primary goal of which is to ensure continuous optimum performance of a facility, in accordance with design or operating needs, over the useful life of the facility, while meeting facility occupancy requirements.

(F) Payback period

(i) In general

Subject to clause (ii), the term "payback period", with respect to a measure, means a value equal to the quotient obtained by dividing—

(I) the estimated initial implementation cost of the measure (other than financing costs); by

(II) the annual cost savings resulting from the measure, including—

(aa) net savings in estimated energy and water costs; and

(bb) operations, maintenance, repair, replacement, and other direct costs.

(ii) Modifications and exceptions

The Secretary, in guidelines issued pursuant to paragraph (6), may make such modifications and provide such exceptions to the calculation of the payback period of a measure as the Secretary determines to be appropriate to achieve the purposes of this chapter.

(G) Recommissioning

The term "recommissioning" means a process—

(i) of commissioning a facility or system beyond the project development and warranty phases of the facility or system; and

(ii) the primary goal of which is to ensure optimum performance of a facility, in accordance with design or current operating needs, over the useful life of the facility, while meeting building occupancy requirements.

(H) Retrocommissioning

The term "retrocommissioning" means a process of commissioning a facility or system that was not commissioned at the time of construction of the facility or system.

(2) Facility energy managers

(A) In general

Each Federal agency shall designate an energy manager responsible for implementing this subsection and reducing energy and water use at each facility that meets criteria under subparagraph (B).

(B) Covered facilities

The Secretary shall develop criteria, after consultation with affected agencies, efficiency advocates, and energy and utility service providers, that cover, at a minimum, Federal facilities, including central utility plants and distribution systems and other energy intensive operations, that constitute at least 75 percent of facility energy or water use at each agency.

(C) Energy management system

An energy manager designated for a facility under subparagraph (A) shall take into consideration—

(i) the use of a system to manage energy and water use at the facility; and

(ii) the applicability of the certification of the facility in accordance with the International Organization for Standardization standard numbered 50001 and entitled "Energy Management Systems".

(3) Energy and water evaluations and commissioning

(A) Evaluations

Except as provided in subparagraph (B), not later than the date that is 180 days after December 27, 2020, and annually thereafter, each energy manager shall complete, for the preceding calendar year, a comprehensive energy and water evaluation and recommissioning or retrocommissioning for approximately 25 percent of the facilities of the applicable agency that meet the criteria under paragraph (2)(B) in a manner that ensures that an evaluation of each facility is completed not less frequently than once every 4 years.

(B) Exceptions

An evaluation and recommissioning or retrocommissioning shall not be required under subparagraph (A) with respect to a facility that, as of the date on which the evaluation and recommissioning or retrocommissioning would occur—

(i) has had a comprehensive energy and water evaluation during the preceding 8-year period;

(ii)(I) has been commissioned, recommissioned, or retrocommissioned during the preceding 10-year period; or

(II) is under ongoing commissioning, recommissioning, or retrocomissioning;

(iii) has not had a major change in function or use since the previous evaluation and recommissioning or retrocommissioning;

(iv) has been benchmarked with public disclosure under paragraph (8) during the preceding calendar year; and

(v)(I) based on the benchmarking described in clause (iv), has achieved at a facility level the most recent cumulative energy savings target under subsection (a) compared to the earlier of—

(aa) the date of the most recent evaluation; or

(bb) the date—

(AA) of the most recent commissioning, recommissioning, or retrocommissioning; or

(BB) on which ongoing commissioning began; or

(II) has a long-term contract in place guaranteeing energy savings at least as great as the energy savings target under subclause (I).

(4) Implementation of identified energy and water efficiency measures

(A) In general

Not later than 2 years after the date of completion of each evaluation under paragraph (3), each energy manager shall implement any energy- or water-saving measure that—

(i) the Federal agency identified in the evaluation; and

(ii) is life cycle cost-effective, as determined by evaluating an individual measure or a bundle of measures with varying paybacks.

(B) Performance contracting

Each Federal agency shall use performance contracting to address at least 50 percent of the measures identified under subparagraph (A)(i).

(5) Follow-up on implemented measures

For each measure implemented under paragraph (4), each energy manager shall ensure that—

(A) equipment, including building and equipment controls, is fully commissioned at acceptance to be operating at design specifications;

(B) a plan for appropriate operations, maintenance, and repair of the equipment is in place at acceptance and is followed;

(C) equipment and system performance is measured during its entire life to ensure proper operations, maintenance, and repair; and

(D) energy and water savings are measured and verified.

(6) Guidelines

(A) In general

The Secretary shall issue guidelines and necessary criteria that each Federal agency shall follow for implementation of—

(i) paragraphs (2) and (3) not later than 180 days after December 19, 2007; and

(ii) paragraphs (4) and (5) not later than 1 year after December 19, 2007.

(B) Relationship to funding source

The guidelines issued by the Secretary under subparagraph (A) shall be appropriate and

uniform for measures funded with each type of funding made available under paragraph (10), but may distinguish between different types of measures [1] project size, and other criteria the Secretary determines are relevant.

(7) Web-based certification

(A) In general

For each facility that meets the criteria established by the Secretary under paragraph (2)(B), the energy manager shall use the web-based tracking system under subparagraph (B)—

(i) to certify compliance with the requirements for—

(I) energy and water evaluations under paragraph (3);

(II) implementation of identified energy and water measures under paragraph (4); and

(III) follow-up on implemented measures under paragraph (5); and

(ii) to publish energy and water consumption data on an individual facility basis.

(B) Deployment

(i) In general

Not later than 1 year after December 19, 2007, the Secretary shall develop and deploy a web-based tracking system required under this paragraph in a manner that tracks, at a minimum—

(I) the covered facilities;

(II) the status of meeting the requirements specified in subparagraph (A);

(III) the estimated cost and savings for measures required to be implemented in a facility;

(IV) the measured savings and persistence of savings for implemented measures; and

(V) the benchmarking information disclosed under paragraph (8)(C).

(ii) Ease of compliance

The Secretary shall ensure that energy manager compliance with the requirements in this paragraph, to the maximum extent practicable—

(I) can be accomplished with the use of streamlined procedures and templates that minimize the time demands on Federal employees; and

(II) is coordinated with other applicable energy and water reporting requirements.

(C) Availability

(i) In general

Subject to clause (ii), the Secretary shall make the web-based tracking system required under this paragraph available to Congress, other Federal agencies, and the public through the Internet.

(ii) Exemptions

At the request of a Federal agency, the Secretary may exempt specific data for specific facilities from disclosure under clause (i) for national security purposes.

(8) Benchmarking of Federal facilities

(A) In general

The energy manager shall enter energy use data for each metered building that is (or is a part of) a facility that meets the criteria established by the Secretary under paragraph (2)(B) into a building energy use benchmarking system, such as the Energy Star Portfolio Manager.

(B) System and guidance

Not later than 1 year after December 19, 2007, the Secretary shall—

(i) select or develop the building energy use benchmarking system required under this paragraph for each type of building; and

(ii) issue guidance for use of the system.

(C) Public disclosure

Each energy manager shall post the information entered into, or generated by, a benchmarking system under this subsection, on the web-based tracking system under paragraph (7)(B). The energy manager shall update such information each year, and shall include in such reporting previous years' information to allow changes in building performance to be tracked over time.

(9) Federal agency scorecards

(A) In general

The Director of the Office of Management and Budget shall issue semiannual scorecards for energy and water management activities carried out by each Federal agency that includes—

(i) summaries of the status of implementing the various requirements of the agency and its energy managers under this subsection; and

(ii) any other means of measuring performance that the Director considers appropriate.

(B) Availability

The Director shall make the scorecards required under this paragraph available to Congress, other Federal agencies, and the public through the Internet.

(10) Funding and implementation

(A) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(B) Funding options

(i) In general

To carry out this subsection, a Federal agency may use any combination of—

(I) appropriated funds made available under subparagraph (A); and

(II) private financing otherwise authorized under Federal law, including financing available through energy savings performance contracts or utility energy service contracts.

(ii) Combined funding for same measure

A Federal agency may use any combination of appropriated funds and private financing described in clause (i) to carry out the same measure under this subsection.

(C) Implementation

Each Federal agency may implement the requirements under this subsection itself or may contract out performance of some or all of the requirements.

(11) Rule of construction

This subsection shall not be construed to require or to obviate any contractor savings guarantees.

(g) Large capital energy investments

(1) In general

Each Federal agency shall ensure that any large capital energy investment in an existing building that is not a major renovation but involves replacement of installed equipment (such as heating and cooling systems), or involves renovation, rehabilitation, expansion, or remodeling of existing space, employs the most energy efficient designs, systems, equipment, and controls that are life-cycle cost effective.

(2) Process for review of investment decisions

Not later than 180 days after December 19, 2007, each Federal agency shall—

(A) develop a process for reviewing each decision made on a large capital energy investment

described in paragraph (1) to ensure that the requirements of this subsection are met; and

(B) report to the Director of the Office of Management and Budget on the process established.

(3) Compliance report

Not later than 1 year after December 19, 2007, the Director of the Office of Management and Budget shall evaluate and report to Congress on the compliance of each agency with this subsection.

(h) Federal implementation strategy for energy-efficient and energy-saving information technologies

(1) Definitions

In this subsection:

(A) Director

The term "Director" means the Director of the Office of Management and Budget.

(B) Information technology

The term "information technology" has the meaning given that term in section 11101 of title 40.

(2) Development of implementation strategy

Not later than 1 year after December 27, 2020, each Federal agency shall coordinate with the Director, the Secretary, and the Administrator of the Environmental Protection Agency to develop an implementation strategy (including best-practices and measurement and verification techniques) for the maintenance, purchase, and use by the Federal agency of energy-efficient and energy-saving information technologies at or for facilities owned and operated by the Federal agency, taking into consideration the performance goals established under paragraph (4).

(3) Administration

In developing an implementation strategy under paragraph (2), each Federal agency shall consider—

(A) advanced metering infrastructure;

(B) energy efficient data center strategies and methods of increasing asset and infrastructure utilization;

(C) advanced power management tools;

(D) building information modeling, including building energy management;

(E) secure telework and travel substitution tools; and

(F) mechanisms to ensure that the agency realizes the energy cost savings of increased efficiency and utilization.

(4) Performance goals

(A) In general

Not later than 180 days after December 27, 2020, the Director, in consultation with the Secretary, shall establish performance goals for evaluating the efforts of Federal agencies in improving the maintenance, purchase, and use of energy-efficient and energy-saving information technology at or for facilities owned and operated by the Federal agencies.

(B) Best practices

The Chief Information Officers Council established under section 3603 of title 44, shall recommend best practices for the attainment of the performance goals established under subparagraph (A), which shall include, to the extent applicable by law, consideration by a Federal agency of the use of—

(i) energy savings performance contracting; and

(ii) utility energy services contracting.

(5) Reports

(A) Agency reports

Each Federal agency shall include in the report of the agency under section 17143 of this title a description of the efforts and results of the agency under this subsection.

(B) OMB government efficiency reports and scorecards

Effective beginning not later than October 1, 2022, the Director shall include in the annual report and scorecard of the Director required under section 17144 of this title a description of the efforts and results of Federal agencies under this subsection.

(C) Use of existing reporting structures

The Director may require Federal agencies to submit any information required to be submitted under this subsection though reporting structures in use as of December 27, 2020.

(i) Federal Energy Management Program

(1) In general

The Secretary shall carry out a program, to be known as the "Federal Energy Management Program" (referred to in this subsection as the "Program"), to facilitate the implementation by the Federal Government of cost-effective energy and water management and energy-related investment practices—

(A) to coordinate and strengthen Federal energy and water resilience;

(B) to promote environmental stewardship; and

(C) to reduce energy consumption during periods of unusually high electricity or natural gas demand.

(2) Federal Director

The Secretary shall appoint an individual to serve as the director of the Program (referred to in this subsection as the "Federal Director"), which shall be a career position in the Senior Executive service, to administer the Program.

(3) Program activities

(A) Strategic planning and technical assistance

In administering the Program, the Federal Director shall—

(i) provide technical assistance and project implementation support and guidance to agencies to identify, implement, procure, and track energy and water conservation measures required under this chapter and under other provisions of law;

(ii) in coordination with the Administrator of the General Services Administration, establish appropriate procedures, methods, and best practices for use by agencies to select, monitor, and terminate contracts entered into pursuant to a utility incentive program under section 8256(c) of this title with utilities;

(iii) carry out the responsibilities of the Secretary under section 8287 of this title, as determined appropriate by the Secretary;

(iv) establish and maintain internet-based information resources and project tracking systems and tools for energy and water management;

(v) coordinate comprehensive and strategic approaches to energy and water resilience planning for agencies;

(vi) establish a recognition program for Federal achievement in energy and water management, energy-related investment practices, environmental stewardship, and other relevant areas, through events such as individual recognition award ceremonies and public announcements; and

(vii) promote the installation of demand-response technology and the use of demand-response practices in Federal buildings.

(B) Energy and water management and reporting

In administering the Program, the Federal Director shall—

(i) track and report on the progress of agencies in meeting the requirements of the agency under this section;

(ii) make publicly available agency performance data required under—

(I) this section and sections 8254, 8256, 8257, and 8258 of this title; and

(II) section 15852 of this title;

(iii)(I) collect energy and water use and consumption data from each agency; and

(II) based on that data, submit to each agency a report that will facilitate the energy and water management, energy-related investment practices, and environmental stewardship of the agency in support of Federal goals under this chapter and under other provisions of law;

(iv) carry out the responsibilities of the Secretary under section 6834 of this title;

(v) in consultation with the Administrator of the General Services Administration, acting through the head of the Office of High-Performance Green Buildings, establish and implement sustainable design principles for Federal facilities; and

(vi) designate products that meet the highest energy conservation standards for categories not covered under the Energy Star program established under section 6294a of this title.

(C) Federal interagency coordination

In administering the Program, the Federal Director shall—

(i) develop and implement accredited training consistent with existing Federal programs and activities—

(I) relating to energy and water use, management, and resilience in Federal facilities, energy-related investment practices, and environmental stewardship; and

(II) that includes in-person training, internet-based programs, and national in-person training events;

(ii) carry out the functions of the Secretary with respect to the Interagency Energy Management Task Force under section 8257 of this title; and

(iii) report on the implementation of the priorities of the President, including Executive orders, relating to energy and water use in Federal facilities, in coordination with—

(I) the Office of Management and Budget;

(II) the Council on Environmental Quality; and

(III) any other entity, as considered necessary by the Federal Director.

(D) Facility and fleet optimization

In administering the Program, the Federal Director shall develop guidance, supply assistance to, and track the progress of agencies—

(i) in conducting portfolio-wide facility energy and water resilience planning and project integration;

(ii) in building new construction and major renovations to meet the sustainable design and energy and water performance standards required under this section;

(iii) in developing guidelines for—

(I) facility commissioning; and

(II) facility operations and maintenance; and

(iv) in coordination with the Administrator of the General Services Administration, in meeting statutory and agency goals for Federal fleet vehicles.

(4) Management council

The Federal Director shall establish a management council to advise the Federal Director that shall—

(A) convene not less frequently than once every quarter; and

(B) consist of representatives from—

(i) the Council on Environmental Quality;
(ii) the Office of Management and Budget; and
(iii) the Office of Federal High-Performance Green Buildings in the General Services Administration.

(5) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this subsection $36,000,000 for each of fiscal years 2021 through 2025.

(Pub. L. 95–619, title V, §543, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3185; Pub. L. 102–486, title I, §152(b), (c), Oct. 24, 1992, 106 Stat. 2844, 2845; Pub. L. 104–66, title I, §1052(b), Dec. 21, 1995, 109 Stat. 718; Pub. L. 109–58, title I, §§102(a)(1), (b)–(e), 103, Aug. 8, 2005, 119 Stat. 606–608; Pub. L. 110–140, title IV, §§431, 432, 434, Dec. 19, 2007, 121 Stat. 1607, 1614; Pub. L. 112–210, §§8, 9, Dec. 18, 2012, 126 Stat. 1521, 1522; Pub. L. 116–260, div. Z, title I, §§1002(g), 1004, 1012, Dec. 27, 2020, 134 Stat. 2423, 2428, 2447; Pub. L. 117–58, div. D, title I, §40104(c), Nov. 15, 2021, 135 Stat. 932.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(1)(A)(iii), (f)(1)(F)(ii), and (i)(3)(A)(i), (B)(iii)(II), was in the original "this Act", meaning Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

The Energy Policy Act of 1992, referred to in subsec. (c)(1)(A)(iii), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

AMENDMENTS

2021—Subsec. (i)(1)(C). Pub. L. 117–58, §40104(c)(1), added subpar. (C).

Subsec. (i)(3)(A)(vii). Pub. L. 117–58, §40104(c)(2), added cl. (vii).

2020—Pub. L. 116–260, §1002(g)(1), inserted "and water" after "Energy" in section catchline.

Subsec. (b). Pub. L. 116–260, §1002(g)(2)(A), inserted "and water" after "Energy" in heading.

Subsec. (b)(1), (2). Pub. L. 116–260, §1002(g)(2)(B), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) Not later than January 1, 2005, each agency shall, to the maximum extent practicable, install in Federal buildings owned by the United States all energy and water conservation measures with payback periods of less than 10 years, as determined by using the methods and procedures developed pursuant to section 8254 of this title.

"(2) The Secretary may waive the requirements of this subsection for any agency for such periods as the Secretary may determine if the Secretary finds that the agency is taking all practicable steps to meet the requirements and that the requirements of this subsection will pose an unacceptable burden upon the agency. If the Secretary waives the requirements of this subsection, the Secretary shall, as part of the report required under section 8258(b) of this title, notify the Congress in writing with an explanation and a justification of the reasons for such waiver."

Subsec. (c)(1)(A). Pub. L. 116–260, §1002(g)(3)(A), in introductory provisions, substituted "The head of each agency" for "An agency" and inserted "or water" after "energy" in two places.

Subsec. (c)(1)(A)(ii), (iii). Pub. L. 116–260, §1002(g)(3)(A)(ii), inserted "or water" after "energy".

Subsec. (c)(1)(B)(i). Pub. L. 116–260, §1002(g)(3)(B), inserted "or water" after "energy".

Subsec. (d)(2). Pub. L. 116–260, §1002(g)(4), inserted "and water" after "energy".

Subsec. (e). Pub. L. 116–260, §1002(g)(5)(A), inserted "and water" after "energy" in heading.

Subsec. (e)(1). Pub. L. 116–260, §1002(g)(5)(B), substituted "October 1, 2022" for "October 1, 2012" and inserted "and water" after "energy" in two places and after "electricity" in two places.

Subsec. (e)(2)(A). Pub. L. 116–260, §1002(g)(5)(C)(i), struck out "and" before "Federal" and inserted "and any other person the Secretary deems necessary," before "shall".

Subsec. (e)(2)(B). Pub. L. 116–260, §1002(g)(5)(C)(ii), inserted "and water" after "energy" wherever appearing.

Subsec. (e)(2)(C). Pub. L. 116–260, §1002(g)(5)(C)(iii), added subpar. (C).

Subsec. (e)(3). Pub. L. 116–260, §1002(g)(5)(D), substituted "updated under paragraph (2)(C)" for "established under paragraph (2)" in introductory provisions.

Subsec. (e)(4)(A). Pub. L. 116–260, §1002(g)(5)(E)(i), substituted "December 27, 2020" for "December 18, 2012" and inserted "and water" before "use in".

Subsec. (e)(4)(B)(ii). Pub. L. 116–260, §1002(g)(5)(E)(ii), inserted "and water" after "energy" in introductory provisions.

Subsec. (f)(1)(E) to (H). Pub. L. 116–260, §1002(g)(6)(A), added subpar. (E) and redesignated former subpars. (E) to (G) as (F) to (H), respectively.

Subsec. (f)(2)(A). Pub. L. 116–260, §1002(g)(6)(B)(i), inserted "and water" before "use".

Subsec. (f)(2)(B). Pub. L. 116–260, §1002(g)(6)(B)(ii), struck out "energy" before "efficiency" and inserted "or water" before "use".

Subsec. (f)(2)(C). Pub. L. 116–260, §1002(g)(6)(B)(iii), added subpar. (C).

Subsec. (f)(3), (4). Pub. L. 116–260, §1002(g)(6)(C), added pars. (3) and (4) and struck out former pars. (3) and (4) which related to energy and water evaluations and implementation of identified energy and water efficiency measures.

Subsec. (f)(7)(B)(ii)(II). Pub. L. 116–260, §1002(g)(6)(D), inserted "and water" after "energy".

Subsec. (f)(9)(A). Pub. L. 116–260, §1002(g)(6)(E), inserted "and water" after "energy" in introductory provisions.

Subsec. (h). Pub. L. 116–260, §1004, added subsec. (h).

Subsec. (i). Pub. L. 116–260, §1012, added subsec. (i).

2012—Subsec. (e)(3), (4). Pub. L. 112–210, §8, added pars. (3) and (4) and struck out former par. (3). Prior to amendment, text read as follows: "Not later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 8258(a) of this title, each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable."

Subsec. (f). Pub. L. 112–210, §9(1), redesignated subsec. (f) relating to large capital energy investments as (g).

Subsec. (f)(7)(A). Pub. L. 112–210, §9(2), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: "For each facility that meets the criteria established by the Secretary under paragraph (2)(B), the energy manager shall use the web-based tracking system under subparagraph (B) to certify compliance with the requirements for—

"(i) energy and water evaluations under paragraph (3);

"(ii) implementation of identified energy and water measures under paragraph (4); and

"(iii) follow-up on implemented measures under paragraph (5)."

Subsec. (g). Pub. L. 112–210, §9(1), redesignated subsec. (f) relating to large capital energy investments as (g).

2007—Subsec. (a)(1). Pub. L. 110–140, §431, added table and struck out former table which listed percentage reductions for fiscal years as follows: 2 percent for fiscal year 2006, 4 percent for fiscal year 2007, 6 percent for fiscal year 2008, 8 percent for fiscal year 2009, 10 percent for fiscal year 2010, 12 percent for fiscal year 2011, 14 percent for fiscal year 2012, 16 percent for fiscal year 2013, 18 percent for fiscal year 2014, and 20 percent for fiscal year 2015.

Subsec. (e)(1). Pub. L. 110–140, §434(b), inserted after second sentence "Not later than October 1, 2016, each agency shall provide for equivalent metering of natural gas and steam, in accordance with guidelines established by the Secretary under paragraph (2)."

Subsec. (f). Pub. L. 110–140, §434(a), added subsec. (f) relating to large capital energy investments.

Pub. L. 110–140, §432, added subsec. (f) relating to use of energy and water efficiency measures in Federal buildings.

2005—Subsec. (a)(1). Pub. L. 109–58, §102(a)(1), substituted provisions relating to reduction of energy consumption in fiscal years 2006 to 2015 as compared to consumption in fiscal year 2003 and table of percentages specifying amount of reduction in each fiscal year for provisions relating to energy consumption during fiscal year 1995 at least 10 percent less than consumption during fiscal year 1985 and energy consumption during fiscal year 2000 at least 20 percent less than consumption during fiscal year 1985.

Subsec. (a)(3). Pub. L. 109–58, §102(b), added par. (3).

Subsec. (c)(1). Pub. L. 109–58, §102(c), added par. (1) and struck out former par. (1) which read as follows: "An agency may exclude, from the energy consumption requirements for the year 2000 established under subsection (a) and the requirements of subsection (b)(1), any Federal building or collection of Federal

buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with such requirements would be impractical. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, and, in the cases of the Departments of Defense and Energy, the unique character of certain facilities operated by such Departments."

Subsec. (c)(2). Pub. L. 109–58, §102(d), substituted "standards for exclusion" for "impracticability standards", "the exclusion" for "a finding of impracticability", and "requirements of subsections (a) and (b)(1)" for "energy consumption requirements".

Subsec. (c)(3). Pub. L. 109–58, §102(e), added par. (3).

Subsec. (e). Pub. L. 109–58, §103, added subsec. (e).

1995—Subsec. (b)(2). Pub. L. 104–66 in last sentence inserted ", as part of the report required under section 8258(b) of this title," after "the Secretary shall" and struck out "promptly" after "Congress".

1992—Pub. L. 102–486, §152(b)(1), substituted "requirements" for "goals" in section catchline.

Subsec. (a). Pub. L. 102–486, §152(b)(2), (3), in heading substituted "requirement" for "goal" and in par. (1) inserted before period at end "and so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 2000 is at least 20 percent less than the energy consumption per gross square foot of its Federal buildings in use during fiscal year 1985".

Subsecs. (b), (c). Pub. L. 102–486, §152(b)(4), added subsecs. (b) and (c). Former subsec. (b) redesignated (d).

Subsec. (d). Pub. L. 102–486, §152(b)(4), (c)(1), redesignated subsec. (b) as (d) and in introductory provisions substituted "The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section," for "To achieve the goal established in subsection (a),".

Subsec. (d)(1). Pub. L. 102–486, §152(c)(2), added par. (1) and struck out former par. (1) which read as follows: "prepare or update, within 6 months after November 5, 1988, a plan describing how the agency intends to meet such goal, including how it will implement this part, designate personnel primarily responsible for achieving such goal, and identify high priority projects;".

Subsec. (d)(2). Pub. L. 102–486, §152(c)(3), inserted before semicolon at end "and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 8258b of this title".

Subsec. (d)(3) to (5). Pub. L. 102–486, §152(c)(4), (5), added pars. (3) and (4), redesignated former par. (4) as (5), and struck out former par. (3) which read as follows: "using such surveys, apply energy conservation measures in a manner which will attain the goal established in subsection (a) in the most cost-effective manner practicable; and".

1988—Pub. L. 100–615 amended section generally, substituting energy management goals statement for statement of purpose to promote (1) use of commonly accepted methods to establish and compare life cycle costs of operating Federal buildings, and life cycle fuel and energy requirements of such buildings, with and without special features for energy conservation and (2) use of solar heating and cooling and other renewable energy sources in Federal buildings.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117–58, including authority of Secretary of Labor, see section 18851 of this title.

REPORTING BASELINE

Pub. L. 109–58, title I, §102(a)(2), Aug. 8, 2005, 119 Stat. 606, provided that: "The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)), as amended by this subsection, supersede all previous goals and baselines under such paragraph, and related reporting requirements."

SURVEY OF ENERGY SAVING POTENTIAL

Pub. L. 100–615, §3, Nov. 5, 1988, 102 Stat. 3189, which authorized Secretary of Energy to carry out an energy survey to determine maximum potential cost effective energy savings in federally used buildings and recommend cost effective energy efficiency and renewable energy improvements in those buildings, devise a plan for implementing such survey, and report its findings and conclusions to Congress, was repealed by Pub. L. 102–486, title I, §152(i)(3), Oct. 24, 1992, 106 Stat. 2851.

[1] *So in original. A comma probably should appear.*

§8254. Establishment and use of life cycle cost methods and procedures

(a) Establishment of life cycle cost methods and procedures

The Secretary, in consultation with the Director of the Office of Management and Budget, the Secretary of Defense, the Director of the National Institute of Standards and Technology, and the Administrator of the General Services Administration, shall—

(1) establish practical and effective present value methods for estimating and comparing life cycle costs for Federal buildings, using the sum of all capital and operating expenses associated with the energy system of the building involved over the expected life of such system or during a period of 40 years, whichever is shorter, and using average fuel costs and a discount rate determined by the Secretary; and

(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established.

(b) Use of life cycle cost methods and procedures

(1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, shall be made using life cycle cost methods and procedures established under subsection (a).

(2) In leasing buildings for its own use or that of another agency, each agency shall, after January 1, 1994, fully consider the efficiency of all potential building space at the time of renewing or entering into a new lease.

(c) Use in non-Federal structures

The Secretary shall make available information to the public on the use of life cycle cost methods in the construction of buildings, structures, and facilities in all segments of the economy.

(Pub. L. 95–619, title V, §544, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3186; Pub. L. 102–486, title I, §152(d), Oct. 24, 1992, 106 Stat. 2845; Pub. L. 110–140, title IV, §441, Dec. 19, 2007, 121 Stat. 1623.)

EDITORIAL NOTES

AMENDMENTS

2007—Subsec. (a)(1). Pub. L. 110–140 substituted "40" for "25".

1992—Subsec. (a). Pub. L. 102–486, §152(d)(1), substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

Subsec. (b)(2). Pub. L. 102–486, §152(d)(2), substituted "agency shall, after January 1, 1994, fully consider the efficiency of all potential building space at the time of renewing or entering into a new lease." for "agency shall give appropriate preference to buildings which minimize life cycle costs."

1988—Pub. L. 100–615 amended section generally, substituting provisions relating to establishment and use of life cycle cost methods and procedures for provisions defining terms (1) Secretary, (2) life cycle cost, (3) preliminary energy audit, (4) energy survey, (5) Federal building, (6) construction, and (7) energy performance target.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§8255. Budget treatment for energy conservation measures

The President shall transmit to the Congress, along with each budget that is submitted to the Congress under section 1105 of title 31, a statement of the amount of appropriations requested in such budget, if any, on an individual agency basis, for—

(1) electric and other energy costs to be incurred in operating and maintaining agency facilities; and

(2) compliance with the provisions of this part, the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.), and all applicable Executive orders, including Executive Order 12003 (42 U.S.C. 6201 note) and Executive Order 12759 (56 Fed. Reg. 16257).

(Pub. L. 95–619, title V, §545, Nov. 9, 1978, 92 Stat. 3278; Pub. L. 96–294, title IV, §405, June 30, 1980, 94 Stat. 716; Pub. L. 99–509, title III, §3301, Oct. 21, 1986, 100 Stat. 1890; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3186; Pub. L. 102–486, title I, §152(e), Oct. 24, 1992, 106 Stat. 2846.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in par. (2), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Executive Order 12003, referred to in par. (2), is Ex. Ord. No. 12003, July 20, 1977, 42 F.R. 37523 which amended Ex. Ord. No. 11912, April 13, 1976, 41 F.R. 15825, set out as a note under section 6201 of this title.

Executive Order 12759, referred to in par. (2), is Ex. Ord. No. 12759, April 17, 1991, 56 F.R. 16257, which was set out as a note under section 6201 of this title, prior to revocation by Ex. Ord. No. 13123, §604, June 3, 1999, 64 F.R. 30859, formerly set out as a note under section 8251 of this title.

AMENDMENTS

1992—Pub. L. 102–486 amended section generally. Prior to amendment, section read as follows: "Each agency, in support of the President's annual budget request to the Congress, shall specifically set forth and identify funds requested for energy conservation measures."

1988—Pub. L. 100–615 amended section generally, substituting provision relating to budget treatment for energy conservation measures for provisions relating to establishment and use of life cycle cost methods, use of life cycle costs, and use in non-Federal structures.

1986—Subsec. (a)(2). Pub. L. 99–509 substituted "average" for "marginal".

1980—Subsec. (a)(1). Pub. L. 96–294, which directed amendment of par. (1) by inserting provisions setting forth criteria for establishing life-cycle costs for Federal buildings before the period at end, was executed to par. (2) as the probable intent of Congress because par. (1) does not contain a period.

§8256. Incentives for agencies

(a) Contracts

(1) Each agency shall establish a program of incentives for conserving, and otherwise making more efficient use of, energy as a result of entering into contracts under subchapter VII of this chapter.

(2) The Secretary shall, not later than 18 months after October 24, 1992, and after consultation with the Director of the Office of Management and Budget, the Secretary of Defense, and the Administrator of General Services, develop appropriate procedures and methods for use by agencies to implement the incentives referred to in paragraph (1).

(b) Federal Energy Efficiency Fund

(1) The Secretary shall establish a Federal Energy Efficiency Fund to provide grants to agencies to assist them in meeting the requirements of section 8253 of this title.

(2) Not later than June 30, 1993, the Secretary shall issue guidelines to be followed by agencies submitting proposals for such grants. All agencies shall be eligible to submit proposals for grants under the Fund.

(3) The Secretary shall award grants from the Fund after a competitive assessment of the technical and economic effectiveness of each agency proposal. The Secretary shall consider the following factors in determining whether to provide funding under this subsection:

(A) The cost-effectiveness of the project.

(B) The amount of energy and cost savings anticipated to the Federal Government.

(C) The amount of funding committed to the project by the agency requesting financial assistance.

(D) The extent that a proposal leverages financing from other non-Federal sources.

(E) Any other factor which the Secretary determines will result in the greatest amount of energy and cost savings to the Federal Government.

(4) There are authorized to be appropriated, to remain available to be expended, to carry out this subsection not more than $10,000,000 for fiscal year 1994, $50,000,000 for fiscal year 1995, and such sums as may be necessary for fiscal years thereafter.

(c) Utility incentive programs

(1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

(2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.

(3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.

(4) If an agency satisfies the criteria which generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.

(d) Financial incentive program for facility energy managers

(1) The Secretary shall, in consultation with the Task Force established pursuant to section 8257 of this title, establish a financial bonus program to reward, with funds made available for such purpose, outstanding Federal facility energy managers in agencies and the United States Postal Service.

(2) Not later than June 1, 1993, the Secretary shall issue procedures for implementing and conducting the award program, including the criteria to be used in selecting outstanding energy managers and contributors who have—

(A) improved energy performance through increased energy efficiency;

(B) implemented proven energy efficiency and energy conservation techniques, devices, equipment, or procedures;

(C) developed and implemented training programs for facility energy managers, operators, and maintenance personnel;

(D) developed and implemented employee awareness programs;

(E) succeeded in generating utility incentives, shared energy savings contracts, and other federally approved performance based energy savings contracts;

(F) made successful efforts to fulfill compliance with energy reduction mandates, including the provisions of section 8253 of this title; and

(G) succeeded in the implementation of the guidelines established under section 8262e [1] of this title.

(3) There is authorized to be appropriated to carry out this subsection not more than $250,000 for each of the fiscal years 1993, 1994, and 1995.

(e) Retention of energy and water savings

An agency may retain any funds appropriated to that agency for energy expenditures, water expenditures, or wastewater treatment expenditures, at buildings subject to the requirements of section 8253(a) and (b) of this title, that are not made because of energy savings or water savings. Except as otherwise provided by law, such funds may be used only for energy efficiency, water conservation, or unconventional and renewable energy resources projects. Such projects shall be subject to the requirements of section 3307 of title 40.

(Pub. L. 95–619, title V, §546, Nov. 9, 1978, 92 Stat. 3278; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3187; Pub. L. 102–486, title I, §152(f), Oct. 24, 1992, 106 Stat. 2846; Pub. L. 109–58, title I, §102(f), Aug. 8, 2005, 119 Stat. 607; Pub. L. 110–140, title V, §516, Dec. 19, 2007, 121 Stat. 1659.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 8262e of this title, referred to in subsec. (d)(2)(G), was in the original "section 159" and was translated as meaning section 159 of Pub. L. 102–486, title I, Oct. 24, 1992, 106 Stat. 2857, which enacted section 8262e of this title, to reflect the probable intent of Congress.

AMENDMENTS

2007—Subsec. (c)(5). Pub. L. 110–140 struck out par. (5) which read as follows:

"(5)(A) An amount equal to fifty percent of the energy and water cost savings realized by an agency (other than the Department of Defense) with respect to funds appropriated for any fiscal year beginning after fiscal year 1992 (including financial benefits resulting from energy savings performance contracts under subchapter VII of this chapter and utility energy efficiency rebates) shall, subject to appropriation, remain available for expenditure by such agency for additional energy efficiency measures which may include related employee incentive programs, particularly at those facilities at which energy savings were achieved.

"(B) Agencies shall establish a fund and maintain strict financial accounting and controls for savings realized and expenditures made under this subsection. Records maintained pursuant to this subparagraph shall be made available for public inspection upon request."

2005—Subsec. (e). Pub. L. 109–58 added subsec. (e).

1992—Subsec. (a). Pub. L. 102–486, §152(f)(1), (2), substituted "Contracts" for "In general" in heading, designated existing provisions as par. (1), and redesignated former subsec. (b) as subsec. (a)(2) and amended it generally. Prior to amendment, par. (2) read as follows: "The head of each agency shall, no later than 120 days after November 5, 1988, implement procedures for entering into such contracts and for identifying, verifying, and utilizing, on a fiscal year basis, the cost savings resulting from such contracts."

Subsec. (b). Pub. L. 102–486, §152(f)(4), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsecs. (c), (d). Pub. L. 102–486, §152(f)(3), (4), added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: "The portion of the funds appropriated to an agency for energy expenses for a fiscal year that is equal to the amount of cost savings realized by such agency for such year from contracts entered into under subchapter VII of this chapter shall remain available for obligation, without further appropriation, to undertake additional energy conservation measures."

1988—Pub. L. 100–615 amended section generally, substituting statement of incentives for agencies for provisions relating to energy performance targets for Federal buildings.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

ENERGY EFFICIENCY AND WATER CONSERVATION MEASURES; USE OF REBATES AND

SAVINGS

Pub. L. 104–52, title VI, §625, Nov. 19, 1995, 109 Stat. 502, provided that:

"(a) Beginning in fiscal year 1996 and thereafter, for each Federal agency, except the Department of Defense (which has separate authority), and except as provided in Public Law 102–393, title IV, section 13 (40 U.S.C. 490g) [now 40 U.S.C. 592(f)] with respect to the Fund established pursuant to 40 U.S.C. 490(f) [now 40 U.S.C. 592(a)–(c)(1), (d), (e)], an amount equal to 50 percent of—

"(1) the amount of each utility rebate received by the agency for energy efficiency and water conservation measures, which the agency has implemented; and

"(2) the amount of the agency's share of the measured energy savings resulting from energy-savings performance contracts,

may be retained and credited to accounts that fund energy and water conservation activities at the agency's facilities, and shall remain available until expended for additional specific energy efficiency or water conservation projects or activities, including improvements and retrofits, facility surveys, additional or improved utility metering, and employee training and awareness programs, as authorized by section 152(f) of the Energy Policy Act (Public Law 102–486) [amending this section].

"(b) The remaining 50 percent of each rebate, and the remaining 50 percent of the amount of the agency's share of savings from energy-savings performance contracts, shall be transferred to the General Fund of the Treasury at the end of the fiscal year in which received."

[1] *See References in Text note below.*

§8257. Interagency Energy Management Task Force

(a) In general

To assist the interagency committee organized under section 7266 of this title to coordinate the activities of the Federal Government in promoting energy conservation and the efficient use of energy and in informing non-Federal entities of the Federal experience in energy conservation, the Secretary shall establish an Interagency Energy Management Task Force (hereafter in this section referred to as the "Task Force").

(b) Members

The Task Force shall be composed of the chief energy managers of agencies represented on the interagency committee organized under section 7266 of this title.

(c) Duties

The Task Force shall meet when the Secretary requests, but not less often than twice a year, to—

(1) assess the progress of the various agencies in achieving energy savings;

(2) collect and disseminate information to agencies, States, local governments, and the public on effective survey techniques, innovative approaches to the efficient use of energy, incentive programs developed under section 8256 of this title, innovative contracting methods developed under subchapter VII of this chapter, the use of cogeneration facilities and renewable resources, and other technologies that promote the conservation and efficient use of energy;

(3) coordinate energy surveys conducted by the agencies;

(4) develop options for use in conserving energy;

(5) report to the committee organized under section 7266 of this title; and

(6) review, from time to time as may be necessary, the regulations relating to building temperature settings to determine whether changes in such regulations would be appropriate to assist in meeting the goals specified in section 8253 of this title.

(Pub. L. 95–619, title V, §547, Nov. 9, 1978, 92 Stat. 3279; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3187.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–615 amended section generally, substituting provisions relating to creation of an Interagency Energy Management Task Force for provisions relating to energy audits and retrofitting of existing Federal buildings.

§8258. Reports

(a) Reports to Secretary

Each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—

(1) the agency's progress in achieving the goals established by section 8253 of this title; and

(2) the procedures being used by the agency pursuant to section 8256(a)(2) of this title, the number of contracts entered into by such agency under subchapter VII of this chapter, the energy and cost savings that have resulted from such contracts and any termination penalty exposure, the use of such cost savings under section 8256(c) of this title, and any problem encountered in entering into such contracts and otherwise implementing section 8256 of this title.

(b) Reports to the President and Congress

The Secretary shall report, not later than April 2 of each year, with respect to each fiscal year beginning after November 5, 1988, to the President and Congress—

(1) on all activities carried out under this part and on the progress made toward achievement of the objectives of this part, including—

(A) a copy of the list of the exclusions made under sections 8253(a)(2) and 8253(c)(3) of this title;

(B) the information required under section 8253(b)(2) [1] of this title; and

(C) a statement detailing the amount of funds awarded to each agency under section 8256(b) of this title, the energy and water conservation measures installed with such funds, the projected energy and water savings to be realized from installed measures, and, for each installed measure for which the projected energy and water savings reported in the previous year were not realized, the percentage of such projected savings that was not realized, the reasons such savings were not realized, and proposals for, and projected costs of, achieving such projected savings in the future;

(2) the number of contracts entered into by all agencies under subchapter VII of this chapter, the difficulties (if any) encountered in attempting to enter into such contracts, and proposed solutions to those difficulties;

(3) the extent and nature of interagency exchange of information concerning the conservation and efficient utilization of energy;

(4) the information required under section 8262g(d) of this title; and

(5)(A) the status of the energy savings performance contracts and utility energy service contracts of each agency, to the extent that the information is not duplicative of information provided to the Secretary under a separate authority;

(B) the quantity and investment value of the contracts for the previous year;

(C) the guaranteed energy savings, or for contracts without a guarantee, the estimated energy savings, for the previous year, as compared to the measured energy savings for the previous year;

(D) a forecast of the estimated quantity and investment value of contracts anticipated in the following year for each agency; and

(E)(i) a comparison of the information described in subparagraph (B) and the forecast described in subparagraph (D) in the report of the previous year; and

(ii) if applicable, the reasons for any differences in the data compared under clause (i).

(c) Other report

The Secretary, in consultation with the Administrator of General Services, shall—

(1) conduct a study and evaluate legal, institutional, and other constraints to connecting

buildings owned or leased by the Federal Government to district heating and district cooling systems; and

(2) not later than 18 months after October 24, 1992, transmit to the Congress a report containing the findings and conclusions of such study, including recommendations for the development of streamlined processes for the consideration of connecting buildings owned or leased by the Federal Government to district heating and cooling systems.

(Pub. L. 95–619, title V, §548, Nov. 9, 1978, 92 Stat. 3279; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3187; Pub. L. 102–486, title I, §152(g), (i)(1), Oct. 24, 1992, 106 Stat. 2848, 2851; Pub. L. 104–66, title I, §1052(d), Dec. 21, 1995, 109 Stat. 718; Pub. L. 109–58, title I, §102(g), Aug. 8, 2005, 119 Stat. 608; Pub. L. 110–140, title V, §511(b), Dec. 19, 2007, 121 Stat. 1658; Pub. L. 116–260, div. Z, title I, §1002(a), Dec. 27, 2020, 134 Stat. 2422.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 8253(b)(2) of this title, referred to in subsec. (b)(1)(B), was repealed, and a new section 8253(b)(2) was added which required the Secretary to report to Congress on any noncompliance by an agency with the requirements of section 8253(b)(1) of this title not later than January 1, 2022, and every 2 years thereafter, by Pub. L. 116–260, div. Z, title I, §1002(g)(2)(B), Dec. 27, 2020, 134 Stat. 2423.

AMENDMENTS

2020—Subsec. (b)(5). Pub. L. 116–260 added par. (5).

2007—Subsec. (a)(2). Pub. L. 110–140 inserted "and any termination penalty exposure" after "from such contracts".

2005—Subsec. (b). Pub. L. 109–58 inserted "the President and" before "Congress" in heading and "President and" before "Congress" in introductory provisions.

1995—Subsec. (b)(1). Pub. L. 104–66, §1052(d)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(4). Pub. L. 104–66, §1052(d)(2)–(4), added par. (4).

1992—Subsec. (a)(2). Pub. L. 102–486, §152(i)(1)(A), substituted "8256(a)(2)" for "8256(b)".

Subsec. (b). Pub. L. 102–486, §152(i)(1)(B), substituted ", not later than April 2 of each year," for "annually,".

Subsec. (b)(1). Pub. L. 102–486, §152(g)(1), substituted "including—" and subpars. (A) and (B) for "including a copy of the list of the exclusions made under section 8253(a)(2) of this title;".

Subsec. (c). Pub. L. 102–486, §152(g)(2), added subsec. (c).

1988—Pub. L. 100–615 amended section generally, substituting provisions relating to reports to Secretary and Congress for former requirement that in leasing Federal buildings for its own use or that of another Federal agency, each Federal agency should give appropriate preference to buildings which used solar heating and cooling equipment or other renewable energy sources or which otherwise minimized life cycle costs.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 16th item on page 89 identifies a reporting provision which, as subsequently amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

[1] *See References in Text note below.*

§8258a. Demonstration of new technology

(a) Demonstration program

Not later than January 1, 1994, the Secretary, in cooperation with the Administrator of General Services, shall establish a demonstration program to install, in federally owned facilities or federally assisted housing, energy conservation measures for which the Secretary has determined that such installation would accelerate commercial viability. In those cases where technologies are determined to be equivalent, priority shall be given to those technologies that have received or are receiving Federal financial assistance.

(b) Selection criteria

In addition to the determination under subsection (a), the Secretary shall select, in cooperation with the Administrator of General Services, proposals to be funded under this section on the basis of—

(1) cost-effectiveness;

(2) technical feasibility and system reliability in a working environment;

(3) lack of market penetration in the Federal sector;

(4) the potential needs of the proposing Federal agency for the technology, projected over 5 to 10 years;

(5) the potential Federal sector market, projected over 5 to 10 years;

(6) energy efficiency; and

(7) other environmental benefits, including the projected reduction of greenhouse gas emissions and indoor air pollution.

(c) Proposals

Federal agencies may submit to the Secretary, for each fiscal year, proposals for projects to be funded by the Secretary under this section. Each such proposal shall include—

(1) a description of the proposed project emphasizing the innovative use of technology in the Federal sector;

(2) a description of the technical reliability and cost-effectiveness data expected to be acquired;

(3) an identification of the potential needs of the Federal agency for the technology;

(4) a commitment to adopt the technology, if the project establishes its technical reliability and life cycle cost-effectiveness, to supply at least 10 percent of the Federal agency's potential needs identified under paragraph (3);

(5) schedules and milestones for installing additional units; and

(6) a technology transfer plan to publicize the results of the project.

(d) Participation by GSA

The Secretary may only select a project for funding under this section which is proposed to be carried out in a building under the jurisdiction of the General Services Administration if the project will be carried out by the Administrator of General Services. If such project involves a total expenditure in excess of $1,600,000, no appropriation shall be made for such project unless such project has been approved by a resolution adopted by the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(e) Study

The Secretary shall conduct a study to evaluate the potential use of the purchasing power of the Federal Government to promote the development and commercialization of energy efficient products. The study shall identify products for which there is a high potential for Federal purchasing power to substantially promote their development and commercialization, and shall include a plan to develop such potential. The study shall be conducted in consultation with utilities, manufacturers, and appropriate nonprofit organizations concerned with energy efficiency. The Secretary shall report to the Congress on the results of the study not later than two years after October 24, 1992.

(f) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section $5,000,000 for each of the fiscal years 1993, 1994, and 1995.

(Pub. L. 95–619, title V, §549, as added Pub. L. 102–486, title I, §152(h)(2), Oct. 24, 1992, 106 Stat. 2848.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 549 of Pub. L. 95–619 was renumbered section 551 and is classified to section 8259 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§8258b. Survey of energy saving potential

(a) In general

The Secretary shall, in consultation with the Interagency Energy Management Task Force established under section 8257 of this title, carry out an energy survey for the purposes of—

(1) determining the maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by the Federal Government in different areas of the country;

(2) making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar Federal buildings; and

(3) identifying barriers which may prevent an agency's ability to comply with section 8253 of this title and other energy management goals.

(b) Implementation

(1) The Secretary shall transmit to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, within 180 days after October 24, 1992, a plan for implementing this section.

(2) The Secretary shall designate buildings to be surveyed in the project so as to obtain a sample of the buildings of the types and in the climates that is representative of buildings owned or leased by Federal agencies in the United States that consume the major portion of the energy consumed in Federal buildings. Such sample shall include, where appropriate, the following types of Federal facility space:

(A) Housing.
(B) Storage.
(C) Office.
(D) Services.
(E) Schools.
(F) Research and Development.
(G) Industrial.
(H) Prisons.
(I) Hospitals.

(3) For purposes of this section, an improvement shall be considered cost effective if the cost of the energy saved or displaced by the improvement exceeds the cost of the improvement over the remaining life of a Federal building or the remaining term of a lease of a building leased by the Federal Government as determined by the life cycle costing methodology developed under section 8254 of this title.

(c) Personnel

(1) In carrying out this section, the Secretary shall utilize personnel who are—

(A) employees of the Department of Energy; or

(B) selected by the agencies utilizing the buildings which are being surveyed under this section.

(2) Such personnel shall be detailed for the purpose of carrying out this section without any reduction of salary or benefits.

(d) Report

As soon as practicable after the completion of the project carried out under this section, the Secretary shall transmit a report of the findings and conclusions of the project to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, and the agencies who own the buildings involved in such project. Such report shall include an analysis of the probability of each agency achieving each of the energy reduction goals established under section 8253(a) of this title.

(Pub. L. 95–619, title V, §550, as added Pub. L. 102–486, title I, §152(h)(2), Oct. 24, 1992, 106 Stat. 2850; amended Pub. L. 109–58, title I, §102(h), Aug. 8, 2005, 119 Stat. 608.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 550 of Pub. L. 95–619 was classified to section 8260 of this title prior to the general amendment of this part by Pub. L. 100–615.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 substituted "each of the energy reduction goals" for "the 20 percent reduction goal".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by

House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

§8259. Definitions

For the purposes of this part—

(1) the term "agency" has the meaning given it in section 551(1) of title 5;

(2) the term "construction" means new construction or substantial rehabilitation of existing structures;

(3) the term "cogeneration facilities" has the same meaning given such term in section 796(18)(A) of title 16;

(4) the term "energy conservation measures" means measures that are applied to a Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, retrofit activities, or energy consuming devices and required support structures;

(5) the term "energy survey" means a procedure used to determine energy and cost savings likely to result from the use of appropriate energy related maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related equipment and the use of renewable energy sources;

(6) the term "Federal building" means any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy; such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection;

(7) the term "life cycle cost" means the total costs of owning, operating, and maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease;

(8) the term "renewable energy sources" includes, but is not limited to, sources such as agriculture and urban waste, geothermal energy, solar energy, and wind energy; and

(9) the term "Secretary" means the Secretary of Energy.

(Pub. L. 95–619, title V, §551, formerly §549, Nov. 9, 1978, 92 Stat. 3280; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3188; renumbered §551, Pub. L. 102–486, title I, §152(h)(1), Oct. 24, 1992, 106 Stat. 2848; amended Pub. L. 105–388, §5(c)(5), Nov. 13, 1998, 112 Stat. 3479; Pub. L. 116–260, div. Z, title I, §1002(b), Dec. 27, 2020, 134 Stat. 2422.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 551 of Pub. L. 95–619 was classified to section 8261 of this title prior to the general amendment of this part by Pub. L. 100–615.

AMENDMENTS

2020—Par. (4). Pub. L. 116–260 substituted "retrofit activities, or energy consuming devices and required support structures" for "or retrofit activities".

1998—Par. (8). Pub. L. 105–388 substituted "geothermal" for "goethermal".

1988—Pub. L. 100–615 amended section generally, substituting provisions relating to definitions for Federal energy management for former provision relating to budget treatment of energy conserving improvements by Federal agencies.

§8259a. Energy and water savings measures in congressional buildings

(a) In general

The Architect of the Capitol—

(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the "plan") for all facilities administered by Congress (referred to in this section as "congressional buildings") to meet the energy performance requirements for Federal buildings established under section 8253(a)(1) of this title; and

(2) shall submit the plan to Congress, not later than 180 days after August 8, 2005.

(b) Plan requirements

The plan shall include—

(1) a description of the life cycle cost analysis used to determine the cost-effectiveness of proposed energy efficiency projects;

(2) a schedule of energy surveys to ensure complete surveys of all congressional buildings every 5 years to determine the cost and payback period of energy and water conservation measures;

(3) a strategy for installation of life cycle cost-effective energy and water conservation measures;

(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

(5) information packages and "how-to" guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

(c) Annual report

The Architect of the Capitol shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

(1) energy expenditures and savings estimates for each facility;

(2) energy management and conservation projects; and

(3) future priorities to ensure compliance with this section.

(Pub. L. 95–619, title V, §552, as added Pub. L. 109–58, title I, §101(a), Aug. 8, 2005, 119 Stat. 605.)

§8259b. Federal procurement of energy efficient products

(a) Definitions

In this section:

(1) Agency

The term "agency" has the meaning given that term in section 7902(a) of title 5.

(2) Energy Star product

The term "Energy Star product" means a product that is rated for energy efficiency under an Energy Star program.

(3) Energy Star program

The term "Energy Star program" means the program established by section 6294a of this title.

(4) FEMP designated product

The term "FEMP designated product" means a product that is designated under the Federal

Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

(5) Product

The term "product" does not include any energy consuming product or system designed or procured for combat or combat-related missions.

(b) Procurement of energy efficient products

(1) Requirement

To meet the requirements of an agency for an energy consuming product in a product category covered by the Energy Star program or the Federal Energy Management Program for designated products, the head of the agency shall, except as provided in paragraph (2), procure—

(A) an Energy Star product; or

(B) a FEMP designated product.

(2) Exceptions

The head of an agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the agency finds in writing that—

(A) an Energy Star product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or

(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the agency.

(3) Procurement planning

The head of an agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

(c) Listing of energy efficient products in Federal catalogs

Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall list in their catalogues, represent as available, and supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases in which the head of the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

(d) Specific products

(1) In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard not later than 120 days after August 8, 2005, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

(2) All Federal agencies are encouraged to take actions to maximize the efficiency of air conditioning and refrigeration equipment, including appropriate cleaning and maintenance, including the use of any system treatment or additive that will reduce the electricity consumed by air conditioning and refrigeration equipment. Any such treatment or additive must be—

(A) determined by the Secretary to be effective in increasing the efficiency of air conditioning and refrigeration equipment without having an adverse impact on air conditioning performance (including cooling capacity) or equipment useful life;

(B) determined by the Administrator of the Environmental Protection Agency to be environmentally safe; and

(C) shown to increase seasonal energy efficiency ratio (SEER) or energy efficiency ratio (EER) when tested by the National Institute of Standards and Technology according to Department of Energy test procedures without causing any adverse impact on the system, system components, the refrigerant or lubricant, or other materials in the system.

Results of testing described in subparagraph (C) shall be published in the Federal Register for public review and comment. For purposes of this section, a hardware device or primary refrigerant shall not be considered an additive.

(e) Federally-procured appliances with standby power

(1) Definition of eligible product

In this subsection, the term "eligible product" means a commercially available, off-the-shelf product that—

(A)(i) uses external standby power devices; or

(ii) contains an internal standby power function; and

(B) is included on the list compiled under paragraph (4).

(2) Federal purchasing requirement

Subject to paragraph (3), if an agency purchases an eligible product, the agency shall purchase—

(A) an eligible product that uses not more than 1 watt in the standby power consuming mode of the eligible product; or

(B) if an eligible product described in subparagraph (A) is not available, the eligible product with the lowest available standby power wattage in the standby power consuming mode of the eligible product.

(3) Limitation

The requirements of paragraph (2) shall apply to a purchase by an agency only if—

(A) the lower-wattage eligible product is—

(i) lifecycle cost-effective; and

(ii) practicable; and

(B) the utility and performance of the eligible product is not compromised by the lower wattage requirement.

(4) Eligible products

The Secretary, in consultation with the Secretary of Defense, the Administrator of the Environmental Protection Agency, and the Administrator of General Services, shall compile a publicly accessible list of cost-effective eligible products that shall be subject to the purchasing requirements of paragraph (2).

(f) Regulations

Not later than 180 days after August 8, 2005, the Secretary shall issue guidelines to carry out this section.

(Pub. L. 95–619, title V, §553, as added Pub. L. 109–58, title I, §104(a), Aug. 8, 2005, 119 Stat. 609; amended Pub. L. 110–140, title V, §§524, 525(a), Dec. 19, 2007, 121 Stat. 1662, 1663.)

EDITORIAL NOTES

AMENDMENTS

2007—Subsec. (b)(1). Pub. L. 110–140, §525(a)(1), inserted "in a product category covered by the Energy Star program or the Federal Energy Management Program for designated products" after "energy consuming product" in introductory provisions.

Subsec. (c). Pub. L. 110–140, §525(a)(2), in second sentence, inserted "list in their catalogues, represent as available, and" after "shall" and substituted "in which the head of the agency" for "where the agency".

Subsecs. (e), (f). Pub. L. 110–140, §524, added subsec. (e) and redesignated former subsec. (e) as (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

CATALOGUE LISTING DEADLINE

Pub. L. 110–140, title V, §525(b), Dec. 19, 2007, 121 Stat. 1663, provided that: "Not later than 9 months after the date of enactment of this Act [Dec. 19, 2007], the General Services Administration and the Defense Logistics Agency shall ensure that the requirement established by the amendment made by subsection (a)(2)(A) [amending this section] has been fully complied with."

§§8260, 8261. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8260 and 8261 were omitted in the general amendment of this part by Pub. L 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3185.

Section 8260, Pub. L. 95–619, title V, §550, Nov. 9, 1978, 92 Stat. 3280, directed each Federal agency to periodically furnish Secretary with full and complete information on its activities under this part, and directed Secretary to annually submit to Congress a comprehensive report on all activities under this part and on progress made toward achievement of objectives of this part.

Section 8261, Pub. L. 95–619, title V, §551, Nov. 9, 1978, 92 Stat. 3280, authorized to be appropriated to Secretary not to exceed $2,000,000 for fiscal year ending Sept. 30, 1979, to enable Secretary to perform analytical and administrative functions under this part.

§8262. Definitions

For purposes of this subtitle— [1]

(1) the term "agency" means [2] has the meaning given such term in section 551(1) of title 5, except that such term does not include the United States Postal Service;

(2) the term "facility energy supervisor" means the employee with responsibility for the daily operations of a Federal facility, including the management, installation, operation, and maintenance of energy systems in Federal facilities which may include more than one building;

(3) the term "trained energy manager" means a person who has demonstrated proficiency, or who has completed a course of study in the areas of fundamentals of building energy systems, building energy codes and applicable professional standards, energy accounting and analysis, life-cycle cost methodology, fuel supply and pricing, and instrumentation for energy surveys and audits;

(4) the term "Task Force" means the Interagency Energy Management Task Force established under section 8257 of this title; and

(5) the term "energy conservation measures" has the meaning given such term in section 8259(4) of this title.

(Pub. L. 102–486, title I, §151, Oct. 24, 1992, 106 Stat. 2843.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle F (§§151–168) of title I of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and former section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

[1] See References in Text note below.

[2] So in original. The word "means" probably should not appear.

§8262a. Report by General Services Administration

Not later than one year after October 24, 1992, and annually thereafter, the Administrator of General Services shall report to the Committee on Governmental Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives on the activities of the General Services Administration conducted pursuant to this subtitle.[1]

(Pub. L. 102–486, title I, §154, Oct. 24, 1992, 106 Stat. 2852.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle F (§§151–168) of title I of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and former section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as

a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

[1] *See References in Text note below.*

§8262b. Intergovernmental energy management planning and coordination

(a) Conference workshops

The Administrator of General Services, in consultation with the Secretary and the Task Force, shall hold regular, biennial conference workshops in each of the 10 standard Federal regions on energy management, conservation, efficiency, and planning strategy. The Administrator shall work and consult with the Department of Energy and other Federal agencies to plan for particular regional conferences. The Administrator shall invite Department of Energy, State, local, tribal, and county public officials who have responsibilities for energy management or may have an interest in such conferences and shall seek the input of, and be responsive to, the views of such officials in the planning and organization of such workshops.

(b) Focus of workshops

Such workshops and conferences shall focus on the following (but may include other topics):

(1) Developing strategies among Federal, State, tribal, and local governments to coordinate energy management policies and to maximize available intergovernmental energy management resources within the region regarding the use of governmental facilities and buildings.

(2) The design, construction, maintenance, and retrofitting of governmental facilities to incorporate energy efficient techniques.

(3) Procurement and use of energy efficient products.

(4) Dissemination of energy information on innovative programs, technologies, and methods which have proven successful in government.

(5) Technical assistance to design and incorporate effective energy management strategies.

(c) Establishment of workshop timetable

As a part of the first report to be submitted pursuant to section 8262a of this title, the Administrator shall set forth the schedule for the regional energy management workshops to be conducted under this section. Not less than five such workshops shall be held by September 30, 1993, and at least one such workshop shall be held in each of the 10 Federal regions every two years beginning on September 30, 1993.

(Pub. L. 102–486, title I, §156, Oct. 24, 1992, 106 Stat. 2855.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8262c. Federal agency energy management training

(a) Energy management training

(1) Each executive department described under section 101 of title 5, the Environmental Protection Agency, the National Aeronautics and Space Administration, the General Services Administration, and the United States Postal Service shall establish and maintain a program to ensure that facility energy managers are trained energy managers. Such programs shall be managed—

(A) by the department or agency representative on the Task Force; or

(B) if a department or agency is not represented on the Task Force, by the designee of the head of such department or agency.

(2) Departments and agencies described in paragraph (1) shall encourage appropriate employees to participate in energy manager training courses. Employees may enroll in courses of study in the areas described in section 8262(3) of this title including, but not limited to, courses offered by—

(A) private or public educational institutions;

(B) Federal agencies; or

(C) professional associations.

(b) Report to Task Force

(1) Each department and agency described in subsection (a)(1) shall, not later than 60 days following October 24, 1992, report to the Task Force the following information:

(A) Those individuals employed by such department or agency on October 24, 1992, who qualify as trained energy managers.

(B) The General Schedule (GS) or grade level at which each of the individuals described in subparagraph (A) is employed.

(C) The facility or facilities for which such individuals are responsible or otherwise stationed.

(2) The Secretary shall provide a summary of the reports described in paragraph (1) to the Congress as part of the first report submitted under section 8258 of this title after October 24, 1992.

(c) Requirements at Federal facilities

(1) Not later than one year after October 24, 1992, the departments and agencies described under subsection (a)(1) shall upgrade their energy management capabilities by—

(A) designating facility energy supervisors;

(B) encouraging facility energy supervisors to become trained energy managers; and

(C) increasing the overall number of trained energy managers within such department or agency to a sufficient level to ensure effective implementation of this Act.

(2) Departments and agencies described in subsection (a)(1) may hire trained energy managers to be facility energy supervisors. Trained energy managers, including those who are facility supervisors as well as other trained personnel, shall focus their efforts on improving energy efficiency in the following facilities—

(A) department or agency facilities identified as most costly to operate or most energy inefficient; or

(B) other facilities identified by the department or agency head as having significant energy savings potential.

(d) Annual report to Secretary and Congress

Each department and agency listed in subsection (a)(1) shall report to the Secretary on the status and implementation of the requirements of this section. The Secretary shall include a summary of each such report in the annual report to Congress as required under section 8258(b) of this title.

(Pub. L. 102–486, title I, §157, Oct. 24, 1992, 106 Stat. 2856.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(1)(B), is set out under section 5332 of Title 5, Government Organization and Employees.

This Act, referred to in subsec. (c)(1)(C), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8262d. Energy audit teams

(a) Establishment

The Secretary shall assemble from existing personnel with appropriate expertise, and with particular utilization of the national laboratories, and make available to all Federal agencies, one or more energy audit teams which shall be equipped with instruments and other advanced equipment needed to perform energy audits of Federal facilities.

(b) Monitoring programs

The Secretary shall also assist in establishing, at each site that has utilized an energy audit team, a program for monitoring the implementation of energy efficiency improvements based upon energy audit team recommendations, and for recording the operating history of such improvements.

(Pub. L. 102–486, title I, §158, Oct. 24, 1992, 106 Stat. 2857.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8262e. Federal energy cost accounting and management

(a) Guidelines

Not later than 120 days after October 24, 1992, the Director of the Office of Management and Budget, in cooperation with the Secretary, the Administrator of General Services, and the Secretary of Defense, shall establish guidelines to be employed by each Federal agency to assess accurate energy consumption for all buildings or facilities which the agency owns, operates, manages or leases, where the Government pays utilities separate from the lease and the Government operates the leased space. Such guidelines are to be used in reports required under section 8258 of this title. Each agency shall implement such guidelines no later than 120 days after their establishment. Each facility energy manager shall maintain energy consumption and energy cost records for review by the Inspector General, the Congress, and the general public.

(b) Contents of guidelines

Such guidelines shall include the establishment of a monitoring system to determine—

(1) which facilities are the most costly to operate when measured on an energy consumption per square foot basis or other relevant analytical basis;

(2) unusual or abnormal changes in energy consumption; and

(3) the accuracy of utility charges for electric and gas consumption.

(c) Federally leased space energy reporting requirement

The Administrator of General Services shall include, in each report submitted under section 8262a

of this title, the estimated energy cost of leased buildings or space in which the Federal Government does not directly pay the utility bills.

(Pub. L. 102–486, title I, §159, Oct. 24, 1992, 106 Stat. 2857.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8262f. Inspector General review and agency accountability

(a) Audit survey

Not later than 120 days after October 24, 1992, each Inspector General created to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 401(1) of title 5, and the Chief Postal Inspector of the United States Postal Service, in accordance with section 415(f) of title 5 shall—

(1) identify agency compliance activities to meet the requirements of section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) and any other matters relevant to implementing the goals of such Act; and

(2) determine if the agency has the internal accounting mechanisms necessary to assess the accuracy and reliability of energy consumption and energy cost figures required under such section.

(b) President's Council on Integrity and Efficiency report to Congress

Not later than 150 days after October 24, 1992, the President's Council on Integrity and Efficiency shall submit a report to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, on the review conducted by the Inspector General of each agency under this section.

(c) Inspector General review

Each Inspector General established under section 402 of title 5 is encouraged to conduct periodic reviews of agency compliance with part 3 of title V of the National Energy Conservation Policy Act [42 U.S.C. 8251 et seq.], the provisions of this subtitle,[1] and other laws relating to energy consumption. Such reviews shall not be inconsistent with the performance of the required duties of the Inspector General's office.

(Pub. L. 102–486, title I, §160, Oct. 24, 1992, 106 Stat. 2858; Pub. L. 117–286, §4(b)(82), Dec. 27, 2022, 136 Stat. 4351.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsecs. (a)(1) and (c), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206. Part 3 of title V of the Act is classified generally to part B (§8251 et seq.) of subchapter III of chapter 91 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

This subtitle, referred to in subsec. (c), is subtitle F (§§151–168) of title I of Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and former section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–286, §4(b)(82)(A), in introductory provisions, substituted "section 401(1) of title 5," for "section 11(2) of the Inspector General Act of 1978 (5 U.S.C. App.)," and "section 415(f) of title 5" for "section 8E(f)(1) as established by section 8E(a)(2) of the Inspector General Act Amendments of 1988 (Public Law 100–504)".

Subsec. (c). Pub. L. 117–286, §4(b)(82)(B), substituted "section 402 of title 5" for "section 2 of the Inspector General Act of 1978 (5 U.S.C. App.)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

[1] *See References in Text note below.*

§8262g. Procurement and identification of energy efficient products

(a) Procurement

The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, each shall undertake a program to include energy efficient products in carrying out their procurement and supply functions.

(b) Identification program

The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, in consultation with the Secretary of Energy, each shall implement, in conjunction with carrying out their procurement and supply functions, a program to identify and designate those energy efficient products that offer significant potential savings, using, to the extent practicable, the life cycle cost methods and procedures developed under section 8254 of this title. The Secretary of Energy shall, to the extent necessary to carry out this section and after consultation with the

aforementioned agency heads, provide estimates of the degree of relative energy efficiency of products.

(c) Guidelines

The Administrator for Federal Procurement Policy, in consultation with the Administrator of General Services, the Secretary of Energy, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall issue guidelines to encourage the acquisition and use by all Federal agencies of products identified pursuant to this section. The Secretary of Defense and the Director of the Defense Logistics Agency shall consider, and place emphasis on, the acquisition of such products as part of the Agency's ongoing review of military specifications.

(d) Report to Congress

Not later than December 31 of 1993 and thereafter as part of the report required under section 8258(b) of this title, the Secretary of Energy, in consultation with the Administrator for Federal Procurement Policy, the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall report on the progress, status, activities, and results of the programs under subsections (a), (b), and (c). The report shall include—

(1) the types and functions of each product identified under subsection (b), and efforts undertaken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to encourage the acquisition and use of such products;

(2) the actions taken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to identify products under subsection (b), the barriers which inhibit implementation of identification of such products, and recommendations for legislative action, if necessary;

(3) progress on the development and issuance of guidelines under subsection (c);

(4) an indication of whether energy cost savings technologies identified by the Advanced Building Technology Council, under section 1701j–2(h) of title 12, have been used in the identification of products under subsection (b);

(5) an estimate of the potential cost savings to the Federal Government from acquiring products identified under subsection (b) with respect to which energy is a significant component of life cycle cost, based on the quantities of such products that could be utilized throughout the Government; and

(6) the actual quantities acquired of products described in paragraph (5).

(Pub. L. 102–486, title I, §161, Oct. 24, 1992, 106 Stat. 2858; Pub. L. 104–66, title I, §1052(c), Dec. 21, 1995, 109 Stat. 718.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–66 substituted "thereafter as part of the report required under section 8258(b) of this title," for "of each year thereafter," in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 12th item on page 85 identifies a reporting provision which, as subsequently amended, is contained in subsec. (d) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12845

Ex. Ord. No. 12845, Apr. 21, 1993, 58 F.R. 21887, which required Federal agencies to procure computer equipment that met EPA Energy Star requirements for energy efficiency, was revoked by Ex. Ord. No. 13123, §604, June 3, 1999, 64 F.R. 30859, formerly set out as a note under section 8251 of this title.

§8262h. United States Postal Service energy regulations

(a) In general

The Postmaster General shall issue regulations to ensure the reliable and accurate accounting of energy consumption costs for all buildings or facilities which it owns, leases, operates, or manages. Such regulations shall—

(1) establish a monitoring system to determine which facilities are the most costly to operate on an energy consumption per square foot basis or other relevant analytical basis;

(2) identify unusual or abnormal changes in energy consumption; and

(3) check the accuracy of utility charges for electricity and gas consumption.

(b) Identification of energy efficiency products

The Postmaster General shall actively undertake a program to identify and procure energy efficiency products for use in its facilities. In carrying out this subsection, the Postmaster General shall, to the maximum extent practicable, incorporate energy efficient information available on Federal Supply Schedules maintained by the General Services Administration and the Defense Logistics Agency.

(Pub. L. 102–486, title I, §163, Oct. 24, 1992, 106 Stat. 2860.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

UNITED STATES POSTAL SERVICE BUILDING ENERGY SURVEY AND REPORT

Pub. L. 102–486, title I, §164, Oct. 24, 1992, 106 Stat. 2860, directed Postmaster General to conduct an energy survey, as defined in 42 U.S.C. 8259(5), for purposes of determining maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by United States Postal Service in different areas of the country, making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar United States Postal Service buildings, and identifying barriers which may prevent the United States Postal Service from complying with energy management goals, and further directed Postmaster General to transmit to Congress within 180 days after Oct. 24, 1992, a plan for implementing this survey, and to report to Congress on the findings and conclusions of such survey as soon as practicable after its completion.

§8262i. United States Postal Service energy management report

Not later than one year after October 24, 1992, and not later than January 1 of each year thereafter, the Postmaster General shall submit a report to the Committee on Governmental Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and

Commerce and the Committee on Post Office and Civil Service of the House of Representatives on the United States Postal Service's building management program as it relates to energy efficiency. The report shall include, but not be limited to—

(1) a description of actions taken to reduce energy consumption;

(2) future plans to reduce energy consumption;

(3) an assessment of the success of the energy conservation program;

(4) a statement of energy costs incurred in operating and maintaining all United States Postal Service facilities; and

(5) the status of the energy efficient procurement program established under section 8262h of this title.

(Pub. L. 102–486, title I, §165, Oct. 24, 1992, 106 Stat. 2861.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

ABOLITION OF HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Committee on Post Office and Civil Service of House of Representatives abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. References to Committee on Post Office and Civil Service treated as referring to Committee on Government Reform and Oversight of House of Representatives, see section 1(b) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§8262j. Energy management requirements for United States Postal Service

(a) Energy management requirements for postal facilities

(1) The Postmaster General shall, to the maximum extent practicable, ensure that each United States Postal Service facility meets the energy management requirements for Federal buildings and agencies specified in section 8253 of this title.

(2) The Postmaster General may exclude from the requirements of such section any facility or collection of facilities, and the associated energy consumption and gross square footage if the

Postmaster General finds that compliance with the requirements of such section would be impracticable. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such facility or collection of facilities, the type and amount of energy consumed, or the technical feasibility of making the desired changes. The Postmaster General shall identify and list in the report required under section 8262i of this title the facilities designated by it for such exclusion.

(b) Implementation steps

In carrying [1] subsection (a), the Postmaster General shall—

(1) not later than 1 year after October 24, 1992, prepare or update, as appropriate, a plan (which may be submitted as part of the first report submitted under section 8262i of this title)—

(A) describing how this section will be implemented;

(B) designating personnel primarily responsible for achieving the requirements of this section; and

(C) identifying high priority projects;

(2) perform energy surveys of United States Postal Service facilities as necessary to achieve the requirements of this section;

(3) install those energy conservation measures that will attain the requirements of this section in a cost-effective manner as defined in section 8254 of this title; and

(4) ensure that the operation and maintenance procedures applied under this section are continued.

(Pub. L. 102–486, title I, §166, Oct. 24, 1992, 106 Stat. 2861.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

[1] So in original. Probably should be followed by the word "out".

§8262k. Government contract incentives

(a) Establishment of criteria

Each agency, in consultation with the Federal Acquisition Regulatory Council, shall establish criteria for the improvement of energy efficiency in Federal facilities operated by Federal Government contractors or subcontractors.

(b) Purpose of criteria

The criteria established under subsection (a) shall be used to encourage Federal contractors, and their subcontractors, which manage and operate federally-owned facilities, to adopt and utilize energy conservation measures designed to reduce energy costs in Government-owned and contractor-operated facilities and which are ultimately borne by the Federal Government.

(Pub. L. 102–486, title I, §167, Oct. 24, 1992, 106 Stat. 2862.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

PART C—FEDERAL PHOTOVOLTAIC UTILIZATION

§8271. "Federal facility" and "Secretary" defined

For purposes of this part—

(1) The term "Federal facility" means any building, structure, or fixture or part thereof which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation. Such term also applies to facilities related to programs administered by Federal agencies.

(2) The term "Secretary" means the Secretary of Energy.

(Pub. L. 95–619, title V, §562, Nov. 9, 1978, 92 Stat. 3280; Pub. L. 96–294, title IV, §407(1), June 30, 1980, 94 Stat. 717.)

EDITORIAL NOTES

AMENDMENTS

1980—Par. (1). Pub. L. 96–294 inserted applicability to facilities related to programs administered by Federal agencies.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

For short title of this part as the "Federal Photovoltaic Utilization Act", see section 561 of Pub. L. 95–619, set out as a note under section 8201 of this title.

§8272. Photovoltaic energy program

There is hereby established a photovoltaic energy commercialization program for the accelerated procurement and installation of photovoltaic solar electric systems for electric production in Federal facilities.

(Pub. L. 95–619, title V, §563, Nov. 9, 1978, 92 Stat. 3280.)

§8273. Purpose of program

The purpose of the program established by section 8272 of this title is to—

(1) accelerate the growth of a commercially viable and competitive industry to make photovoltaic solar electric systems available to the general public as an option in order to reduce national consumption of fossil fuel;

(2) reduce fossil fuel costs to the Federal Government;

(3) stimulate the general use within the Federal Government of methods for the minimization of life cycle costs; and

(4) develop performance data on the program established by section 8272 of this title.

(Pub. L. 95–619, title V, §564, Nov. 9, 1978, 92 Stat. 3280.)

§8274. Acquisition of systems

The program established by section 8272 of this title shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability by the Secretary for their use by Federal agencies, and for the acquisition of such systems and associated capability by Federal

agencies for their own use in cases where the authority to make such acquisition has been delegated to the agency involved by the Secretary. The acquisition of photovoltaic solar electric systems shall be at an annual level substantial enough to allow use of low-cost production techniques by suppliers of such systems. The Secretary (or other Federal agency acting under delegation from the Secretary) is authorized to make such acquisitions through the use of multiyear contracts. Authority under this part to enter into acquisition contracts shall be only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95–619, title V, §565, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96–294, title IV, §407(2)(A), (B), June 30, 1980, 94 Stat. 717.)

EDITORIAL NOTES

AMENDMENTS

1980—Pub. L. 96–294 inserted provisions relating to acquisition of systems and associated capability by Federal agencies and inserted "(or other Federal agency acting under delegation from the Secretary)".

§8275. Administration

The Secretary shall administer the program established under section 8272 of this title and shall—

(1) consult with the Secretary of Defense to insure that the installation and purchase of photovoltaic solar electric systems pursuant to this part shall not interfere with defense-related activities;

(2) prescribe such requirements as may be appropriate to monitor and assess the performance and operation of photovoltaic electric systems installed pursuant to this part; and

(3) report annually to the Congress on the status of the program.

Notwithstanding any other provision of law, the Secretary shall not be subject to the requirements of section 553 of title 5, in the performance of his functions under this part.

(Pub. L. 95–619, title V, §566, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96–294, title IV, §407(3), (4), June 30, 1980, 94 Stat. 717, 718.)

EDITORIAL NOTES

AMENDMENTS

1980—Pub. L. 96–294 inserted provisions relating to inapplicability of section 553 of title 5 and substituted "requirements" for "rules and regulations" in par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of the reporting provision in par. (3) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 3rd item on page 87 of House Document No. 103–7.

§8276. System evaluation and purchase program

(a) Program

The Secretary shall establish, within 60 days after November 9, 1978, a photovoltaic systems evaluation and purchase program to provide such systems as are required by the Federal agencies to carry out this part. In acquiring photovoltaic solar electric systems under this part, the Secretary (or other Federal agency acting under delegation from the Secretary) shall insure that such systems

reflect to the maximum extent practicable the most advanced and reliable technologies and shall schedule purchases in a manner which will stimulate the early development of a permanent low-cost private photovoltaic production capability in the United States, and to stimulate the private sector market for photovoltaic power systems. The Secretary and other Federal agencies acting under delegation from the Secretary shall, subject to the availability of appropriated funds, procure not more than 30 megawatts of photovoltaic solar electric systems during fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(b) Other procurement

Nothing in this part shall preclude any Federal agency from directly procuring a photovoltaic solar electric system (in lieu of obtaining one under the program under subsection (a)), except that any such Federal agency shall consult with the Secretary before procuring such a system.

(Pub. L. 95–619, title V, §567, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96–294, title IV, §407(2)(C), (D), June 30, 1980, 94 Stat. 717.)

EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–294 inserted provisions relating to Federal agencies acting under delegations from the Secretary.

§8277. Advisory committee

(a) Establishment

There is hereby established an advisory committee to assist the Secretary in the establishment and conduct of the programs established under this part.

(b) Membership

Such committee shall be composed of the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of the National Aeronautics and Space Administration, the Administrator of the General Services Administration, the Secretary of Transportation, the Administrator of the Small Business Administration, the chairman of the Federal Trade Commission, the Postmaster General, and such other persons as the Secretary deems necessary. The Secretary shall appoint such other nongovernmental persons to the extent necessary to assure that the membership of the committee will be fairly balanced in terms of the point of view represented and the functions to be performed by the committee.

(c) Termination

The advisory committee shall terminate October 1, 1981.

(Pub. L. 95–619, title V, §568, Nov. 9, 1978, 92 Stat. 3281.)

§8278. Authorization of appropriations

For the purposes of this part, there is authorized to be appropriated to the Secretary not to exceed $98,000,000 for the period beginning October 1, 1978, and ending September 30, 1981.

(Pub. L. 95–619, title V, §569, Nov. 9, 1978, 92 Stat. 3282.)

PART D—PEAK DEMAND REDUCTION

§8279. National Action Plan for Demand Response

(a) National Assessment and report

The Federal Energy Regulatory Commission ("Commission") shall conduct a National Assessment of Demand Response. The Commission shall, within 18 months of December 19, 2007, submit a report to Congress that includes each of the following:

(1) Estimation of nationwide demand response potential in 5 and 10 year horizons, including data on a State-by-State basis, and a methodology for updates of such estimates on an annual basis.

(2) Estimation of how much of this potential can be achieved within 5 and 10 years after December 19, 2007, accompanied by specific policy recommendations that if implemented can achieve the estimated potential. Such recommendations shall include options for funding and/or incentives for the development of demand response resources.

(3) The Commission shall further note any barriers to demand response programs offering flexible, non-discriminatory, and fairly compensatory terms for the services and benefits made available, and shall provide recommendations for overcoming such barriers.

(4) The Commission shall seek to take advantage of preexisting research and ongoing work, and shall insure that there is no duplication of effort.

(b) National Action Plan on Demand Response

The Commission shall further develop a National Action Plan on Demand Response, soliciting and accepting input and participation from a broad range of industry stakeholders, State regulatory utility commissioners, and non-governmental groups. The Commission shall seek consensus where possible, and decide on optimum solutions to issues that defy consensus. Such Plan shall be completed within 1 year after the completion of the National Assessment of Demand Response, and shall meet each of the following objectives:

(1) Identification of requirements for technical assistance to States to allow them to maximize the amount of demand response resources that can be developed and deployed.

(2) Design and identification of requirements for implementation of a national communications program that includes broad-based customer education and support.

(3) Development or identification of analytical tools, information, model regulatory provisions, model contracts, and other support materials for use by customers, States, utilities and demand response providers.

(c) Implementation of Plan

Upon completion, the National Action Plan on Demand Response shall be published, together with any favorable and dissenting comments submitted by participants in its preparation. Six months after publication, the Commission, together with the Secretary of Energy, shall submit to Congress a proposal to implement the Action Plan, including specific proposed assignments of responsibility, proposed budget amounts, and any agreements secured for participation from State and other participants.

(d) Authorization

There are authorized to be appropriated to the Commission to carry out this section not more than $10,000,000 for each of the fiscal years 2008, 2009, and 2010.

(Pub. L. 95–619, title V, §571, as added Pub. L. 110–140, title V, §529(a), Dec. 19, 2007, 121 Stat. 1664.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

SUBCHAPTER IV—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

PART A—GENERAL PROVISIONS

§§8281 to 8281b. Repealed. Pub. L. 99–412, title II, §201(a), Aug. 28, 1986, 100 Stat. 943

Section 8281, Pub. L. 95–619, title VII, §710, as added Pub. L. 96–294, title V, §565, June 30, 1980, 94 Stat. 752, provided that definitions in section 8211 of this title apply to this subchapter and defined additional terms.

Section 8281a, Pub. L. 95–619, title VII, §711, as added Pub. L. 96–294, title V, §565, June 30, 1980, 94 Stat. 754, provided that this subchapter apply to any public utility for which coverage is provided under section 8212 of this title.

Section 8281b, Pub. L. 95–619, title VII, §712, as added Pub. L. 96–294, title V, §565, June 30, 1980, 94 Stat. 754, related to rules of the Secretary for submission and approval of plans.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEMONSTRATION PROJECTS FOR ENERGY EFFICIENCY IN COMMERCIAL BUILDINGS

Pub. L. 99–412, title II, §202, Aug. 28, 1986, 100 Stat. 943, provided that: "The Secretary of Energy shall, using funds appropriated for energy conservation activities of the Department of Energy, carry out demonstration projects by sharing the cost of the construction and development by nongovernmental entities of facilities which demonstrate innovative technologies for utility applications that increase energy efficiency in commercial buildings."

PART B—ENERGY CONSERVATION PLANS

§§8282 to 8282b. Repealed. Pub. L. 99–412, title II, §201(a), Aug. 28, 1986, 100 Stat. 943

Section 8282, Pub. L. 95–619, title VII, §721, as added Pub. L. 96–294, title V, §565, June 30, 1980, 94 Stat. 754, related to procedures for submission and approval of State energy conservation plans for commercial buildings and multifamily dwellings.

Section 8282a, Pub. L. 95–619, title VII, §722, as added Pub. L. 96–294, title V, §565, June 30, 1980, 94 Stat. 755, related to requirements for State plans for regulated utilities.

Section 8282b, Pub. L. 95–619, title VII, §723, as added Pub. L. 96–294, title V, §565, June 30, 1980, 94 Stat. 756, related to plan requirements for nonregulated utilities and building heating suppliers.

STATUTORY NOTES AND RELATED SUBSIDIARIES

AUTHORITY TO CONTINUE CERTAIN STATE ENERGY CONSERVATION PLANS

Pub. L. 99–412, title II, §201(c), Aug. 28, 1986, 100 Stat. 943, provided that: "Notwithstanding subsection (a) [repealing this subchapter], any State energy conservation plan for commercial buildings and multifamily dwellings approved under section 721 of the National Energy Conservation Policy Act [42 U.S.C. 8282] before August 1, 1984, may, with respect to regulated utilities, continue in effect until January 1, 1990."

PART C—UTILITY PROGRAMS

§§8283, 8283a. Repealed. Pub. L. 99–412, title II, §201(a), Aug. 28, 1986, 100 Stat. 943

Section 8283, Pub. L. 95–619, title VII, §731, as added Pub. L. 96–294, title V, §565, June 30, 1980, 94 Stat. 756, related to general requirements for utility programs and requirements concerning accounting and payment of costs.

Section 8283a, Pub. L. 95–619, title VII, §732, as added Pub. L. 96–294, title V, §565, June 30, 1980, 94 Stat. 757, related to requirements for building heating supplier programs and waiver of such requirements.

PART D—FEDERAL IMPLEMENTATION

§8284. Repealed. Pub. L. 99–412, title II, §201(a), Aug. 28, 1986, 100 Stat. 943

Section, Pub. L. 95–619, title VII, §741, as added Pub. L. 96–294, title V, §565, June 30, 1980, 94 Stat. 757, related to Federal standby authority to promulgate plans.

SUBCHAPTER V—ENERGY AUDITOR TRAINING AND CERTIFICATION

EDITORIAL NOTES

CODIFICATION

This subchapter was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8285. Purpose

It is the purpose of this subchapter to encourage the training and certification of individuals to conduct energy audits for residential and commercial buildings in order to serve the various private and public needs of the Nation for energy audits.

(Pub. L. 96–294, title V, §581, June 30, 1980, 94 Stat. 760.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8285a. Definitions

For the purposes of this subchapter—

(1) the term "Governor" means the chief executive officer of each State, including the Mayor of the District of Columbia;

(2) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands;

(3) the term "energy audit" means an inspection as described in section 8216(b)(1)(A) [1] of this title, or an energy audit as defined in section 8281(b)(7) [1] of this title, which in addition may provide information on the utilization of renewable resources and may make energy-related improvements in the building; and

(4) the term "Secretary" means the Secretary of Energy.

(Pub. L. 96–294, title V, §582, June 30, 1980, 94 Stat. 761.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 8216 of this title, referred to in par. (3), was omitted from the Code pursuant to section 8229 of this title, which terminated authority under that section June 30, 1989.

Section 8281 of this title, referred to in par. (3), was repealed by Pub. L. 99–412, title II, §201(a), Aug. 28, 1986, 100 Stat. 943.

CODIFICATION

Section was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

[1] *See References in Text note below.*

§8285b. Grants

(a) The Secretary may make grants to any Governor of a State for the training and certification of individuals to conduct energy audits.

(b) Before making a grant under subsection (a) to a Governor, the Secretary must receive from the Governor an application containing—

(A) any information which the Secretary deems is necessary to carry out this subchapter; and

(B) an assurance that the grant will supplement and not supplant other funds available for such training and certification and will be used to increase the total amount of funds available for such training and certification.

(c)(1) Before making any grant under subsection (a) the Secretary shall establish minimum standards for the training and certification of individuals to conduct energy audits.

(2) The Secretary shall require each Governor receiving any grant under this subchapter to agree to meet the standards established pursuant to paragraph (1) in any training and certification conducted using funds provided under this subchapter.

(Pub. L. 96–294, title V, §583, June 30, 1980, 94 Stat. 761.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8285c. Authorization of appropriations

(a) To carry out this subchapter there is authorized to be appropriated the sum of $10,000,000 for the fiscal year ending on September 30, 1981, and the sum of $15,000,000 for the fiscal year ending on September 30, 1982.

(b) Any funds appropriated under the authorization contained in this section shall remain available until expended.

(Pub. L. 96–294, title V, §584, June 30, 1980, 94 Stat. 761.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

SUBCHAPTER VI—COORDINATION OF FEDERAL ENERGY CONSERVATION FACTORS AND DATA

EDITORIAL NOTES

CODIFICATION

This subchapter was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8286. Consensus on factors and data for energy conservation standards

The Secretary of Energy shall assure that within 6 months after June 30, 1980, the Secretary of Energy, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Secretary of Health and Human Services, the Secretary of Defense, the Administrator of the General Services Administration, and the head of any other agency responsible for developing energy conservation standards for new or existing residential, commercial, or agricultural buildings shall reach a consensus regarding factors and data used to develop such standards. This consensus shall apply to, but not be limited to—

(1) fuel price projections;
(2) discount rates;
(3) inflation rates;
(4) climatic conditions and zones; and
(5) the cost and energy saving characteristics of construction materials.

(Pub. L. 96–294, title V, §595, June 30, 1980, 94 Stat. 762.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8286a. Use of factors and data

Factors and data consented to pursuant to section 8286 of this title may be revised and agreed to by a consensus of the heads of the various Federal agencies involved. Such factors and data shall be used by all Federal agencies in establishing and revising various energy conservation standards used by such agencies, except that other factors and data may be used with respect to the standards applicable to any program if—

(1) the other factors and data are approved by the Secretary of Energy solely on the basis that such other factors and data are critical to meet the unique needs of the program concerned;
(2) using the consented to factors and data would cause a violation of an express provision of

law; or

(3) statutory requirements or responsibilities require a modification of the consented to factors and data.

(Pub. L. 96–294, title V, §596, June 30, 1980, 94 Stat. 762.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§8286b. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 96–294, title V, §597, June 30, 1980, 94 Stat. 762, which required the President (who delegated the duty to the Secretary of Energy by Memorandum of June 23, 1993, 58 F.R. 34519) to report annually to Congress on activities carried out under this subchapter and on other efforts to coordinate Federal energy conservation programs, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 15th item on page 19 of House Document No. 103–7.

SUBCHAPTER VII—ENERGY SAVINGS PERFORMANCE CONTRACTS

§8287. Authority to enter into contracts

(a) In general

(1) The head of a Federal agency may enter into contracts under this subchapter solely for the purpose of achieving energy savings and benefits ancillary to that purpose. Each such contract may, notwithstanding any other provision of law, be for a period not to exceed 25 years. Such contract shall provide that the contractor shall incur costs of implementing energy savings measures, including at least the costs (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.

(2)(A) Contracts under this subchapter shall be energy savings performance contracts and shall require an annual energy audit and specify the terms and conditions of any Government payments and performance guarantees. Any such performance guarantee shall provide that the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.

(B) Aggregate annual payments by an agency to both utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the agency would have paid for utilities without an energy savings performance contract (as estimated through the procedures developed pursuant to this section) during contract years. The contract shall provide for a guarantee of savings to the agency, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.

(C) Federal agencies may incur obligations pursuant to such contracts to finance energy conservation measures provided guaranteed savings exceed the debt service requirements.

(D) A Federal agency may enter into a multiyear contract under this subchapter for a period not to

exceed 25 years beginning on the date of the delivery order, without funding of cancellation charges before cancellation, if—

(i) such contract was awarded in a competitive manner pursuant to subsection (b)(2), using procedures and methods established under this subchapter;

(ii) funds are available and adequate for payment of the costs of such contract for the first fiscal year; and

(iii) such contract is governed by part 17.1 of the Federal Acquisition Regulation promulgated under section 1303 of title 41 or the applicable rules promulgated under this subchapter.

(E) FUNDING OPTIONS.—In carrying out a contract under this subchapter, a Federal agency may use any combination of—

(i) appropriated funds; and

(ii) private financing under an energy savings performance contract.

(F) PROMOTION OF CONTRACTS.—In carrying out this section, a Federal agency shall not—

(i) establish a Federal agency policy that limits the maximum contract term under subparagraph (D) to a period shorter than 25 years;

(ii) limit the total amount of obligations under energy savings performance contracts or other private financing of energy savings measures; or

(iii) limit the recognition of operation and maintenance savings associated with systems modernized or replaced with the implementation of energy conservation measures, water conservation measures, or any combination of energy conservation measures and water conservation measures.

(G) MEASUREMENT AND VERIFICATION REQUIREMENTS FOR PRIVATE FINANCING.—

(i) IN GENERAL.—In the case of energy savings performance contracts, the evaluations and savings measurement and verification required under paragraphs (2) and (4) of section 8253(f) of this title shall be used by a Federal agency to meet the requirements for the need for energy audits, calculation of energy savings, and any other evaluation of costs and savings needed to implement the guarantee of savings under this section.

(ii) MODIFICATION OF EXISTING CONTRACTS.—Not later than 18 months after December 19, 2007, each Federal agency shall, to the maximum extent practicable, modify any indefinite delivery and indefinite quantity energy savings performance contracts, and other indefinite delivery and indefinite quantity contracts using private financing, to conform to the amendments made by subtitle B of title V of the Energy Independence and Security Act of 2007.

(H) MISCELLANEOUS AUTHORITY.—Notwithstanding subtitle I of title 40, a Federal agency may accept, retain, sell, or transfer, and apply the proceeds of the sale or transfer of, any energy and water incentive, rebate, grid services revenue, or credit (including a renewable energy certificate) to fund a contract under this subchapter.

(I) EXCLUDED CONTRACTS.—A contract entered into under this subchapter may not be for work performed—

(i) at a Federal hydroelectric facility that provides power marketed by a Power Marketing Administration; or

(ii) at a hydroelectric facility owned and operated by the Tennessee Valley Authority established under the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.).

(b) Implementation

(1)(A) The Secretary, with the concurrence of the Federal Acquisition Regulatory Council established under section 1302(a) of title 41, not later than 180 days after October 24, 1992, shall, by rule, establish appropriate procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy service contractors in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In developing such

procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.

(B) The procedures and methods established pursuant to subparagraph (A) shall be the procedures and contracting methods for selection, by an agency, of a contractor to provide energy savings performance services. Such procedures and methods shall provide for the calculation of energy savings based on sound engineering and financial practices.

(2) The procedures and methods established pursuant to paragraph (1)(A) shall—

(A) allow the Secretary to—

(i) request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information, from firms engaged in providing energy savings services; and

(ii) from the statements received, designate and prepare a list, with an update at least annually, of those firms that are qualified to provide energy savings services;

(B) require each agency to use the list prepared by the Secretary pursuant to subparagraph (A)(ii) unless the agency elects to develop an agency list of firms qualified to provide energy savings performance services using the same selection procedures and methods as are required of the Secretary in preparing such lists; and

(C) allow the head of each agency to—

(i) select firms from the list prepared pursuant to subparagraph (A)(ii) or the list prepared by the agency pursuant to subparagraph (B) to conduct discussions concerning a particular proposed energy savings project, including requesting a technical and price proposal from such selected firms for such project;

(ii) select from such firms the most qualified firm to provide energy savings services based on technical and price proposals and any other relevant information;

(iii) permit receipt of unsolicited proposals for energy savings performance contracting services from a firm that such agency has determined is qualified to provide such services under the procedures established pursuant to paragraph (1)(A), and require agency facility managers to place a notice in the Commerce Business Daily announcing they have received such a proposal and invite other similarly qualified firms to submit competing proposals; and

(iv) enter into an energy savings performance contract with a firm qualified under clause (iii), consistent with the procedures and methods established pursuant to paragraph (1)(A).

(3) A firm not designated as qualified to provide energy savings services under paragraph (2)(A)(i) or paragraph (2)(B) may request a review of such decision to be conducted in accordance with procedures to be developed by the board of contract appeals of the General Services Administration.

(c) Task or delivery orders

(1) The head of a Federal agency may issue a task or delivery order under an energy savings performance contract by—

(A) notifying all contractors that have received an award under such contract that the agency proposes to discuss energy savings performance services for some or all of its facilities and, following a reasonable period of time to provide a proposal in response to the notice, soliciting from such contractors the submission of expressions of interest in, and contractor qualifications for, performing site surveys or investigations and feasibility designs and studies, and including in the notice summary information concerning energy use for any facilities that the agency has specific interest in including in such task or delivery order;

(B) reviewing all expressions of interest and qualifications submitted pursuant to the notice under subparagraph (A);

(C) selecting two or more contractors (from among those reviewed under subparagraph (B)) to conduct discussions concerning the contractors' respective qualifications to implement potential energy conservation measures, including—

(i) requesting references and specific detailed examples with respect to similar efforts and the resulting energy savings of such similar efforts; and

(ii) requesting an explanation of how such similar efforts relate to the scope and content of the task or delivery order concerned;

(D) selecting and authorizing—

(i) more than one contractor (from among those selected under subparagraph (C)) to conduct site surveys, investigations, feasibility designs and studies, or similar assessments for the energy savings performance contract services (or for discrete portions of such services), for the purpose of allowing each such contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures; or

(ii) one contractor (from among those selected under subparagraph (C)) to conduct a site survey, investigation, feasibility design and study, or similar assessment for the purpose of allowing the contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures;

(E) providing a debriefing to any contractor not selected under subparagraph (D);

(F) negotiating a task or delivery order for energy savings performance contracting services with the contractor or contractors selected under subparagraph (D) based on the energy conservation measures identified; and

(G) issuing a task or delivery order for energy savings performance contracting services to such contractor or contractors.

(2) The issuance of a task or delivery order for energy savings performance contracting services pursuant to paragraph (1) is deemed to satisfy the task and delivery order competition requirements in section 3406(d) of title 10 and section 4106(d) of title 41.

(3) The Secretary may issue guidance as necessary to agencies issuing task or delivery orders pursuant to paragraph (1).

(Pub. L. 95–619, title VIII, §801, as added Pub. L. 99–272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 142; amended Pub. L. 102–486, title I, §155(a), Oct. 24, 1992, 106 Stat. 2852; Pub. L. 104–106, div. E, title LVI, §5607(e), Feb. 10, 1996, 110 Stat. 702; Pub. L. 104–316, title I, §122(s), Oct. 19, 1996, 110 Stat. 3838; Pub. L. 105–388, §4(a), Nov. 13, 1998, 112 Stat. 3477; Pub. L. 106–291, title III, §335, Oct. 11, 2000, 114 Stat. 997; Pub. L. 106–469, title IV, §401, Nov. 9, 2000, 114 Stat. 2037; Pub. L. 108–375, div. A, title X, §1090(a), Oct. 28, 2004, 118 Stat. 2067; Pub. L. 109–58, title I, §105(a), Aug. 8, 2005, 119 Stat. 611; Pub. L. 110–140, title V, §§511(a), 512–514, Dec. 19, 2007, 121 Stat. 1658, 1659; Pub. L. 111–383, div. A, title VIII, §828(a), Jan. 7, 2011, 124 Stat. 4271; Pub. L. 116–260, div. Z, title I, §1002(c), (d), Dec. 27, 2020, 134 Stat. 2422; Pub. L. 117–81, div. A, title XVII, §1702(j)(5), Dec. 27, 2021, 135 Stat. 2159.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Independence and Security Act of 2007, referred to in subsec. (a)(2)(G)(ii), is Pub. L. 110–140, Dec. 19, 2007, 121 Stat. 1492. Subtitle B of title V of the Act enacted part A (§17131) of subchapter IV of chapter 152 of this title and amended this section and sections 8256, 8258, and 8287c of this title and section 2913 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Short Title note set out under section 17001 of this title and Tables.

The Tennessee Valley Authority Act of 1933, referred to in subsec. (a)(2)(I)(ii), is act May 18, 1933, ch. 32, 48 Stat. 58, which is classified generally to chapter 12A (§831 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 831 of Title 16 and Tables.

CODIFICATION

The following substitutions were made on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts:

In subsec. (a)(2)(D)(iii), "section 1303 of title 41" substituted for "section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421)".

In subsec. (b)(1)(A), "section 1302(a) of title 41" substituted for "section 25(a) of the Office of Federal Procurement Policy Act".

AMENDMENTS

2021—Subsec. (c)(2). Pub. L. 117–81 substituted "section 3406(d) of title 10 and section 4106(d) of title 41." for "section 2304c(d) of title 10 and section 303J(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(d))."

2020—Subsec. (a)(2)(F)(iii). Pub. L. 116–260, §1002(c), added cl. (iii).

Subsec. (a)(2)(H), (I). Pub. L. 116–260, §1002(d), added subpars. (H) and (I).

2011—Subsec. (c). Pub. L. 111–383 added subsec. (c).

2007—Subsec. (a)(2)(D). Pub. L. 110–140, §513(1), inserted "beginning on the date of the delivery order" after "25 years" in introductory provisions.

Subsec. (a)(2)(D)(iii), (iv). Pub. L. 110–140, §511(a), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: "30 days before the award of any such contract that contains a clause setting forth a cancellation ceiling in excess of $10,000,000, the head of such agency gives written notification of such proposed contract and of the proposed cancellation ceiling for such contract to the appropriate authorizing and appropriating committees of the Congress; and".

Subsec. (a)(2)(E). Pub. L. 110–140, §512, added subpar. (E).

Subsec. (a)(2)(F), (G). Pub. L. 110–140, §513(2), added subpars. (F) and (G).

Subsec. (c). Pub. L. 110–140, §514, struck out subsec. (c). Text read as follows: "The authority to enter into new contracts under this section shall cease to be effective on October 1, 2016."

2005—Subsec. (c). Pub. L. 109–58 substituted "2016" for "2006".

2004—Subsec. (c). Pub. L. 108–375 substituted "2006" for "2003".

2000—Subsec. (a)(2)(D)(iii). Pub. L. 106–291 and Pub. L. 106–469 amended cl. (iii) identically, substituting "$10,000,000" for "$750,000".

1998—Subsec. (c). Pub. L. 105–388 substituted "on October 1, 2003" for "five years after the date procedures and methods are established under subsection (b)".

1996—Subsec. (b)(3). Pub. L. 104–106 struck out at end "Procedures developed by the board of contract appeals under this paragraph shall be substantially equivalent to procedures established under section 759(f) of title 40."

Subsec. (c). Pub. L. 104–316 struck out par. (1) designation before "The authority to" and struck out par. (2) which required Comptroller General of the United States to report annually for five years on implementation of this section, including an assessment of various energy issues.

1992—Pub. L. 102–486 inserted subsec. (a) designation and heading, designated existing provisions as par. (1), and added par. (2) and subsecs. (b) and (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VIII, §828(b), Jan. 7, 2011, 124 Stat. 4272, provided that: "The amendment made by subsection (a) [amending this section] is inapplicable to task or delivery orders issued before the date of enactment of this Act [Jan. 7, 2011]."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

ARCHITECT OF THE CAPITOL AS AGENCY ELECTING TO DEVELOP LIST OF FIRMS QUALIFIED TO PROVIDE ENERGY SAVING SERVICES AND AS AGENCY HEAD SELECTING FROM LIST

Pub. L. 103–211, title III, §402, Feb. 12, 1994, 108 Stat. 40, provided that: "The Architect of the Capitol shall be considered the agency for the purposes of the election in section 801(b)(2)(B) of the National Energy

Conservation Policy Act [42 U.S.C. 8287(b)(2)(B)] and the head of the agency for purposes of subsection (b)(2)(C) of such section."

REVIEW

Pub. L. 108–375, div. A, title X, §1090(f), Oct. 28, 2004, 118 Stat. 2068, provided that, not later than 180 days after Oct. 28, 2004, the Secretary of Energy was to complete a review, and report its findings to Congress, of the Energy Savings Performance Contract program, which was to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program.

EXTENSION OF AUTHORITY

Pub. L. 109–58, title I, §105(b), Aug. 8, 2005, 119 Stat. 611, provided that: "Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Aug. 8, 2005], shall be considered to have been entered into under that section."

Pub. L. 108–375, div. A, title X, §1090(g), Oct. 28, 2004, 118 Stat. 2068, provided that: "Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Oct. 28, 2004], shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section."

ENERGY EFFICIENCY INCENTIVE

Pub. L. 100–456, div. A, title VII, §736, Sept. 29, 1988, 102 Stat. 2006, as amended by Pub. L. 101–189, div. A, title III, §331, Nov. 29, 1989, 103 Stat. 1417, provided that:

"(a) ENERGY CONSERVATION INCENTIVE.—In order to provide additional incentive for the Secretary of a military department to enter into contracts under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.), the Secretary may use the energy cost savings realized by the United States during the first five years under any such contract in the manner provided in subsection (b). The amount of savings available for use under subsection (b) shall be determined as provided in subsection (c) and shall remain available for obligation until expended.

"(b) AUTHORIZED USES OF SAVINGS.—The energy cost savings realized by the United States in each of the first five years under a contract may be used as follows:

"(1) One-half of the amount of such savings may be used for the acquisition of energy conserving measures for military installations, and such measures may be in addition to any such energy conserving measures acquired for military installations under contracts entered into under title VIII of the National Energy Conservation Policy Act.

"(2) One-half of the amount of such savings may be used for any morale, welfare, or recreation facility or service that is normally provided with appropriated funds, or for any minor military construction project (as defined in section 2805(a) of title 10, United States Code), that will enhance the quality of life of members of the Armed Forces at the military installation at which the energy cost savings were realized.

"(c) DETERMINATION OF AMOUNT OF SAVINGS.—Not more than 90 days after the end of each of the first five years during which energy savings measures have been in operation under a contract entered into by the Secretary of a military department under title VIII of the National Energy Conservation Policy Act, the Secretary of the military department concerned shall determine the amount of energy cost savings realized by the United States under the terms of the contract during that year by reason of the energy savings measures acquired and installed at that installation pursuant to that contract."

§8287a. Payment of costs

Any amount paid by a Federal agency pursuant to any contract entered into under this subchapter may be paid only from funds appropriated or otherwise made available to the agency for fiscal year 1986 or any fiscal year thereafter for the payment of energy, water, or wastewater treatment expenses, including related operations and maintenance expense.

(Pub. L. 95–619, title VIII, §802, as added Pub. L. 99–272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 142; amended Pub. L. 108–375, div. A, title X, §1090(b), Oct. 28, 2004, 118 Stat. 2067; Pub. L. 116–260, div. Z, title I, §1002(e), Dec. 27, 2020, 134 Stat. 2423.)

EDITORIAL NOTES

AMENDMENTS

2020—Pub. L. 116–260 substituted ", including related operations and maintenance expenses" for "(and related operation and maintenance expenses)".

2004—Pub. L. 108–375 inserted ", water, or wastewater treatment" after "payment of energy".

§8287b. Reports

Each Federal agency shall periodically furnish the Secretary of Energy with full and complete information on its activities under this subchapter, and the Secretary shall include in the report submitted to Congress under section 8260 [1] of this title a description of the progress made by each Federal agency in—

(1) including the authority provided by this subchapter in its contracting practices; and

(2) achieving energy savings under contracts entered into under this subchapter.

(Pub. L. 95–619, title VIII, §803, as added Pub. L. 99–272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 142.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 8260 of this title, referred to in text, was omitted in the general revision of part B (§8251 et seq.) of subchapter III of this chapter by Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3185.

[1] *See References in Text note below.*

§8287c. Definitions

For purposes of this subchapter, the following definitions apply:

(1) The term "Federal agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.

(2) The term "energy savings" means—

(A) a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing Federal building (as defined in section 8259 of this title) as a result of—

(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a Federal building (as defined in section 8259 of this title); or

(iii) the increased efficient use of existing water sources in either interior or exterior applications;

(B) the increased efficient use of an existing energy source by cogeneration or heat recovery;

(C) if otherwise authorized by Federal or State law (including regulations), the sale or transfer of electrical or thermal energy generated on-site from renewable energy sources or cogeneration, but in excess of Federal needs, to utilities or non-Federal energy users;

(D) the increased efficient use of existing water sources in interior or exterior applications;

(E) the use, sale, or transfer of any energy and water incentive, rebate, grid services revenue, or credit (including a renewable energy certificate); and

(F) any revenue generated from a reduction in energy or water use, more efficient waste recycling, or additional energy generated from more efficient equipment.

(3) The terms "energy savings contract" and "energy savings performance contract" mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40), be in compliance with the prospectus requirements and procedures of section 3307 of title 40.

(4) The term "energy or water conservation measure" means—

(A) an energy conservation measure, as defined in section 8259 of this title; or

(B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.

(Pub. L. 95–619, title VIII, §804, as added Pub. L. 99–272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 143; amended Pub. L. 102–486, title I, §155(b), Oct. 24, 1992, 106 Stat. 2855; Pub. L. 105–388, §4(b), Nov. 13, 1998, 112 Stat. 3477; Pub. L. 108–375, div. A, title X, §1090(c)–(e), Oct. 28, 2004, 118 Stat. 2067; Pub. L. 110–140, title V, §515, Dec. 19, 2007, 121 Stat. 1659; Pub. L. 116–260, div. Z, title I, §1002(f), Dec. 27, 2020, 134 Stat. 2423.)

EDITORIAL NOTES

AMENDMENTS

2020—Par. (2)(A). Pub. L. 116–260, §1002(f)(1), substituted "Federal building (as defined in section 8259 of this title)" for "federally owned building or buildings or other federally owned facilities" in introductory provisions and in cl. (ii).

Par. (2)(E), (F). Pub. L. 116–260, §1002(f)(2)–(4), added subpars. (E) and (F).

2007—Par. (2). Pub. L. 110–140 substituted "means—" for "means" in introductory provisions, inserted subpar. (A) designation before "a reduction", redesignated former subpars. (A) to (C) as cls. (i) to (iii) of subpar. (A), respectively, and added subpars. (B) to (D).

2004—Par. (2). Pub. L. 108–375, §1090(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'energy savings' means a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

"(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or

"(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities."

Par. (3). Pub. L. 108–375, §1090(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

"(A) may provide for appropriate software licensing agreements; and

"(B) shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606)."

Par. (4). Pub. L. 108–375, §1090(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The term 'energy conservation measures' has the meaning given such term in section 8259(4) of this title."

1998—Par. (1). Pub. L. 105–388 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'Federal agency' means an agency defined in section 551(1) of title 5."

1992—Pub. L. 102–486, §155(b)(1), substituted "subchapter, the following definitions apply:" for "subchapter—" in introductory provisions.

Par. (1). Pub. L. 102–486, §155(b)(2), substituted "The" for "the" and a period for ", and" at end.

Par. (2). Pub. L. 102–486, §155(b)(3), substituted "The term" for "the term".

Pars. (3), (4). Pub. L. 102–486, §155(b)(4), added pars. (3) and (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§8287d. Assistance to Federal agencies in achieving energy efficiency in Federal facilities and operations

The Secretary in fiscal year 1999 and thereafter, shall continue the process begun in fiscal year 1998 of accepting funds from other Federal agencies in return for assisting agencies in achieving energy efficiency in Federal facilities and operations by the use of privately financed, energy savings performance contracts and other private financing mechanisms. The funds may be provided after agencies begin to realize energy cost savings; may be retained by the Secretary until expended; and may be used only for the purpose of assisting Federal agencies in achieving greater efficiency, water conservation and use of renewable energy by means of privately financed mechanisms, including energy savings performance contracts and utility incentive programs. These recovered funds will continue to be used to administer even greater energy efficiency, water conservation and use of renewable energy by means of privately financed mechanisms such as utility efficiency service contracts and energy savings performance contracts. The recoverable funds will be used for all necessary program expenses, including contractor support and resources needed, to achieve overall Federal energy management program objectives for greater energy savings. Any such privately financed contracts shall meet the provisions of the Energy Policy Act of 1992, Public Law 102–486 regarding energy savings performance contracts and utility incentive programs.

(Pub. L. 105–277, div. A, §101(e) [title II], Oct. 21, 1998, 112 Stat. 2681–231, 2681–278.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Policy Act of 1992, referred to in text, is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

CODIFICATION

Section was enacted as part of Department of the Interior and Related Agencies Appropriations Act, 1999, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:
Pub. L. 105–83, title II, Nov. 14, 1997, 111 Stat. 1582.

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SUBCHAPTER I—GENERAL PROVISIONS

§8301. Findings; statement of purposes

(a) Findings

The Congress finds that—

(1) the protection of public health and welfare, the preservation of national security, and the regulation of interstate commerce require the establishment of a program for the expended [1] use, consistent with applicable environmental requirements, of coal and other alternate fuels as primary energy sources for existing and new electric powerplants; and

(2) the purposes of this chapter are furthered in cases in which coal or other alternate fuels are used by electric powerplants, consistent with applicable environmental requirements, as primary energy sources in lieu of natural gas or petroleum.

(b) Statement of purposes

The purpose [2] of this chapter, which shall be carried out in a manner consistent with applicable environmental requirements, are—

(1) to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States to the extent such reduction and use further the goal of national energy self-sufficiency and otherwise are in the best interests of the United States;

(2) to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum, as a primary energy source;

(3) to the extent permitted by this chapter, to encourage the use of synthetic gas derived from coal or other alternate fuels;

(4) to encourage the rehabilitation and upgrading of railroad service and equipment necessary to transport coal to regions or States which can use coal in greater quantities;

(5) to encourage the modernization or replacement of existing and new electric powerplants which utilize natural gas or petroleum as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum;

(6) to require that existing and new electric powerplants which utilize natural gas, petroleum, or coal or other alternate fuels pursuant to this chapter comply with applicable environmental requirements;

(7) to insure that all Federal agencies utilize their authorities fully in furtherance of the purposes of this chapter by carrying out programs designed to prohibit or discourage the use of natural gas

and petroleum as a primary energy source and by taking such actions as lie within their authorities to maximize the efficient use of energy and conserve natural gas and petroleum in programs funded or carried out by such agencies;

(8) to insure that adequate supplies of natural gas are available for essential agricultural uses (including crop drying, seed drying, irrigation, fertilizer production, and production of essential fertilizer ingredients for such uses);

(9) to reduce the vulnerability of the United States to energy supply interruptions; and

(10) to regulate interstate commerce.

(Pub. L. 95–620, title I, §102, Nov. 9, 1978, 92 Stat. 3291; Pub. L. 100–42, §1(c)(1), May 21, 1987, 101 Stat. 310.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1987—Subsec. (a)(1), (2). Pub. L. 100–42, §1(c)(1)(A), struck out "and major fuel-burning installations" after "electric powerplants".

Subsec. (b)(2). Pub. L. 100–42, §1(c)(1)(B), redesignated par. (3) as (2) and struck out former par. (2) relating to conservation of natural gas and petroleum for uses for which there are no alternatives.

Subsec. (b)(3), (4). Pub. L. 100–42, §1(c)(1)(B), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (b)(5). Pub. L. 100–42, §1(c)(1), redesignated par. (7) as (5) and struck out "and major fuel-burning installations" after "electric powerplants". Former par. (5) redesignated (4).

Subsec. (b)(6). Pub. L. 100–42, §1(c)(1), redesignated par. (8) as (6) and struck out "and major fuel-burning installations" after "electric powerplants", and struck out former par. (6) which related to prohibition or minimization of use of natural gas and petroleum as a primary energy source.

Subsec. (b)(7) to (10). Pub. L. 100–42, §1(c)(1)(B), redesignated former pars. (9) to (12) as (7) to (10), respectively. Former pars. (7) and (8) redesignated (5) and (6), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 95–620, title IX, §901, Nov. 9, 1978, 92 Stat. 3349, provided that: "Unless otherwise provided in this Act [see Short Title note set out below] the provisions of this Act shall take effect 180 days after the date of the enactment of this Act [Nov. 9, 1978], except that the Secretary may issue rules pursuant to such provisions at any time after such date of enactment, which rules may take effect no earlier than 180 days after such date of enactment."

SHORT TITLE

Pub. L. 95–620, title I, §101(a), Nov. 9, 1978, 92 Stat. 3289, provided that: "This Act [enacting this chapter, amending sections 6211 and 7193 of this title, section 796 of Title 15, Commerce and Trade, section 1202 of Title 19, Customs Duties, sections 821, 822 and 825 of Title 45, Railroads, and section 26b of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 822 of Title 45] may be cited as the 'Powerplant and Industrial Fuel Use Act of 1978'."

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AND TEMPORARY EXEMPTION ISSUED UNDER SECTION 8321(D) AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

Pub. L. 95–620, title IX, §902, Nov. 9, 1978, 92 Stat. 3349, provided that:

"(a) EXEMPTIONS IN THE CASE OF CERTAIN POWERPLANTS.—In the case of—

"(1) any electric powerplant which, as of April 20, 1977, has received a final decision from the appropriate State agency authorizing the construction of such powerplant, and

"(2) any electric powerplant (A) consisting of one or more combined cycle units owned or operated by an electric utility which serves at least 2,000,000 customers and (B) for which an application has been filed for at least one year before the date of the enactment of this Act [Nov. 9, 1978] with the appropriate State agency for authorization to construct such powerplant,

the Secretary may receive, consider, and grant (or deny) any petition for an exemption under title II or III [subchapters II and III of this chapter] notwithstanding section 901 [section 901 of Pub. L. 95–620, set out as a note above] or the fact that all rules related to such petition have not been prescribed at the time.

"(b) EXEMPTIONS UNDER SECTION 211(d).—The Secretary may receive, consider, and grant (or deny) any petition for any exemption under section 211(d) [section 8321(d) of this title] notwithstanding section 901 [section 901 of Pub. L. 95–620, set out as a note above], or the fact that all rules related to such petition have not been prescribed at the time."

[1] *So in original. Probably should be "expanded".*

[2] *So in original. Probably should be "purposes".*

§8302. Definitions

(a) Generally

Unless otherwise expressly provided, for the purposes of this chapter—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "person" means any (A) individual, corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company, (B) any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States, or (C) any agency or instrumentality (including any municipality) thereof.

(3)(A) Except as provided in subparagraph (B), the term "natural gas" means any fuel consisting in whole or in part of—

(i) natural gas;

(ii) liquid petroleum gas;

(iii) synthetic gas derived from petroleum or natural gas liquids; or

(iv) any mixture of natural gas and synthetic gas.

(B) The term "natural gas" does not include—

(i) natural gas which is commercially unmarketable (either by reason of quality or quantity), as determined under rules prescribed by the Secretary;

(ii) natural gas produced by the user from a well the maximum efficient production rate of which is less than 250 million Btu's per day;

(iii) natural gas to the extent the exclusion of such gas is provided for in subsection (b); or

(iv) synthetic gas, derived from coal or other alternate fuel, the heat content of which is less than 600 Btu's per cubic foot at 14.73 pounds per square inch (absolute) and 60 degrees Fahrenheit.

(4) The term "petroleum" means crude oil and products derived from crude oil, other than—

(A) synthetic gas derived from crude oil;

(B) liquid petroleum gas;

(C) liquid, solid, or gaseous waste byproducts of refinery operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; or

(D) petroleum coke or waste gases from industrial operations.

(5) The term "coal" means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(6) The term "alternate fuel" means electricity or any fuel, other than natural gas or petroleum,

and includes—

(A) petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood, and renewable and geothermal energy sources;

(B) liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; and

(C) waste gases from industrial operations.

(7)(A) The terms "electric powerplant" and "powerplant" mean any stationary electric generating unit, consisting of a boiler, a gas turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) For purposes of subparagraph (A), the term "electric generating unit" does not include—

(i) any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale, as determined by the Secretary.

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule, to be appropriate.

(8) The term "new electric powerplant" means—

(A) any electric powerplant for which construction or acquisition began on a date on or after November 9, 1978; and

(B) any electric powerplant for which construction or acquisition began on a date after April 20, 1977, and before November 9, 1978, unless the Secretary finds the construction or acquisition of such powerplant could not be canceled, rescheduled, or modified to comply with the applicable requirements of this chapter without—

(i) adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority), or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(9)(A) The term "existing electric powerplant" means any electric powerplant other than a new electric powerplant.

(B) Any powerplant treated under this chapter as an existing electric powerplant shall not be treated thereafter as a new electric powerplant merely by reason of a transfer of ownership.

(10)(A) The terms "major fuel-burning installation" and "installation" means a stationary unit consisting of a boiler, gas turbine unit, combined cycle unit, or internal combustion engine which—

(i) has a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) The terms "major fuel-burning installation" and "installation" do not include—

(i) any electric powerplant; or

(ii) any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to the Secretary of such use (in accordance with rules prescribed by the Secretary).

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule to be appropriate.

(11) The term "new major fuel-burning installation" means—

(A) any major fuel-burning installation on which construction or acquisition began on a date on or after November 9, 1978; and

(B) any major fuel-burning installation on which construction or acquisition began on a date after April 20, 1977, and before November 9, 1978, unless the Secretary finds the construction or acquisition of such installation could not be canceled, rescheduled, or modified to comply with applicable requirements of this chapter without—

(i) incurring significant operational detriment of the unit (as determined by the Secretary); or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(12)(A) The term "existing major fuel-burning installation" means any installation which is not a new major fuel-burning installation.

(B) Such term does not include a major fuel-burning installation for the extraction of mineral resources located—

(i) on or above the Continental Shelf of the United States, or

(ii) on wetlands areas adjacent to the Continental Shelf of the United States,

where coal storage is not practicable or would produce adverse effects on environmental quality.

(C) Any installation treated as an existing major fuel-burning installation shall not be treated thereafter as a new major fuel-burning installation merely by reason of a transfer of ownership.

(13) The term "construction or acquisition began" means, when used with reference to a certain date, that—

(A) construction in accordance with final drawings or equivalent design documents (as defined by the Secretary, by rule) began on or after that date; or

(B)(i) construction or acquisition had been contracted for on or after that date, or (ii) if the construction or acquisition had been contracted for before such date, such construction or acquisition could be canceled, rescheduled, or modified to comply with the applicable requirements of this chapter—

(I) without imposing substantial financial penalty, as determined under rules prescribed by the Secretary; and

(II) in the case of a powerplant, without adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority).

(14) The term "construction" means substantial onsite construction or reconstruction, as defined by rule by the Secretary.

(15) The term "primary energy source" means the fuel or fuels used by any existing or new electric powerplant, except it does not include, as determined under rules prescribed by the Secretary—

(A) the minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses, and

(B) the minimum amounts of fuel required to alleviate or prevent (i) unanticipated equipment outages and (ii) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.

(16) The term "site limitation" means, when used with respect to any powerplant, any specific physical limitation associated with a particular site which relates to the use of coal or other alternate fuels as a primary energy source for such powerplant, such as—

(A) inaccessibility to coal or other alternate fuels;

(B) lack of transportation facilities for coal or other alternate fuels;

(C) lack of adequate land or facilities for the handling, use, and storage of coal or other alternate fuels;

(D) lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(E) lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

(17) The term "applicable environmental requirements" includes—

(A) any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(B) any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], or the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(18)(A) The term "peakload powerplant" means a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours.

(B) The term "intermediate load powerplant" means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(C) The term "base load powerplant" means a powerplant the electrical generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(D) Not later than 90 days after November 9, 1978, the Federal Energy Regulatory Commission shall prescribe rules under which a powerplant's design capacity may be determined for purposes of this paragraph.

(19) the [1] term "cogeneration facility" means an electric powerplant which produces—

(A) electric power; and

(B) any other form of useful energy (such as steam, gas, or heat) which is, or will be, used for industrial, commercial, or space heating purposes.

(20) The term "cost", unless the context indicates otherwise, means total costs (both operating and capital) incurred over the estimated remaining useful life of an electric powerplant, discounted to present value, as determined by the Secretary (in the case of powerplants, in consultation with the State regulatory authorities). In the case of an electric powerplant, such costs shall take into

account any change required in the use of existing electric powerplants in the relevant dispatching system and other economic factors which are included in planning for the production, transmission, and distribution of electric power within such system.

(21) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electricity by any State regulated electric utility.

(22) The term "air pollution control agency" has the same meaning as given such term by section 302(b) of the Clean Air Act [42 U.S.C. 7602(b)].

(23) The term "electric utility" means any person, including any affiliate, or Federal agency which sells electric power.

(24) The term "affiliate", when used in relation to a person, means another person which controls, is controlled by, or is under common control with, such person.

(25) The term "Federal agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States; and

(D) the government of the District of Columbia.

(26) The term "Btu" means British thermal unit.

(27) the term "Mcf" means, when used in relation to natural gas, 1,000 cubic feet of natural gas.

(28) The term "mixture", when used in relation to fuels used in a unit, means a mixture of such fuels or a combination of such fuels used simultaneously or alternately in such unit.

(29) The term "fluidized bed combustion" means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.

(b) Special rules relating to definitions of natural gas and alternate fuel

(1) Subject to paragraph (2), natural gas which is to be used by a powerplant shall for purposes of this chapter (other than this subsection), be excluded from the definition of "natural gas" under subsection (a)(3)(B)(iii) and shall be included within the definition of "alternate fuel" under subsection (a)(6) if the person proposing to use such natural gas certifies to the Secretary (together with such supporting documents as the Secretary may require) that—

(A) such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) the Btu content of such synthetic gas is equal to, or greater than, the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) all necessary permits, licenses, or approvals from appropriate Federal, State, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved.

(2) The application of paragraph (1) with respect to the use of natural gas by any powerplant shall be conditioned on the person using such natural gas submitting to the Secretary a report not later than one year after certification is made under paragraph (1), and annually thereafter, containing the following information:

(A) the source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which paragraph (1) applied during the annual period ending with the calendar month preceding the date of such report; and

(B) the amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by paragraph (1) which is used by the person during such annual period.

(3) Repealed. Pub. L. 100–42, §1(c)(2)(H), May 21, 1987, 101 Stat. 310.

(4) For purposes of this subsection, the term "pipeline" means any interstate or intrastate pipeline or local distribution company.

(Pub. L. 95–620, title I, §103, Nov. 9, 1978, 92 Stat. 3292; Pub. L. 100–42, §1(c)(2), May 21, 1987, 101 Stat. 310.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

The Clean Air Act, referred to in subsec. (a)(17)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a)(17)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (a)(17)(B), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a)(17)(B), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1987—Subsec. (a)(13)(B)(ii). Pub. L. 100–42, §1(c)(2)(A), inserted "and" at end of subcl. (I), substituted period for "; or" at end of subcl. (II), and struck out subcl. (III) which read as follows: "in the case of a major fuel-burning installation, without incurring significant operational detriment of the unit (as determined by the Secretary)."

Subsec. (a)(15). Pub. L. 100–42, §1(c)(2)(B), struck out "or major fuel-burning installation" after "electric powerplant".

Subsec. (a)(16). Pub. L. 100–42, §1(c)(2)(C), struck out "or installation" after "any powerplant" in introductory provisions and after "such powerplant" in introductory provisions and subpar. (D).

Subsec. (a)(19). Pub. L. 100–42, §1(c)(2)(D), struck out "or a major fuel-burning installation" after "electric powerplant".

Subsec. (a)(20). Pub. L. 100–42, §1(c)(2)(E), struck out "or major fuel-burning installation" after "life of an electric powerplant".

Subsec. (b)(1). Pub. L. 100–42, §1(c)(2)(F), struck out "or major fuel-burning installation" after "used by a powerplant" in introductory provisions.

Subsec. (b)(1)(D). Pub. L. 100–42, §1(c)(2)(G), substituted a period for ", except that for purposes of the prohibition under section 8311(2) of this title against powerplants being constructed without the capability of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented."

Subsec. (b)(2). Pub. L. 100–42, §1(c)(2)(F), struck out "or major fuel-burning installation" after "by any powerplant" in introductory provisions.

Subsec. (b)(3). Pub. L. 100–42, §1(c)(2)(H), struck out par. (3) which read as follows: "In the case of any boiler subject to a prohibition under section 8371 of this title, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

[1] *So in original. Probably should be capitalized.*

§8303. Territorial application

The provisions of this chapter shall only apply within the contiguous 48 States and the District of Columbia.

(Pub. L. 95–620, title I, §104, Nov. 9, 1978, 92 Stat. 3298; Pub. L. 100–42, §1(c)(3), May 21, 1987, 101 Stat. 311.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Pub. L. 100–42 amended section generally. Prior to amendment, section read as follows: "The provisions of this chapter shall apply in all the States, Puerto Rico, and the territories and possessions of the United States, except that—

"(1) the provisions of subchapters II and III of this chapter (other than section 8341 of this title) shall only apply to powerplants and installations situated within the contiguous 48 States, Alaska, and the District of Columbia; and

"(2) the provisions of section 8341 of this title shall only apply to powerplants situated within the contiguous 48 States and the District of Columbia."

SUBCHAPTER II—NEW FACILITIES

PART A—PROHIBITIONS

§8311. Coal capability of new electric powerplants; certification of compliance

(a) General prohibition

Except to such extent as may be authorized under part B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability to use coal or alternate fuel

An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability to base load powerplants

(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-certification

(1) In order to meet the requirement of subsection (a), the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction, or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b). Such certification shall be effective to establish compliance with the requirement of subsection (a) as of the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the Federal Register a notice reciting that the certification has been filed.

(2) The Secretary, within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

(Pub. L. 95–620, title II, §201, Nov. 9, 1978, 92 Stat. 3298; Pub. L. 100–42, §1(c)(4)(A), May 21, 1987, 101 Stat. 311.)

EDITORIAL NOTES

AMENDMENTS

1987—Pub. L. 100–42 substituted "Coal capability of new electric powerplants; certification of compliance" for "New electric powerplants" in section catchline and amended text generally. Prior to amendment, text read as follows: "Except to such extent as may be authorized under part B—

"(1) natural gas or petroleum shall not be used as a primary energy source in any new electric powerplant; and

"(2) no new electric powerplant may be constructed without the capability to use coal or any other alternate fuel as a primary energy source."

§8312. Repealed. Pub. L. 100–42, §1(a)(1), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title II, §202, Nov. 9, 1978, 92 Stat. 3298, prohibited, except to extent authorized under part B, use of natural gas or petroleum as primary energy source in new major fuel-burning installation consisting of a boiler, and authorized Secretary to prohibit nonboilers from using natural gas or petroleum.

PART B—EXEMPTIONS

§8321. Temporary exemptions

(a) General exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of the fuel that would be used as a primary energy source;

(2) one or more site limitations exist which would ot [1] permit the location or operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8311 of this title could not be satisfied without violating applicable environmental requirements.

(b) Temporary exemption based upon future use of synthetic fuels

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of part A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8324(b) of this title.

(c), (d) Repealed. Pub. L. 100–42, §1(c)(5)(E), May 21, 1987, 101 Stat. 312

(e) Duration of temporary exemptions

(1) Except as provided in paragraph (2), exemptions under this section for any powerplant may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) An exemption under subsection (b) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) If an exemption is granted for any powerplant before the powerplant is placed in service, the period before it is placed in service shall not be taken into account in computing the 5-year and the 10-year limitations of paragraphs (1) and (2).

(Pub. L. 95–620, title II, §211, Nov. 9, 1978, 92 Stat. 3299; Pub. L. 100–42, §1(c)(5), May 21, 1987, 101 Stat. 312.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, §1(c)(5)(A)–(D), substituted "from" for "or installation from one or more of" in introductory provisions, substituted "the fuel that would be used" for "using imported petroleum" and struck out "or installation" after "powerplant" in par. (1), struck out "or installation" after "powerplant" in par. (2), and struck out "or 8312" after "8311" in par. (3).

Subsec. (b). Pub. L. 100–42, §1(c)(5)(A), substituted "from" for "or installation from one or more of".

Subsec. (c). Pub. L. 100–42, §1(c)(5)(E), struck out subsec. (c) which read as follows: "After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, the Secretary may, by order, grant an exemption under this subsection for the use of

natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption would be in the public interest and would be consistent with the purposes of this chapter."

Subsec. (d). Pub. L. 100–42, §1(c)(5)(E), struck out subsec. (d) which read as follows: "After consideration of a petition (and comments thereon) for an exemption from the prohibition of the use of petroleum under section 8312 of this title for an installation with a design capacity of consuming any fuel (or any mixture thereof) at a fuel heat input rate which does not exceed 300 million Btu's per hour, the Secretary may, by order, grant an exemption under this subsection for the use of petroleum if he finds that the petitioner has demonstrated, by the existence of binding contracts or other evidence, including appropriate State construction permits, that he will use coal or another alternate fuel for at least 75 percent of the annual fuel heat input rate upon the expiration of such exemption. For provisions relating to authority to receive, consider and granting (or denying) certain petitons [sic] for an exemption under this subsection, see section 902(b)."

Subsec. (e)(1), (3). Pub. L. 100–42, §1(c)(5)(B), struck out "or installation" after "powerplant" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AND TEMPORARY EXEMPTION ISSUED UNDER SUBSECTION (D) AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants and the temporary exemption issued under subsec. (d) of this section as prior to 180 days after Nov. 9, 1978, see section 902 of Pub. L. 95–620, set out as a note under section 8301 of this title.

[1] So in original. Probably should be "not".

§8322. Permanent exemptions

(a) Permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or adequate capital

(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source (i) will not be available within the first 10 years of the useful life of the powerplant, or (ii) will not be available at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of the fuel that would be used as a primary energy source during the useful life of the powerplant involved;

(B) one or more site limitations exist which would not permit the location or operation of such powerplant using coal or any other alternate fuel as a primary energy source;

(C) the prohibitions of part A could not be satisfied without violating applicable environmental requirements; or

(D) the required use of coal or any other alternate fuel would not allow the petitioner to obtain adequate capital for the financing of such powerplant.

(2) The demonstration required to be made by a petitioner under paragraph (1) shall be made with respect to the site of such powerplant and reasonable alternative sites.

(b) Permanent exemption due to certain State or local requirements

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this

subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) with respect to the proposed site of the powerplant, the construction or operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement (other than a building code or a nuisance or zoning law);

(2) there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1)(A) through (D); and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this chapter.

(c) Permanent exemption for cogeneration

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) Permanent exemption for certain mixtures containing natural gas or petroleum

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the powerplant uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(2) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of such powerplant consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(e) Permanent exemption for emergency purposes

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) Permanent exemption for powerplants necessary to maintain reliability of service

After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum if he finds that the petitioner has demonstrated that—

(1) such exemption is necessary to prevent impairment of reliability of service, and

(2) the petitioner, despite diligent good faith efforts, is not able to make the demonstration necessary to obtain an exemption under subsection (a) or (b) in the time required to prevent such impairment of service.

(Pub. L. 95–620, title II, §212, Nov. 9, 1978, 92 Stat. 3300; Pub. L. 100–42, §1(c)(6), May 21, 1987, 101 Stat. 312.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(3), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified

principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–42, §1(c)(6)(A)–(C), substituted "from" for "or installation from one or more of" in introductory provisions, substituted "the fuel that would be used" for "using imported petroleum" and struck out "or installation" after "powerplant" wherever appearing in subpar. (A), and struck out "or installation" after "powerplant" in subpars. (B) and (D).

Subsec. (a)(2). Pub. L. 100–42, §1(c)(1)(D), struck out "—

"(A) in the case of a new major fuel-burning installation, be made with respect to the site of such installation proposed by the petitioner; and

"(B) in the case of a new electric powerplant,"

after "paragraph (1) shall".

Subsec. (a)(3). Pub. L. 100–42, §1(c)(6)(E), struck out par. (3) which read as follows: "Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (h) may not be granted an exemption under this subsection."

Subsec. (b). Pub. L. 100–42, §1(c)(6)(A), (B), (F), in introductory provisions substituted "from" for "or installation from one or more of", in par. (1) struck out "or installation" after "powerplant", and in par. (2) struck out "in the case of a powerplant," after "(2)".

Subsec. (d). Pub. L. 100–42, §1(c)(6)(A), (B), (G), struck out "(1)" before "After consideration of", substituted "from" for "installation from one or more of" in introductory provisions, redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, struck out "or installation" after "powerplant" wherever appearing in such pars., and struck out former par. (2) which read as follows: "In the case of a new major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent."

Subsec. (e). Pub. L. 100–42, §1(c)(6)(B), struck out "or installation" after "powerplant" wherever appearing.

Subsec. (g). Pub. L. 100–42, §1(c)(6)(H), struck out subsec. (g) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for peakload powerplants.

Subsec. (h). Pub. L. 100–42, §1(c)(6)(H), struck out subsec. (h) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of petroleum for intermediate load powerplants.

Subsec. (i). Pub. L. 100–42, §1(c)(6)(H), struck out subsec. (i) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations based upon product or process requirements.

Subsec. (j). Pub. L. 100–42, §1(c)(6)(H), struck out subsec. (j) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations necessary to meet scheduled equipment outages.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§8323. General requirements for exemptions

(a) Use of mixtures or fluidized bed combustion not feasible

Except in the case of an exemption under section 8322(d) of this title, the Secretary may grant a permanent exemption for a powerplant under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal or another alternate fuel, for which an exemption under section 8322(d) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or another alternate fuel is economically and technically feasible.

(b) State approval required for powerplant

If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption, to the extent it applies to the prohibition under section 8311 of this title against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

(c) No alternative power supply in the case of a powerplant

(1) Except in the case of an exemption under section 8322(c) of this title, the Secretary may not grant an exemption for a new powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with such Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95–620, title II, §213, Nov. 9, 1978, 92 Stat. 3304; Pub. L. 100–42, §1(c)(7), May 21, 1987, 101 Stat. 312.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, §1(c)(7)(A), (B), in introductory provisions struck out "or (g)" after "8322(d)" and "or installation" after "powerplant".

Subsec. (b). Pub. L. 100–42, §1(c)(7)(C), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption—

"(1) to the extent it applies to the prohibition under section 8311(2) of this title against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained; and

"(2) to the extent it applies to the prohibition under section 8311(1) of this title against the use of natural gas or petroleum as a primary energy source, shall not take effect until all approvals required by such State regulatory authority which relate to construction or operation have been obtained."

Subsec. (c)(1). Pub. L. 100–42, §1(c)(7)(A), in introductory provisions struck out "or (g)" after "section 8322(c)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§8324. Terms and conditions; compliance plans

(a) Terms and conditions generally

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant covered by such exemption will comply with the applicable prohibitions.

(b) Compliance plans

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibitions of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow or [1] such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95–620, title II, §214, Nov. 9, 1978, 92 Stat. 3304; Pub. L. 100–42, §1(c)(8), May 21, 1987, 101 Stat. 312.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1)(A), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42 struck out "or installation" after "powerplant".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

[1] *So in original. Probably should be "for".*

SUBCHAPTER III—EXISTING FACILITIES

PART A—PROHIBITIONS

§8341. Existing electric powerplants

(a) Certification by powerplants of coal capability

At any time, the owner or operator of an existing electric powerplant may certify to the Secretary, for purposes of subsection (b)—

(1) whether or not such powerplant has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) whether or not such powerplant could have the technical capability to use coal or another alternate fuel as a primary energy source without having—

(A) substantial physical modification of the powerplant, or

(B) substantial reduction in the rated capacity of the powerplant; and

(3) whether or not it is financially feasible to use coal or another alternate fuel as a primary energy source in such a powerplant.

(b) Authority of Secretary to prohibit where coal or alternate fuel capability exists

The Secretary may prohibit, in accordance with section 8343(a) or (b) of this title, the use of petroleum or natural gas, or both, as a primary energy source in any existing electric powerplant, if an affirmative certification under subsection (a)(1), (2), and (3) is in effect with respect to such powerplant and if, after examining the basis for the certification, the Secretary concurs with the certification.

(c) Authority of Secretary to prohibit excessive use in mixtures

At any time, the owner or operator of an existing electric powerplant may certify to the Secretary for purposes of this subsection whether or not it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source in that powerplant. If an affirmative certification under this subsection is in effect with respect to such powerplant and if, after examining the basis for the certification, the Secretary concurs with the certification, the Secretary may prohibit, in accordance with section 8343(a) of this title, the use of petroleum or natural gas, or both, in such powerplant in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

(d) Amendment of subsection (a) and (c) certifications

The owner or operator of any such powerplant may at any time amend any certification under subsection (a) or (c) in order to take into account changes in relevant facts and circumstances; except that no such amendment to such a certification may be made after the date of any final prohibition under subsection (b) or (c) based on that certification.

(Pub. L. 95–620, title III, §301, as added Pub. L. 97–35, title X, §1021(a), Aug. 13, 1981, 95 Stat. 614.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 8341, Pub. L. 95–620, title III, §301, Nov. 9, 1978, 92 Stat. 3305, related to existing electric powerplants, prior to repeal by Pub. L. 97–35, title X, §1021(a), Aug. 13, 1981, 95 Stat. 614.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

VALIDITY OF ORDERS UNDER FORMER PROVISIONS OF THIS SECTION

Pub. L. 97–35, title X, §1022, Aug. 13, 1981, 95 Stat. 616, provided that:

"(a) The amendments made by section 1021 to section 301(b) and (c) of the Powerplant and Industrial Fuel Use Act of 1978 [subsecs. (b) and (c) of this section] shall not apply to any electric powerplant for which a final order was issued pursuant to section 301(b) or (c) of such Act before the date of the enactment of this Act [Aug. 13, 1981].

"(b) Any electric powerplant issued a proposed order under section 301(b) or (c) of such Act which is pending on the date of the enactment of this Act may elect not to have the amendments made by section 1021 to such section 301(b) or (c) apply with respect to that powerplant. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary of Energy shall, within 45 days after the date of the enactment of this Act, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary of Energy prescribes the form and manner of making such election.

"(c)(1) The amendments made by section 1021 shall not affect the validity of any final order issued under section 301(b) or (c) of the Powerplant and Industrial Fuel Use Act of 1978 before the date of the enactment of this Act.

"(2) The validity of any proposed order issued under such section 301(b) or (c) shall not be affected in the case of powerplants covered by elections made under subsection (b).

"(3) The authority of the Secretary of Energy to amend, repeal, rescind, modify, or enforce any order referred to in paragraph (1) or (2), or rules applicable thereto, shall remain in effect notwithstanding any such amendments."

§8342. Repealed. Pub. L. 100–42, §1(a)(2), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title III, §302, Nov. 9, 1978, 92 Stat. 3306, authorized Secretary to prohibit use of petroleum or natural gas as primary energy source in existing major fuel-burning installations having coal or alternate fuel capability and, in installations in which mixtures of petroleum or natural gas and coal or other alternate fuels are found feasible, to prohibit excessive use of petroleum or natural gas in such mixtures.

§8343. Rules relating to case-by-case and category prohibitions

(a) Case-by-case prohibitions

(1) Except to the extent authorized by subsection (b), the Secretary shall prohibit any powerplant from using natural gas or petroleum under the authority granted him under section 8341(b) or (c) of this title only by means of a final order issued by him which shall be limited to the particular powerplant involved.

(2) The Secretary may issue such a final order only with respect to a powerplant which is not, at the time the proposed order is issued, covered by a final rule issued under section [1] (b).

(b) Prohibitions applicable to categories of facilities

(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 8341(b) of this title in existing electric powerplants.

(2) Each powerplant to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 8411(b) of this title.

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants (such as the intermittent use, size, age, or geographic location of such powerplants). Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.

(Pub. L. 95–620, title III, §303, Nov. 9, 1978, 92 Stat. 3306; Pub. L. 100–42, §1(c)(9), May 21, 1987, 101 Stat. 312.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–42, §1(c)(9)(A), (B), struck out "or installation" after "powerplant" in two places and "or 8342" after "section 8341(b) or (c)".

Subsec. (a)(2). Pub. L. 100–42, §1(c)(9)(A), struck out "or installation" after "powerplant".

Subsec. (a)(3). Pub. L. 100–42, §1(c)(9)(C), struck out par. (3) which read as follows:

"(A) Subject to subparagraph (B), the Secretary shall not issue a final order under this subsection to any powerplant if it is demonstrated that such powerplant would have been granted an exemption if such prohibition had been established by a final rule pursuant to subsection (b) rather than by order pursuant to this subsection, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as the temporary exemption would have terminated.

"(B) In any case in which an order is not issued by reason of subparagraph (A) or in which the effective date of such order is delayed under subparagraph (A), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 8354(a) of this title) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed."

Subsec. (b)(1). Pub. L. 100–42, §1(c)(9)(D), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The Secretary may, by rule, prohibit the use of natural gas or petroleum pursuant to section 8341(b) or 8342(a) of this title—

"(A) in the case of any category of existing electric powerplants identified in such rule; and

"(B) in the case of any category of existing major fuel-burning installations which have design capabilities of consuming fuel (or any mixture thereof) at a fuel heat input rate of 300 million Btu's per hour or greater which are identified in such rule."

Subsec. (b)(2). Pub. L. 100–42, §1(c)(9)(A), struck out "or installation" after "powerplant".

Subsec. (b)(3). Pub. L. 100–42, §1(c)(9)(A), (E), struck out "or installations" after "powerplants" in two places in introductory provisions, and amended last sentence generally. Prior to amendment, last sentence read as follows: "Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order."

[1] *So in original. Probably should be "subsection".*

PART B—EXEMPTIONS

§8351. Temporary exemptions

(a) Temporary exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant such an exemption for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source, will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the costs, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8341 of this title could not be satisfied without violating applicable environmental requirements.

(b) Temporary exemption based upon future use of synthetic fuels

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of part A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(c) Temporary exemption based upon use of innovative technologies

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will comply with such prohibitions at the expiration of such exemption by the adoption of a technology for the use of coal or another alternate fuel which at the time of the granting of the exemption is determined by the Secretary to be an innovative technology. The effectiveness of

an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(d) Temporary exemption for units to be retired

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant is to permanently cease operation at or before the expiration of the exemption period. An exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) (other than paragraph (1)(B)) of this title.

(2) Notwithstanding any other provision of this chapter, an exemption under this part may not be granted for any powerplant once an exemption under this subsection has been granted for such powerplant.

(e) Temporary public interest exemption

After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of part A for a powerplant, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption is in the public interest and is consistent with the purposes of this chapter.

(f) Temporary exemption for peakload powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(g) Temporary exemption for powerplants where necessary to maintain reliability of service

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such exemption is necessary to prevent impairment of reliability of service.

(2) Notwithstanding any other provision of this chapter, an exemption under this part (other than a permanent exemption under section 8352(f) of this title for the use of petroleum) may not be granted for any powerplant for which an exemption under this subsection has been granted.

(h) Duration of temporary exemptions

(1) Except as provided in paragraphs (2) and (3), exemptions under this section for any powerplant may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) Subject to paragraph (3), an exemption under subsections (b), (c), and (g) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) An exemption under subsections (d), (f), and (g) for the use of natural gas by a powerplant may not extend beyond December 31, 1994.

(4) In computing the 5-year and 10-year limitations of paragraphs (1) and (2) in the case of any exemption under this section, the period before the prohibition on the use of natural gas and petroleum would first apply (if the exemption had not been granted) shall be disregarded.

(Pub. L. 95–620, title III, §311, Nov. 9, 1978, 92 Stat. 3307; Pub. L. 100–42, §1(c)(10), (11), May 21, 1987, 101 Stat. 313.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (d)(2), (e), and (g)(2), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, §1(c)(10), (11), struck out "or installation" after "powerplant" in introductory provisions and in pars. (1) and (2) and struck out "or 8342" after "section 8341" in par. (3).

Subsecs. (b) to (e), (h)(1). Pub. L. 100–42, §1(c)(10), struck out "or installation" after "powerplant" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§8352. Permanent exemptions

(a) Permanent exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the remaining useful life of the powerplant;

(B) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(C) the prohibitions of part A could not be satisfied without violating applicable environmental requirements.

(2) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (g) may not be granted an exemption under this subsection.

(b) Permanent exemption due to certain State or local requirements

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) with respect to the site of the powerplant, the operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement;

(2) if such State or local requirement is under a building code or nuisance or zoning law, no other exemption under this part could be granted for such facility; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this chapter.

(c) Permanent exemption for cogeneration

After consideration of a petition (and comments thereon) for an exemption from one or more of

the prohibitions of part A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) Permanent exemption for certain fuel mixtures containing natural gas or petroleum

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the powerplant uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of the unit consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(2) Repealed. Pub. L. 100–42, §1(c)(12)(A), May 21, 1987, 101 Stat. 313.

(3) The Secretary may authorize a higher percentage than that referred to in paragraph (1)(B) if he finds that the higher percentage of natural gas allowed would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage the use of alternate or new technologies which use renewable sources of energy.

(e) Permanent exemption for emergency purposes

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) Permanent exemption for peakload powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that—

(1) the powerplant is operated solely as a peakload powerplant;

(2) a denial of such petition is likely to result in an impairment of reliability of service; and

(3)(A) modification of the powerplant to permit compliance with such prohibitions is technically infeasible; or

(B) such modification would result in an unreasonable expense.

(g) Permanent exemption for intermediate load powerplants

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A on the use of petroleum by a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such area;

(B) such powerplant is to be operated only to replace no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary energy source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such region;

(C) such powerplant is and shall continue to be operated solely as an intermediate load powerplant;

(D) the net fuel heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the remaining useful life of the powerplant; and

(E) the powerplant has the capability to use synthetic fuels derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption if he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(h) Permanent exemption for use of natural gas by certain powerplants with capacities of less than 250 million Btu's per hour

(1) Subject to paragraph (2), after consideration of a petition (and comments thereon) for an exemption from any prohibition of part A for the use of natural gas by a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for such use, if he finds that the petitioner has demonstrated that—

(A) such powerplant has a design capability of consuming fuel (or any mixture thereof) at a fuel heat input rate of less than 250 million Btu's per hour;

(B) such powerplant was a baseload powerplant on April 20, 1977; and

(C) such powerplant is not capable of consuming coal without—

(i) substantial physical modification of the unit; or

(ii) substantial reduction in the rated capacity of the unit (as determined by the Secretary).

(2) An exemption under this subsection may only apply to the prohibitions under section 8341 of this title and prohibitions established by final rules or orders issued before January 1, 1990.

(i) Permanent exemption for use of LNG by certain powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of liquefied natural gas if the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) has certified to the Secretary that the use of coal by such powerplant as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such region or area and the use of coal would not comply with applicable environmental requirements.

(Pub. L. 95–620, title III, §312, Nov. 9, 1978, 92 Stat. 3309; Pub. L. 100–42, §1(c)(10), (12), May 21, 1987, 101 Stat. 313.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(3), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsecs. (a)(1), (b), (d)(1). Pub. L. 100–42, §1(c)(10), struck out "or installation" after "powerplant" wherever appearing.

Subsec. (d)(2). Pub. L. 100–42, §1(c)(12)(A), struck out par. (2) which read as follows: "In the case of an existing major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent."

Subsec. (d)(3). Pub. L. 100–42, §1(c)(12)(B), substituted "The" for "In the case of an existing electric powerplant, the".

Subsec. (e). Pub. L. 100–42, §1(c)(10), struck out "or installation" after "powerplant" wherever appearing.

Subsec. (j). Pub. L. 100–42, §1(c)(12)(C), struck out subsec. (j) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas for installations served by international pipelines.

Subsec. (k). Pub. L. 100–42, §1(c)(12)(C), struck out subsec. (k) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations based upon product or process requirements.

Subsec. (l). Pub. L. 100–42, §1(c)(12)(C), struck out subsec. (l) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations necessary to meet scheduled equipment outages.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§8353. General requirements for exemptions

(a) Use of mixtures or fluidized bed combustion not feasible

Except in the case of an exemption under section 8352(b), (f), or (i) of this title, the Secretary may grant a permanent exemption for a powerplant under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal (or other alternate fuels), for which an exemption under section 8352(b) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or an alternate fuel is economically and technically feasible.

(b) No alternative power supply in case of a powerplant

(1) In the case of an exemption under section 8352(b) or (g) of this title, the Secretary may not grant an exemption for an existing powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with the Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95–620, title III, §313, Nov. 9, 1978, 92 Stat. 3313; Pub. L. 100–42, §1(c)(10), (13), May 21, 1987, 101 Stat. 313.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, §1(c)(13), struck out "or installation" after "powerplant" in introductory provisions.

Pub. L. 100–42, §1(c)(10), which directed the substitution of "or (i)" for "(i), or (j)" was executed by making the substitution for "(i) or (j)" to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

§8354. Terms and conditions; compliance plans

(a) Terms and conditions generally

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant covered by such exemption will comply with the applicable prohibitions.

(b) Compliance plans

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibition of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95–620, title III, §314, Nov. 9, 1978, 92 Stat. 3314; Pub. L. 100–42, §1(c)(10), May 21, 1987, 101 Stat. 313.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1)(A), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42 struck out "or installation" after "powerplant".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95–620, set out as a note under section 8301 of this title.

SUBCHAPTER IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

§§8371, 8372. Repealed. Pub. L. 100–42, §1(a)(3), (4), May 21, 1987, 101 Stat. 310

Section 8371, Pub. L. 95–620, title IV, §401, Nov. 9, 1978, 92 Stat. 3314, authorized Secretary to prohibit by order the use of natural gas as primary energy source in existing boilers used for space heating purposes which consume 300 Mcf or more natural gas per day and have capability to use petroleum as primary energy

source, and in new boilers to be used for space heating purposes which would be capable of consuming 300 Mcf or more of natural gas per day.

Section 8372, Pub. L. 95–620, title IV, §402, Nov. 9, 1978, 92 Stat. 3315; Pub. L. 97–35, title X, §1024, Aug. 13, 1981, 95 Stat. 617, prohibited installation of outdoor lighting fixtures using natural gas before Nov. 9, 1978, phased out distribution of natural gas to be used in outdoor lighting other than that installed for residential use before Nov. 9, 1978, and required distributors of natural gas to disseminate information to customers to discourage use of natural gas for outdoor lighting.

§8373. Conservation in Federal facilities, contracts, and financial assistance programs

(a) Federal facilities

(1) Each Federal agency owning or operating any electric powerplant shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this chapter, to the same extent as would be the case if such powerplant were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant owned or operated by any Federal agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after a copy of such order has been transmitted to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review.

(b) Federal contracts and financial assistance

(1) In order to implement the purposes of this chapter, the President shall, not later than 30 days after the effective date of this chapter, issue an order—

(A) requiring each Federal agency which is authorized to extend Federal assistance by way of grant, loan, contract, or other form of financial assistance, to promptly effectuate the purposes of this chapter relating to the conservation of petroleum and natural gas, by rule, in such contracting or assistance activities within 180 days after issuance of such order, and

(B) setting forth procedures, sanctions, penalties, and such other provisions as the President determines necessary to carry out such requirement effectively, including a requirement that each agency annually transmit to the President, and make available to the public, a report on the actions taken and to be taken to implement such order.

(2) The President may exempt by order any specific grant, loan, contract, or other form of financial assistance from all or part of the provisions of this subsection if he determines such exemption is in the national interest. The President shall notify the Congress in writing of such exemption at least 60 days before it is effective.

(3) The President or any Federal agency may not use the authority granted under paragraph (1) to require compliance, including the use of coal, by any person or facility with any prohibition under

other sections of this chapter if such person or facility has been specifically determined by the Secretary as subject to such prohibition or has been exempted from the application of such prohibition.

(Pub. L. 95–620, title IV, §403, Nov. 9, 1978, 92 Stat. 3317; Pub. L. 100–42, §1(c)(14), May 21, 1987, 101 Stat. 313; Pub. L. 102–486, title XXX, §3011, Oct. 24, 1992, 106 Stat. 3128.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b)(1), (3), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

The effective date of this chapter, referred to in subsec. (b)(1), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–486 struck out subsec. (c), which read as follows: "The President shall annually submit a detailed report to each House of the Congress on the actions taken by the President and each Federal agency to implement this section, including the progress and problems associated with implementation of this section."

1987—Subsec. (a)(1). Pub. L. 100–42, §1(c)(14)(A), struck out ", major fuel-burning installation, or other unit" after "electric powerplant" and ", installation, or unit" after "such powerplant".

Subsec. (a)(2). Pub. L. 100–42, §1(c)(14)(B), (C), struck out ", installation, or other unit" after "powerplant" in introductory provisions, ", installation, or unit" after "powerplant" in subpar. (A), and last sentence which read as follows: "Any powerplant, installation, or other unit permitted to use natural gas or petroleum under an exemption under this paragraph shall establish and carry out effective fuel conservation measures, as determined by the Secretary."

Subsec. (a)(3). Pub. L. 100–42, §1(c)(14)(D), struck out par. (3) which read as follows: "Any powerplant, installation, or unit owned or operated by any such Federal agency shall be entitled to any exemption by the Secretary to the same extent, in the same manner, and under the same terms and conditions as would apply if it were owned or operated by a nongovernmental person."

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the report under the last sentence of subsec. (a)(2) of this section is listed as the 16th item on page 19), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12185. EFFECTUATION OF CONSERVATION OF PETROLEUM AND NATURAL GAS BY RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE

Ex. Ord. No. 12185, Dec. 17, 1979, 44 F.R. 75093, provided:

By the authority vested in me as President of the United States of America by Section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3318; Public Law 95–620) [42 U.S.C. 8373(b)] and Section 301 of Title 3 of the United States Code, in order to encourage additional conservation of petroleum

and natural gas by recipients of Federal financial assistance, it is hereby ordered as follows:

1–101. Each Federal agency, as that term is defined in Section 103(a)(25) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3297) [42 U.S.C. 8302(a)(25)], shall effectuate through its financial assistance programs the purposes of that Act relating to the conservation of petroleum and natural gas.

1–102. Each Federal agency which extends financial assistance shall review those programs of financial assistance and identify those which are most likely to offer opportunities for significant conservation of petroleum and natural gas.

1–103. Within two months, and annually thereafter, each agency shall publish for comment a list of those programs which it has identified as likely to offer significant opportunity for conservation. The public shall be given 60 days to submit comments, including suggestions for rules which would effectuate the conservation purposes of the Act [see Short Title note set out under 42 U.S.C. 8301].

1–104. After receiving public comment and suggestions, and after consulting with the Director of the Office of Management and Budget, each agency shall publish proposed rules designed to achieve conservation of petroleum and natural gas in connection with the receipt of financial assistance.

Proposed rules should be published within 30 days of the close of the comment period under Section 1–103.

1–105. Final rules shall be adopted by each agency in accordance with the provisions of Sections 102(b) [42 U.S.C. 8301(b)], 403(b) [42 U.S.C. 8373(b)] and 701(a) [42 U.S.C. 8411(a)] of the Powerplant and Industrial Fuel Use Act of 1978, and the provisions of this Order, not later than 180 days from the date of this Order.

1–106. No one shall be awarded any financial assistance unless that award complies with the provisions of the conservation rules adopted by the agency pursuant to this Order.

1–107. To the extent permitted by law and where not inconsistent with the financial assistance program, final rules may provide for the reduction or suspension of financial assistance under any award. Such reduction or suspension shall not be ordered until there has been an opportunity for a hearing on the record, and shall last for such time as the recipient fails to comply with the terms of the conservation rule.

1–108. No conservation rule shall be adopted which is inconsistent with the statutory provisions establishing the financial assistance program.

1–109. No conservation rule shall be used to enforce compliance with any prohibition under the Act [see Short Title note set out under 42 U.S.C. 8301] against any person or facility which has been specifically determined by the Secretary of Energy as subject to or exempt from a prohibition under the Act. The conservation rules shall be used to enforce other new ways of achieving the purposes of the Act related to the conservation of petroleum and natural gas.

1–110. In order to assess the effectiveness of this program, each agency shall annually prepare a report on its activities in accord with Section 403(b)(1)(B) of the Act [42 U.S.C. 8373(b)]. These reports shall be submitted to the President through the Secretary of Energy.

1–111. The Secretary of Energy shall prepare for the President's consideration and transmittal to the Congress the report required by Section 403(c) of the Act [42 U.S.C. 8373(c)].

1–112. The Director of the Office of Management and Budget may issue any rules, regulations, or orders he deems necessary to ensure the implementation of this Order. The Director may exercise any of the authority vested in the President by Section 403(b) of the Act [42 U.S.C. 8373(b)], and may redelegate such of that authority as he deems appropriate to the head of any other agency.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12217

Ex. Ord. No. 12217, June 18, 1980, 45 F.R. 41623, which established the responsibilities and duties of Executive agencies for compliance with this chapter, was revoked by Ex. Ord. No. 12437, Aug. 11, 1983, 48 F.R. 36801.

§8374. Emergency authorities

(a) Coal allocation authority

(1) If the President—

(A) declares a severe energy supply interruption, as defined in section 6202(8) of this title, or

(B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines—

(i) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the

economy; and

(iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God;

the President may, by order, allocate coal (and require the transportation thereof) for the use of any electric powerplant or major fuel-burning installation, in accordance with such terms and conditions as he may prescribe, to insure reliability of electric service or prevent unemployment, or protect public health, safety, or welfare.

(2) For purposes of this subsection, the term "coal" means anthracite and bituminous coal and lignite (but does not mean any fuel derivative thereof).

(b) Emergency prohibition on use of natural gas or petroleum

If the President declares a severe energy supply interruption, as defined in section 6202(8) of this title, the President may, by order, prohibit any electric powerplant or major fuel-burning installation from using natural gas or petroleum, or both, as a primary energy source for the duration of such interruption. Notwithstanding any other provision of this section, any suspension of emission limitations or other requirements of applicable implementation plans, as defined in section 7410(d) [1] of this title, required by such prohibition shall be issued only in accordance with section 7410(f) of this title.

(c) Emergency stays

The President may, by order, stay the application of any provision of this chapter, or any rule or order thereunder, applicable to any new or existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or systemwide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

(d) Duration of emergency orders

(1) Except as provided in paragraph (3), any order issued by the President under this section shall not be effective for longer than the duration of the interruption or emergency, or 90 days, whichever is less.

(2) Any such order may be extended by a subsequent order which the President shall transmit to the Congress in accordance with section 6421 of this title. Such order shall be subject to congressional review pursuant to such section.

(3) Notwithstanding paragraph (1), the effectiveness of any order issued under this section shall not terminate under this subsection during the 15-calendar-day period during which any such subsequent order described in paragraph (2) is subject to congressional review under section 6421 of this title.

(4) For purposes of this subsection, the provisions of this subsection supersede the provisions of subchapter II of chapter 34 of title 50.

(e) Delegation of authority prohibited

The authority of the President to issue any order under this section may not be delegated. This subsection shall not be construed to prevent the President from directing any Federal agency to issue rules or regulations or take such other action, consistent with this section, in the implementation of such order.

(f) Publication and reports to Congress of orders

Any order issued under this section shall be published in the Federal Register. To the greatest extent practicable, the President shall, before issuing any order under this section, but in no event later than 5 days after issuing such order, report to the Congress of his intention to issue such order and state his reasons therefor.

(Pub. L. 95–620, title IV, §404, Nov. 9, 1978, 92 Stat. 3319; Pub. L. 100–42, §1(c)(15), May 21, 1987, 101 Stat. 313.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7410(d) of this title, referred to in subsec. (b), was repealed by Pub. L. 101–549, title I, §101(d)(4), Nov. 15, 1990, 104 Stat. 2409.

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

Subchapter II (§1621 et seq.) of chapter 34 of title 50, referred to in subsec. (d)(4), was in the original "title II of the Act of September 14, 1976 (Public Law 94–412)", which is known as the National Emergencies Act.

AMENDMENTS

1987—Subsec. (g). Pub. L. 100–42 struck out subsec. (g) which permitted use of natural gas or petroleum as primary energy source in peakload powerplant or major fuel-burning installation during temporary emergency condition (other than emergency conditions provided for under section 8302(a)(15) of this title).

[1] *See References in Text note below.*

§8375. Repealed. Pub. L. 100–42, §1(a)(5), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title IV, §405, Nov. 9, 1978, 92 Stat. 3320, prohibited increased use of petroleum as primary energy source in existing electric powerplants which, during calendar year 1977, used coal or another alternate fuel as primary energy source, unless permit authorizing such increased use had been issued by Secretary.

SUBCHAPTER V—SYSTEM COMPLIANCE OPTION

§8391. Repealed. Pub. L. 100–42, §1(a)(6), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title V, §501, Nov. 9, 1978, 92 Stat. 3321, mandated that existing electric powerplants owned or operated by an electric utility be considered in compliance with prohibitions under subchapter III of this chapter relating to use of natural gas if there is in effect an approved plan of system compliance for such utility, and set forth requirements for approval of such plan.

SUBCHAPTER VI—FINANCIAL ASSISTANCE

§8401. Assistance to areas impacted by increased coal or uranium production

(a) Designation of impacted areas

(1) In accordance with such criteria and guidelines as the Secretary of Agriculture shall, by rule, prescribe, the Governor of any State may designate any area within such State for the purposes of this section, if he finds that—

(A) either (i) employment in coal or uranium production development activities in such area has increased for the most recent calendar year by 8 percent or more from the immediately preceding year or (ii) employment in such activities will increase 8 percent or more per year during each of the 3 calendar years beginning after the date of such finding;

(B) such employment increase has required or will require substantial increases in housing or public facilities and services or a combination of both in such area; and

(C) the State and the local government or governments serving such area lack the financial and other resources to meet any such increases in public facilities and services within a reasonable time.

The Secretary of Agriculture shall prescribe a rule containing criteria and guidelines for making a designation under this subsection, after consultation with the Secretary of Labor and the Secretary of Energy, not later than 180 days after the effective date of this chapter.

(2) For purposes of paragraph (1)(C), increased revenues, including severance tax revenues, royalties, and similar fees to the State and local governments which are associated with the increase in coal or uranium development activities and which are not prohibited from being used under provisions of law in effect on November 9, 1978, shall be taken into account in determining if a State or local government lacks financial resources.

(3) The Secretary shall, after consultation with the Secretary of Agriculture, approve any designation of an area under paragraph (1) only if—

(A) the Governor of the State making the designation provides the Secretary in writing with the data and information on which such designation was made, together with such additional information as the Secretary may require to carry out the purposes of this section; and

(B) the Secretary determines that the requirements of subparagraphs (A), (B), and (C) of paragraph (1) have been met.

(b) Planning grants

(1) The Secretary of Agriculture may make a grant to any State in which there is an area designated and approved under subsection (a) for the purposes of developing a plan for such area which shall include determinations of—

(A) the anticipated level of coal or uranium production activities in such area;

(B) the socio-economic impacts which have occurred or which are reasonably projected to occur as a result of the increase in coal or uranium production activities;

(C) the availability and location of resources within such area to meet the increased needs resulting from socio-economic impacts determined under subparagraph (B) (such as any increased need for housing, or public facilities and services); and

(D) the nature and expense of measures necessary to meet within a reasonable time the increased needs resulting from such impact for which there are no resources reasonably available other than under this section.

(2)(A) Any grant for developing a plan under this subsection shall be for an amount equal to 100 percent of the costs of such plan, as determined by the Secretary of Agriculture.

(B) The aggregate amount granted under this subsection in any fiscal year may not exceed 10 percent of the total amount appropriated for purposes of this section for such year.

(3) The Governor of a State receiving a grant under this subsection for developing a plan shall submit a copy of such plan to the Secretary of Agriculture as soon as practicable after it has been prepared.

(c) Land acquisition and development grants

(1) In the case of any real property—

(A) within an area for which a plan meeting the requirements of subsection (b)(1) has been approved;

(B) which is for housing or public facilities determined in such plan as necessary due to an increase in employment due to coal or uranium development activities;

(C) with respect to which the Secretary of Agriculture has determined that the State and the local governments serving such area do not have the financial resources to acquire or the legal authority to acquire by condemnation; and

(D) with respect to which there has been an approval in writing by the Governor of such State that the Secretary of Agriculture exercise his authority under this paragraph;

the Secretary of Agriculture may acquire such real property or interest therein, by purchase, donation, lease, or exchange. Property so acquired shall be transferred to the State under such terms and conditions as the Secretary of Agriculture deems appropriate. Such terms and conditions shall provide for the reimbursement to the Secretary of Agriculture for the fair market value of the property, as determined by the Secretary of Agriculture. The value of any improvement of such property made after such acquisition shall not be taken into account in determining the fair market value of such property under this subsection. Amounts so received by the Secretary of Agriculture shall be deposited in the Treasury of the United States as miscellaneous receipts.

(2) Any approval by a Governor of a State under paragraph (1)(D) shall constitute a binding commitment of such State to accept the property to be acquired and to provide reimbursement for the amount of the fair market value of such property, as determined under paragraph (1).

(3) The Secretary of Agriculture may acquire property under paragraph (1) by condemnation only if he finds that—

(A) such property is not available by means other than condemnation at a price which does not substantially exceed the fair market value of such property;

(B) other real property is not similarly available which is within the same designated area and which is suitable for the purposes to which the property involved is to be applied; and

(C) the State and the local governments serving such area lack the legal authority to acquire such property by condemnation.

(4)(A) In the case of any real property which meets the requirements of subparagraphs (A), (B), and (C) of paragraph (1), the Secretary of Agriculture may make a grant to the State in which such property is located for the purposes of acquiring such property, and for any site development which is consistent with the plan developed under subsection (b).

(B) In the case of property acquired by the Secretary of Agriculture under paragraph (1) and transferred to the State, the Secretary of Agriculture may make a grant to such unit of government for the purposes of site development which is consistent with such plan.

(C) Grants for real property acquisition or site development or both under this paragraph may not exceed 75 percent of the costs thereof, as determined by the Secretary of Agriculture.

(5) In the selection of real property for acquisition and in such acquisition under this subsection, preference shall be given to real property which the Secretary of Agriculture determines at such time to be unoccupied or previously mined and abandoned.

(6)(A) Property held by the United States in trust for Indians or any Indian tribe may not be acquired by condemnation under this section.

(B) No property within the National Forest System (as defined in section 1609 [1] of title 16) may be exchanged by the Secretary in any acquisition under paragraph (1).

(d) General requirements regarding assistance

(1) Assistance under this section shall be provided only upon application, which application shall contain such information as the Secretary of Agriculture shall prescribe.

(2) The Secretary of Agriculture may make any grant under this section in whole or in part to the local government or governments serving an area designated and approved under subsection (a), or to a council of local governments which includes one or more local governments serving such area (in lieu of making such grant solely to the State), if he has determined, after consultation with the Governor of the State, that to do so would be appropriate.

(3) The Secretary of Agriculture shall prescribe, by rule, criteria for the allocation of assistance under this section. Such criteria shall give due weight to the magnitude of the employment increase involved, the financial resources of the designated area, and the ratio of the financial burden on the area to the resources available to such area.

(4) Assistance under this section shall be provide only if the Secretary of Agriculture is satisfied that—

(A) the amounts expended by the State and the local governments involved for the same purposes for which such assistance is provided will not be reduced; and

(B) the amount of such assistance does not reflect any amount for which other Federal financial assistance is provided or on proper application would be provided.

(e) "Coal or uranium development activities" and "site development" defined

For the purposes of this section—

(1) The term "coal or uranium development activities" means the production, processing, or transportation of coal or uranium.

(2) The term "site development" means necessary off-site improvements, such as the construction of sewer and water connections, construction of access roads, and appropriate site restoration, but does not include any portion of the construction of housing or public facilities.

(f) Reports

Any person regularly engaged in any coal or uranium development activity within an area designated and approved under subsection (a) shall prepare and transmit a report to the Secretary of Energy within 90 days after a written request to such person by the Governor of the State in which such area is located. Such report shall include—

(1) projected employment levels for such activity by such person within such area during each of the following 3 calendar years;

(2) the projected increase in employees in such area to engage in such activity during each of such calendar years;

(3) the projected quantity of coal (or uranium) to be produced, processed, or transported by such person during each of such calendar years; and

(4) actions such companies plan to take or are taking to provide needed housing and other facilities for their employees directly or by providing funds to the States or local communities for this purpose.

Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 796(d) of title 15, provide the report to the Secretary of Agriculture, the Governor, and the appropriate county or local officials and make it available for public review.

(g) Administration

The Secretary of Agriculture shall carry out his responsibilities under this section through the Farmers Home Administration and such other agencies within the Department of Agriculture as he may determine appropriate.

(h) Appropriations authorization

(1) [2] There is hereby authorized to be appropriated to the Secretary of Energy for purposes of this section, $60,000,000 for fiscal year 1979 and $120,000,000 for fiscal year 1980. The Secretary of Energy and the Secretary of Agriculture shall enter into an agreement for the allocation of funds appropriated pursuant to this section for carrying out their respective responsibilities under this section, including the amounts for personnel and administrative costs, and upon such agreement, the Secretary of Energy shall transfer to the Secretary of Agriculture amounts determined under that agreement.

(i) Protection from certain hazardous actions

Federal agencies having responsibilities concerning the health and safety of any person working in any coal, uranium, metal, or nonmetallic mine regulated by any Federal agency shall interpret and utilize their authorities fully and promptly, including the promulgation of standards and regulations, to protect existing and future housing, property, persons, and public facilities located adjacent to or near active and abandoned coal, uranium, metal, and nonmetallic mines from actions occurring at such activities that pose a hazard to such property or persons.

(j) Reorganization

The authority of the Secretary of Agriculture and the authority of the Secretary of Energy under this section may not be transferred to any other Secretary or to any other Federal agency under chapter 9 of title 5 or under any other provision of law, other than under specific provisions of a law

enacted after November 9, 1978. The preceding provisions of this subsection shall not preclude either Secretary from delegating any such authority to any officer, employee, or entity within such Secretary's department.

(Pub. L. 95–620, title VI, §601, Nov. 9, 1978, 92 Stat. 3323.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(1), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

Section 1609 of title 16, referred to in subsec. (c)(6)(B), was in the original "section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974". Such section 10 is classified to section 1608 of title 16 but has been editorially translated as section 1609 of title 16 as the probable intent of Congress in that the properties defined as being in the National Forest System appear in section 1609.

[1] See References in Text note below.

[2] So in original. No par. (2) has been enacted.

§8401a. "Local government" defined

For the purposes of section 8401 of this title, the term "local government" shall include—

(1) any county, parish, city, town, township, village or other general purpose political subdivision of a State with the power to levy taxes and expend Federal, State, and local funds and exercise governmental powers; and

(2) which (in whole or in part) is located in, or has authority over the energy impacted area: *Provided further*, That such term shall include a public or private nonprofit corporation, or a school, water, sewer, highway, or other public special purpose district, authority, or body, with the concurrence of the Governor: *Provided further*, That such term shall be applicable to all applications for assistance received since the effective date of section 8401 of this title.

(Pub. L. 96–514, title II, §201, Dec. 12, 1980, 94 Stat. 2975.)

EDITORIAL NOTES

REFERENCES IN TEXT

For effective date of section 8401 of this title, referred to in par. (2), see section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1981, and not as part of the Powerplant and Industrial Fuel Use Act of 1978 which comprises this chapter.

§8402. Loans to assist powerplant acquisitions of air pollution control equipment

(a) Authority to make loans

The Secretary may, in accordance with the provisions of this section and such rules and regulations as he shall prescribe, make a loan (and may make a commitment to loan) to any person who owns or operates any existing electric powerplant converting to coal or other alternate fuel as its primary energy source after the effective date of this chapter for the purpose of financing the purchase and installation of one or more certified air pollution control devices for such electric powerplant.

(b) Limitations and conditions

A loan made under this section shall—

(1) not exceed two-thirds of the cost of purchasing and installing the certified air pollution control devices;

(2) have a maturity date not extending beyond 10 years after the date such loan is made;

(3) bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield of outstanding Treasury obligations of comparable maturity, plus (B) 1 percent;

(4) be made on the condition of payment to the Secretary of a loan fee in an amount equal to (A) such insurance fee as the Secretary determines is necessary to avoid a Federal revenue loss under this section, plus (B) 1 percent of the loan amount; and

(5) be made only if the Secretary finds that—

(A) the financial assistance applied for is not otherwise available from other Federal agencies;

(B) the applicant is unable to obtain sufficient funds on reasonable terms and conditions from any other source;

(C) there is continued reasonable assurance of full repayment of the principal, interest, and fees; and

(D) competition among private entities for the provision of air pollution control devices for electric powerplants using coal as their primary energy source to be assisted under this section will be in no way limited or precluded.

(c) Allocation and priorities

In making loans or commitments to loan pursuant to this section, the Secretary shall—

(1) allocate a minimum of 25 percent of available financial assistance to existing small municipal and rural powerplants; and

(2) give priority consideration to requests for financial assistance by existing electric powerplants subject to any prohibition under subchapter III (or under section 792 of title 15).

(d) Definitions

For purposes of this section—

(1) The term "certified pollution control device" means a new identifiable device which—

(A) is used, in connection with a powerplant, to abate or control atmospheric pollution by removing, altering, disposing, storing, or preventing the emission of pollutants;

(B) the appropriate State air pollution control agency has certified to the Administrator of the Environmental Protection Agency that such device is needed to meet, and is in conformity with, State requirements for abatement or control of atmospheric pollution or contamination;

(C) the Administrator of the Environmental Protection Agency has certified to the Secretary as not duplicating or displacing existing air pollution control devices with a remaining useful economic life in excess of 2 years and as otherwise being in furtherance of the requirements and purposes of the Clean Air Act [42 U.S.C. 7401 et seq.];

(D) does not constitute or include a building, or a structural component of a building, other than a building used exclusively for the purposes set forth in subparagraph (A); and

(E) the construction of which began after the effective date of this chapter.

(2) The term "small municipal or rural cooperative electric powerplant" means an electric generating unit, which—

(A) by design is not capable of consuming fuel at a fuel heat input rate in excess of a rate determined appropriate by the Secretary by rule; and

(B) is owned or operated by a municipality or a rural electric cooperative.

(e) Records

(1) The Secretary shall require all persons receiving financial assistance under this section to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and

disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the later of—

(A) the expiration of 3 years after completion of the project or undertaking referred to in subsection (a), or

(B) full repayment of interest and principal on a loan made under this section, occurs,

have access for the purposes of audit, evaluation, examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to such loan.

(f) Default

(1) If there is a default in any payment by the obligor of interest or principal due under a loan entered into by the Secretary under this section and such default has continued for 90 days, the Secretary has the right to demand payment of such unpaid amount, unless the Secretary finds that such default has been remedied, or a satisfactory plan to remedy such default by the obligor has been accepted by the Secretary.

(2) In demanding payment of unpaid interest or principal by the obligor, the Secretary has all rights specified in the loan-related agreements with respect to any security which he held with respect to the loan, including the authority to complete, maintain, operate, lease, sell, or otherwise dispose of any property acquired pursuant to such loan or related agreements.

(3) If there is a default under any loan, the Secretary shall notify the Attorney General who shall take such action against the obligator or other parties liable thereunder as is, in his discretion, necessary to protect the interests of the United States. The holder of such loan shall make available to the United States all records and evidence necessary to prosecute any such suit.

(g) Deposit of receipts

Amounts received by the Secretary as principal, interest, fees, proceeds from security acquired following default, or other amounts received by the Secretary in connection with loans made under this section shall be paid into the Treasury of the United States as miscellaneous receipts.

(h) Authorization of appropriation

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this section, but not to exceed $400,000,000 for fiscal year 1979 and $400,000,000 for fiscal year 1980. Authority granted to the Secretary under subsection (a) may be exercised only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95–620, title VI, §602, Nov. 9, 1978, 92 Stat. 3327.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a) and (d)(1)(E), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

The Clean Air Act, referred to in subsec. (d)(1)(C), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

SUBCHAPTER VII—ADMINISTRATION AND ENFORCEMENT

PART A—PROCEDURES

§8411. Administrative procedures

(a) General rulemaking

Except to the extent otherwise provided in this section or other provisions of this chapter, rules prescribed under this chapter shall be made in accordance with the procedures set forth in section 553 of title 5.

(b) Notices of rules and orders imposing prohibitions

Before the Secretary prescribes any rule or issues any order imposing a prohibition under this chapter, he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant required to be specifically identified in such rule or order.

(c) Petitions for exemptions

(1) Any petition for an exemption from any prohibition under this chapter shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after November 9, 1978.

(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of the electric powerplant which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption, shall issue a final order granting or denying the petition for such exemption, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

(d) Public comment on prohibitions and exemptions

(1) In the case of any proposed rule or order by the Secretary imposing a prohibition or any petition for any order granting an exemption under this chapter, any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentations,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of such petition, and

(C) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation,

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(2) A rule or order subject to this section may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable,

probative, and substantial evidence.

(e) Transcript

A transcript shall be kept of any public hearing made in accordance with this section.

(f) Environmental Protection Agency comment

A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this chapter (other than under section 8374 of this title), or a petition for an exemption (or permit) under this chapter (other than under section 8374 of this title), shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer period is provided under the Clean Air Act [42 U.S.C. 7401 et seq.]. In any such case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).

(g) Repealed. Pub. L. 100–42, §1(c)(16)(E), May 21, 1987, 101 Stat. 313

(h) Coordination with other provisions of law

(1) Except as provided in sections 8412(c)(4), 8433(d)(5), and 8434 of this title, title V of the Department of Energy Organization Act (42 U.S.C. 7191, et seq.) shall not apply with respect to this chapter.

(2) The preceding provisions of this section shall not apply with respect to any exercise of authority under section 8374 of this title.

(3) The procedures applicable under this chapter shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this chapter (or provisions of law cited herein), or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this chapter, and declaring that such provision supersedes, in whole or in part, the procedures of this chapter.

(Pub. L. 95–620, title VII, §701, Nov. 9, 1978, 92 Stat. 3329; Pub. L. 100–42, §1(c)(16), May 21, 1987, 101 Stat. 313.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c)(1), (d)(1), (f), and (h)(1), (3), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

The Clean Air Act, referred to in subsec. (f), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Department of Energy Organization Act, referred to in subsec. (h)(1), is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 567. Title V of the Department of Energy Organization Act is classified generally to subchapter V (§7191 et seq.) of chapter 84 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–42, §1(c)(16)(A), struck out "(other than under section 8372 of this title)" after "this chapter" and "or installation" after "powerplant".

Subsec. (c)(1). Pub. L. 100–42, §1(c)(16)(B)(i), (ii), struck out "or for any permit under section 8375 of this title" after "this chapter" and "or permit" after "such exemption".

Subsec. (c)(2). Pub. L. 100–42, §1(c)(16)(B)(iii), struck out "or, where appropriate, major fuel-burning installation" after "powerplant".

Subsec. (c)(3). Pub. L. 100–42, §1(c)(16)(B)(i), struck out "or permit" after "exemption" in two places.

Subsec. (c)(4). Pub. L. 100–42, §1(c)(16)(B)(iv), struck out par. (4) which read as follows: "Any order for the approval of a system compliance plan under section 8391 of this title, and any petition for such an order,

shall be treated for purposes of this subchapter the same as an order (or petition) for an exemption."

Subsec. (d)(1). Pub. L. 100–42, §1(c)(16)(C), struck out "(or permit)" after "an exemption" and "(other than under section 8372 of this title)" after "under this chapter".

Subsec. (f). Pub. L. 100–42, §1(c)(16)(D), struck out "8372 or" after "(other than under section" in two places.

Subsec. (g). Pub. L. 100–42, §1(c)(16)(E), struck out subsec. (g) which read as follows: "A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this chapter (other than under section 8372 or 8374 of this title) with respect to a major fuel-burning installation or a boiler subject to section 8371 of this title or a petition by such installation or boiler for an exemption (or permit) under this chapter (other than under section 8372 or 8374 of this title), shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public. In any such case, the Federal Trade Commission shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d)."

§8412. Judicial review

(a) Publication and delay of prohibition or exemption to allow for review

Any final rule or order prescribed by the Secretary imposing a prohibition or granting an exemption (or permit) under this chapter shall be published in the Federal Register, and shall not take effect earlier than the 60th calendar day after such rule or order is published.

(b) Publication of denial of exemption or permit

Any final order issued by the Secretary denying any petition for an exemption or a permit under this chapter shall be published in the Federal Register, together with the reasons for such action.

(c) Judicial review

(1) Any person aggrieved by any final rule or order referred to in subsection (a) or in section 8374 of this title, or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b), may at any time before the 60th day after the date such rule, order, or denial is published under subsection (a) or (b), file a petition with the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which the rule or order was based as provided in section 2112 of title 28.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule, order, or denial in accordance with chapter 7 of title 5, and to grant appropriate relief as provided in such chapter. No rule or order (or denial thereof) may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule, order, or denial shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(4) Subject to the direction and control of the Attorney General, as provided in section 519 of title 28, attorneys appointed by the Secretary may appear for and represent the Secretary in any proceeding instituted under this section in accordance with section 7192(c) of this title.

(Pub. L. 95–620, title VII, §702, Nov. 9, 1978, 92 Stat. 3331.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

PART B—INFORMATION AND REPORTING

§8421. Information

(a) Authority of Secretary

For purposes of carrying out his responsibilities under this chapter, the Secretary may require, under the authority of this chapter or any other authority administered by him, any person owning, operating or controlling any electric powerplant, or any other person otherwise subject to this chapter to submit such information and reports of any kind or nature directly to the Secretary necessary to implement the provisions of this chapter, and insure compliance with the provisions of this chapter, and any rule or order thereunder. The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this section to the same extent and in the same manner as it applies with respect to energy information obtained under section 796 of title 15.

(b) Authority of President and Federal Energy Regulatory Commission

In the case of responsibilities expressly given by this chapter to the President or the Federal Energy Regulatory Commission, subsection (a) shall be applied as if the references to the Secretary were references to the President or the Federal Energy Regulatory Commission, as the case may be.

(c) Natural gas usage by electric utilities

(1) For purposes of section 8374(b) of this title and other emergency authorities, the Secretary shall obtain data necessary to determine—

(A) within 6 months after August 13, 1981, the total quantities of natural gas used as a primary energy source by each electric utility during calendar year 1977, and

(B) on a semiannual basis, the total quantities of natural gas used as a primary energy source during the previous 6-month period by each electric utility.

(2) Repealed. Pub. L. 104–66, title I, §1051(e), Dec. 21, 1995, 109 Stat. 716.

(Pub. L. 95–620, title VII, §711, Nov. 9, 1978, 92 Stat. 3332; Pub. L. 97–35, title X, §1021(b), Aug. 13, 1981, 95 Stat. 615; Pub. L. 100–42, §1(c)(17), May 21, 1987, 101 Stat. 313; Pub. L. 104–66, title I, §1051(e), Dec. 21, 1995, 109 Stat. 716.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1995—Subsec. (c)(2). Pub. L. 104–66 struck out par. (2) which read as follows: "The Secretary shall include in each annual report to the Congress under section 8482 of this title a summary of information received by the Secretary under this subsection."

1987—Subsec. (a). Pub. L. 100–42 struck out "or major fuel-burning installation" after "powerplant".

1981—Subsec. (c). Pub. L. 97–35 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note

under section 6240 of this title.

§8422. Compliance report

(a) Generally

Any person owning, operating, or proposing to operate one or more existing electric powerplants required to come into compliance with the prohibitions of this chapter shall on or before January 1, 1980, and annually thereafter, submit to the Secretary a report identifying all such existing electric powerplants owned or operated by such person. Such report shall—

(1) set forth the anticipated schedule for compliance with the applicable requirements and prohibitions by each such electric powerplant;

(2) indicate proposed or existing contracts or other commitments or good faith negotiations for such contracts or commitments for coal or another alternate fuel, equipment, or combinations thereof, which would enable such powerplant to comply with such prohibitions; and

(3) identify those electric powerplants, if any, for which application for temporary or permanent exemption from the prohibitions of this chapter may be filed.

(b) Report on implementation of section 8484 plan

Any electric utility required to submit a conservation plan under section 8484 of this title shall annually submit to the Secretary a report identifying the steps taken during the preceding year to implement such plan.

(Pub. L. 95–620, title VII, §712, Nov. 9, 1978, 92 Stat. 3332; Pub. L. 97–35, title X, §1023(b), Aug. 13, 1981, 95 Stat. 617.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97–35 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

PART C—ENFORCEMENT

§8431. Notice of violation; other general provisions

(a) Notice of violation

(1) Whenever, on the basis of any information available, the Secretary finds that any person is in violation of any provision of this chapter, or any rule or order thereunder, the Secretary shall issue notice of such violation. Any notice issued under this subsection shall be in writing and shall state with reasonable specificity the nature of the violation.

(2) Paragraph (1) shall not be construed to relieve any person of liability under the other provisions of this chapter for any act or omission occurring before the issuance of notice.

(b) Individual liability of corporate personnel

Any individual director, officer, or agent of a corporation who willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of this chapter, or any rule or order thereunder, shall be subject to penalties under this section without regard to any penalties to which the corporation may be subject, except that no such individual director, officer, or agent shall be subject to imprisonment under section 8432 of this title, unless he also knew of noncompliance by the corporation or had received from the Secretary notice of noncompliance by the corporation.

(c) Repealed. Pub. L. 100–42, §1(c)(18), May 21, 1987, 101 Stat. 313

(d) Federal agencies

The provisions of sections 8432 and 8433 of this title shall not be construed to apply to any Federal agency or officer or employee thereof acting in his official capacity.

(Pub. L. 95–620, title VII, §721, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100–42, §1(c)(18), May 21, 1987, 101 Stat. 313.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–42 struck out subsec. (c) which read as follows: "No person shall be subject to any penalty under this part with respect to the operation of any powerplant in excess of that allowed by an exemption granted on the basis of the operation of such powerplant as a peakload powerplant if it is demonstrated to the Secretary that such operation was necessary to meet peakload demand and that other peakload powerplants within the same system as such powerplant—

"(1) were unavailable for service—

"(A) due to unit or system outages; or

"(B) because operation of such other powerplants would result in their exceeding the hours of operation allowed under an exemption; and

"(2) have not been operated other than to meet peakload demand."

§8432. Criminal penalties

Any person who willfully violates any provision of this chapter, or any rule or order thereunder, shall be subject to a fine of not more than $50,000, or to imprisonment for not more than one year, or both, for each violation.

(Pub. L. 95–620, title VII, §722, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100–42, §1(c)(19), May 21, 1987, 101 Stat. 313.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Pub. L. 100–42 struck out "(other than section 8372 of this title)" after "this chapter".

§8433. Civil penalties

(a) General civil penalty

Any person who violates any provision of this chapter, or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

(b) Civil penalty for operation in excess of exemption

In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas used in operation of such powerplant in excess of that authorized in such exemption.

(c) Repealed. Pub. L. 100–42, §1(c)(20)(C), May 21, 1987, 101 Stat. 314

(d) Assessment

(1) Before issuing an order assessing a civil penalty against any person under this chapter, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, or of section 7192(c) of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this subsection.

(Pub. L. 95–620, title VII, §723, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100–42, §1(c)(20), May 21, 1987, 101 Stat. 313.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(1), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42, §1(c)(20)(A), struck out "(other than section 8372 of this title)" after "this chapter".

Subsec. (b). Pub. L. 100–42, §1(c)(20)(B), (C), struck out "(1)" before "In the case of" and struck out par. (2) which read as follows: "Any person operating a major fuel-burning installation granted an exemption which, for any 12-calendar-month period, uses petroleum or natural gas, or both, in excess of that use allowed by such exemption shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas which was used in excess of that use allowed by such exemption."

Subsec. (c). Pub. L. 100–42, §1(c)(20)(C), struck out subsec. (c) which set forth civil penalties for violation of section 8372 of this title.

§8434. Injunctions and other equitable relief

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of this chapter, or any rule or order thereunder, a civil action,[1] may be brought, in accordance with section 7192(c) of this title, in the appropriate district court of the United States to enjoin such acts or practices, and, upon a proper showing, the court shall grant, without bond, mandatory or prohibitive injunctive relief, including interim equitable relief.

(Pub. L. 95–620, title VII, §724, Nov. 9, 1978, 92 Stat. 3335.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

[1] *So in original. The comma probably should not appear.*

§8435. Citizens suits

(a) General rule

Except as otherwise provided in subsection (b), any aggrieved person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against the Secretary or the head of any Federal agency which has a responsibility under this chapter if there is an alleged failure of the Secretary or such agency head to perform any act or duty under this chapter which is not discretionary. The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) Notice to Secretary or agency head

No action may be commenced under subsection (a) before the 60th calendar day after the date on which the plaintiff has given notice of such action to the Secretary or the agency head involved. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by rule.

(c) Authority of Secretary to intervene

In any action brought under subsection (a), the Secretary, if not a party, may intervene as a matter of right.

(d) Costs of litigation

The court, in issuing any final order in any action brought under subsection (a), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) Other remedies to remain available

Nothing in this section shall restrict any right which any aggrieved person (or class of aggrieved persons) may have under any statute or common law to seek enforcement of this chapter or any rule thereunder, or to seek any other relief (including relief against the Secretary or the agency head involved).

(Pub. L. 95–620, title VII, §725, Nov. 9, 1978, 92 Stat. 3335.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (e), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

PART D—PRESERVATION OF CONTRACTUAL RIGHTS

§8441. Preservation of contractual interest

(a) Right to transfer contractual interests

(1) If any person receives natural gas, the use of which is prohibited by the provisions of subchapter III or any rule or order thereunder, and if such natural gas is received pursuant to a contract in effect on April 20, 1977, between such person and any other person, such person

receiving such natural gas may transfer all or any portion of such person's contractual interests under such contract and receive consideration from the person to whom such contractual interests are transferred. The consideration authorized by this subsection shall not exceed the maximum consideration established as just compensation under this section.

(2) Any person who would have transported or distributed the natural gas subject to a contract with respect to which contractual interests are transferred pursuant to paragraph (1) shall be entitled to receive just compensation (as determined by the Commission) from the person to whom such contractual interests are transferred.

(b) Determination of consideration

(1) The Commission shall, by rule, establish guidelines for the application on a regional or national basis (as may be appropriate) of the criteria specified in subsection (e)(1) to determine the maximum consideration permitted as just compensation under this section.

(2) The person transferring contractual interests pursuant to subsection (a)(1) and the person to whom such interests are transferred may agree on the amount of, or method of determining, the consideration to be paid for such transfer and certify such consideration to the Commission. Except as provided in paragraph (4), such agreed-upon consideration shall not exceed the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1).

(3) In the event the person transferring contractual interests pursuant to subsection (a)(1) and the person to whom such interests are to be transferred fail to agree, under paragraph (2), on the amount of, or method of determining, the consideration to be paid for such transfer, the Commission may, at the request of both such persons, prescribe the amount of, or method of determining, such consideration. Upon the request of either such person, the Commission shall make such determination on the record, after an opportunity for agency hearing. In any such latter case, the determination of the Commission shall be binding upon the party requesting that such determination be made on the record of the agency hearing. The consideration prescribed by the Commission shall not exceed the maximum consideration permitted as just compensation under this section. In prescribing the amount of, or method of determining, consideration under this paragraph, to the maximum extent practicable, the Commission shall utilize any liquidated damages provision set forth in the applicable contract, but in no event may the Commission prescribe consideration in excess of the maximum consideration permitted as just compensation under this section.

(4) In the event that the consideration agreed upon under paragraph (2) exceeds the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1), the Commission may approve such agreed-upon consideration if the Commission determines such agreed-upon consideration does not exceed the maximum consideration permitted as just compensation under this section.

(5) If consideration is agreed upon under paragraph (2) and such consideration exceeds the consideration determined by application of the guidelines prescribed under paragraph (1), but does not exceed the maximum consideration permitted as just compensation under this section, the Commission may not require a refund of any portion of the agreed-upon consideration paid with respect to deliveries of natural gas occurring prior to the Commission's action under paragraph (4) approving or disapproving such consideration unless the Commission determines—

(A) such agreed-upon consideration was fraudulently established;

(B) the processing of the request for approval of such agreed-upon consideration under paragraph (4) was willfully delayed by a party to the transfer; or

(C) such agreed-upon consideration exceeds the maximum consideration permitted as just compensation under this section.

(c) Restrictions on transfers unenforceable

(1) Any provision of any contract, which prohibits any transfer authorized by subsection (a)(1) or terminates such contract on the basis of such transfer, shall be unenforceable in any court of the United States and in any court of any State.

(2) No State may enforce any prohibition on any transfer authorized by subsection (a)(1).

(d) Contractual obligations unaffected

The person acquiring contractual interests transferred pursuant to subsection (a)(1) shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This subsection shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) Definitions

For purposes of this section—

(1) The term "just compensation", when used with respect to any transfer of contractual interests authorized by subsection (a)(1), means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (excluding capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred under subsection (a)(1), in direct association with the use of a fuel, other than natural gas, as a primary energy source by the applicable existing electric powerplant, exceed

(B) the price of natural gas under such contract during such period.

For purposes of subparagraph (A), the reasonable costs associated with the use of a fuel, other than natural gas, as a primary energy source shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such electric powerplant, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such other fuel.

(2) The term "just compensation", when used with respect to subsection (a)(2), means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to subsection (a)(1), to the extent such loss (A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to subsection (a)(1), and (B) is not offset by revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(3) The term "contractual interests", with respect to a contract described in subsection (a)(1), includes the right to receive natural gas as affected by any applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(4) The term "State" means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, and any political subdivision of any of the foregoing.

(5) The term "interstate pipeline" means any person engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(6) The term "Commission" means the Federal Energy Regulatory Commission.

(7) The term "contract", when used with respect to a contract for receipt of natural gas, which contract was in existence on April 20, 1977, does not include any renewal or extension occurring after such date unless such renewal or extension occurs pursuant to the exercise of an option by the person receiving natural gas under such contract.

(f) Coordination with Natural Gas Act

(1) Consideration paid by any interstate pipeline pursuant to this section shall be deemed just and reasonable for purposes of sections 4, 5, and 7 of the Natural Gas Act [15 U.S.C. 717c, 717d, 717f]. The Commission shall not deny a passthrough by such interstate pipeline of such consideration based upon the amount of such consideration paid pursuant to this section.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1).

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] any transportation in interstate commerce of natural gas, any sale in

interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale or person is subject to the juridiction [1] of the Commission under such Act without regard to the transfer of contractual interests under subsection (a)(1).

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the transportation by an interstate pipeline of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1). The Commission shall not deny such a certificate for the transportation in interstate commerce of natural gas based upon the amount of consideration paid pursuant to this section.

(g) Volume limitation

No supplier of natural gas under any contract, with respect to which contractual interests have been transferred under subsection (a)(1), shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests under subsection (a)(1), if no such transfer had occurred;

(3) the volume which would have been delivered, or for which payment would have been made, pursuant to such contract but for the prohibition on the use of such natural gas under subchapter III of this chapter or any rule or order thereunder; and

(4) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests pursuant to this section.

(h) Judicial review

Any action by the Commission under this section is subject to judicial review in accordance with chapter 7 of title 5.

(Pub. L. 95–620, title VII, §731, Nov. 9, 1978, 92 Stat. 3336; Pub. L. 100–42, §1(c)(21), May 21, 1987, 101 Stat. 314.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (e)(5) and (f)(2), (3), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–42, §1(c)(21)(A), struck out reference to subchapter II of this chapter.

Subsec. (e)(1). Pub. L. 100–42, §1(c)(21)(B), struck out "or major fuel-burning installation" after "powerplant" in subpar. (A) and "or major fuel-burning installation" after "powerplant" in last sentence.

Subsec. (g)(3). Pub. L. 100–42, §1(c)(21)(A), struck out reference to subchapter II of this chapter.

[1] So in original. Probably should be "jurisdiction".

PART E—STUDIES

§8451. National coal policy study

(a) Study

The President, acting through the Secretary and the Administrator of the Environmental Protection Agency, shall make a full and complete investigation and study of the alternative national uses of coal available in the United States to meet the Nation's energy requirements consistent with national policies for the protection and enhancement of the quality of the environment and for economic recovery and full employment. In particular the study should identify and evaluate—

(1) current and prospective coal requirements of the United States;

(2) current and prospective voluntary and mandatory energy conservation measures and their potential for reduction of the United States coal requirements;

(3) current and prospective coal resource production, transportation, conversion, and utilization requirements;

(4) the extent and adequacy of coal research, development, and demonstration programs being carried out by Federal, State, local, and nongovernmental entities (including financial resources, manpower, and statutory authority);

(5) programs for the development of coal mining technologies which increase coal production and utilization while protecting the health and safety of coal miners;

(6) alternative strategies for meeting anticipated United States coal requirements, consistent with achieving other national goals, including national security and environmental protection;

(7) existing and prospective governmental policies and laws affecting the coal industry with the view of determining what, if any, changes in and implementation of such policies and laws may be advisable in order to consolidate, coordinate, and provide an effective and equitable national energy policy consistent with other national policies; and

(8) the most efficient use of the Nation's coal resources considering economic (including capital and consumer costs, and balance of payments), social (including employment), environmental, technological, national defense, and other aspects.

(b) Report

Within 18 months after the effective date of this chapter, the President shall submit to the Congress a report with respect to the studies and investigations, together with findings and recommendations in order that the Congress may have such information in a timely fashion. Such report shall include the President's determinations and recommendations with respect to—

(1) the Nation's projected coal needs nationally and regionally, for the next 2 decades with particular reference to electric power;

(2) the coal resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development, and demonstration necessary to provide technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources, consistent with applicable environmental requirements;

(3) the air, water, and other pollution created by coal requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution;

(4) the existing policies and programs of the Federal Government and of State and local governments, which have any significant impact on the availability, production or efficient and economic utilization of coal resources and on the ability to meet the Nation's energy needs and environmental requirements; and

(5) the adequacy of various transportation systems, including roads, railroads, and waterways to meet projected increases in coal production and utilization.

Before submitting a report to the Congress under subsection (b) of this section, the President shall publish in the Federal Register a notice and summary of the proposed report, make copies of such report available, and accord interested persons an opportunity (of not less than 90 days' duration) to present written comments; and shall make such modifications of such report as he may consider appropriate on the basis of such comments.

(c) Authorization of appropriations

There is hereby authorized to be appropriated to the Secretary for allocation between the

Department of Energy and the Environmental Protection Agency for fiscal years 1979 and 1980, not to exceed $18,000,000, for use in carrying out the purposes of this section.

(Pub. L. 95–620, title VII, §741, Nov. 9, 1978, 92 Stat. 3339.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

§8452. Repealed. Pub. L. 97–375, title I, §106(d), Dec. 21, 1982, 96 Stat. 1820

Section, Pub. L. 95–620, title VII, §742, Nov. 9, 1978, 92 Stat. 3341, related to an investigation by the Secretary of the performance and competition of the coal industry, to be reported to Congress in interim reports with a final report to be submitted not later than eighteen months after Nov. 9, 1978.

§8453. Impact on employees

(a) Evaluation

The Secretary shall conduct continuing evaluations of potential loss or shifts of employment which may result from any prohibition under this chapter, including, if appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such prohibition. The results of such evaluations and each investigation shall promptly be made available to the public.

(b) Investigation and hearings

On a written request filed with the Secretary by or on behalf of any employee who is discharged or laid off, threatened with discharge or layoff, or otherwise discriminated against, by any person because of the alleged effects of any such prohibition, the Secretary shall investigate the matter and, at the request of any party, shall hold public hearings, after not less than 30 days notice, at which the Secretary shall require the parties, including any employer involved, to present information on the actual or potential effect of such prohibition on employment and on any alleged employee discharge, layoff, or other discrimination relating to prohibitions and the detailed reasons or justification therefor. At the completion of such investigation, the Secretary shall make findings of fact as to the effect of such prohibition on employment and on the alleged employee discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. The Secretary of Labor shall participate in each such investigation.

(c) Rule of construction

Nothing in this section shall be construed to require or authorize the Secretary to modify or withdraw any prohibition under this chapter.

(Pub. L. 95–620, title VII, §743, Nov. 9, 1978, 92 Stat. 3342.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

§8454. Study of compliance problem of small electric utility systems

(a) Study

The Secretary shall conduct a study of the problems of compliance with this chapter experienced by those electric utility systems which have a total system generating capacity of less than 2,000 megawatts. The Secretary shall report his findings and his recommendations to the Congress not later than 2 years after the effective date of this chapter.

(b) Authorization of appropriations

There is authorized to be appropriated to the Secretary for the fiscal year 1979 not to exceed $500,000 to carry out the provisions of this section.

(Pub. L. 95–620, title VII, §744, Nov. 9, 1978, 92 Stat. 3343.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

The effective date of this chapter, referred to in subsec. (a), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

§8455. Repealed. Pub. L. 104–66, title II, §2021(j)(1), Dec. 21, 1995, 109 Stat. 727

Section, Pub. L. 95–620, title VII, §745, Nov. 9, 1978, 92 Stat. 3343; Pub. L. 100–42, §1(c)(22), May 21, 1987, 101 Stat. 314, related to emissions monitoring.

§8456. Socioeconomic impacts of increased coal production and other energy development

(a) Committee

There is hereby established an interagency committee composed of the heads of the Departments of Energy, Commerce, Interior, Transportation, Housing and Urban Development, and Health and Human Services, the Environmental Protection Agency, the Appalachian Regional Commission, the Farmers' Home Administration, the Office of Management and Budget, and such other Federal agencies as the Secretary shall designate. In carrying out its functions the committee shall consult with the National Governors' Conference and interested persons, organizations, and entities. The chairman of the committee shall be designated by the President. The committee shall terminate 90 days after the submission of its report under subsection (c).

(b) Functions of committee

It is the function of the committee to conduct a study of the socioeconomic impacts of expanded coal production and rapid energy development in general, on States, including local communities, and on the public, including the adequacy of housing and public, recreational, and cultural facilities for coal miners and their families and the effect of any Federal or State laws or regulations on providing such housing and facilities. The committee shall gather data and information on—

(1) the level of assistance provided under this chapter and any other programs related to impact assistance,

(2) the timeliness of assistance in meeting impacts caused by Federal decisions on energy policy as well as private sector decisions, and

(3) the obstacles to effective assistance contained in regulations of existing programs related to impact assistance.

(c) Report

Within 1 year after the effective date of this chapter, the committee shall submit a detailed report on the results of such study to the Congress, together with any recommendations for additional legislation it may consider appropriate.

(Pub. L. 95–620, title VII, §746, Nov. 9, 1978, 92 Stat. 3344; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

The effective date of this chapter, referred to in subsec. (c), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§8457. Use of petroleum and natural gas in combustors

The Secretary shall conduct a detailed study of the uses of petroleum and natural gas as a primary energy source for combustors and installations not subject to the prohibitions of this chapter. In conducting such study, the Secretary shall—

(1) identify those categories of major fuel-burning installations in which the substitution of coal or other alternate fuels for petroleum and natural gas is economically and technically feasible, and

(2) determine the estimated savings of natural gas and petroleum expected from such substitution.

Within 1 year after the effective date of this chapter, the Secretary shall submit a detailed report on the results of such study to the Congress, together with any recommendations for legislation he may consider appropriate.

(Pub. L. 95–620, title VII, §747, Nov. 9, 1978, 92 Stat. 3344.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

The effective date of this chapter, referred to in text, is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

PART F—APPROPRIATIONS AUTHORIZATION

§8461. Authorization of appropriations

There is authorized to be appropriated to the Secretary for fiscal year 1979 $11,900,000, to carry out the provisions of this chapter (other than provisions for which an appropriations authorization is otherwise expressly provided in this chapter) and section 792 of title 15.

(Pub. L. 95–620, title VII, §751, Nov. 9, 1978, 92 Stat. 3344.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

PART G—COORDINATION WITH OTHER PROVISIONS OF LAW

§8471. Effect on environmental requirements

(a) Compliance with applicable environmental requirements

Except as provided in section 8374 of this title, nothing in this chapter shall be construed as permitting any existing or new electric powerplant to delay or avoid compliance with applicable environmental requirements.

(b) Local environmental requirements

In the case of any new or existing facility—

(1) which is subject to any prohibition under this chapter, and

(2) which is also subject to any requirement of any local environmental requirement which may be stricter than any Federal or State environmental requirement,

the existence of such local requirement shall not be construed to affect the validity or applicability of such prohibition to such facility, except to the extent provided under section 8322(b) or section 8352(b) of this title; and the existence of such prohibition shall not be construed to preempt such local requirement with respect to that facility.

(Pub. L. 95–620, title VII, §761, Nov. 9, 1978, 92 Stat. 3345; Pub. L. 100–42, §1(c)(23), May 21, 1987, 101 Stat. 314.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–42 struck out "or major fuel-burning installation" after "powerplant".

§8472. Effect of orders under section 792 of title 15

(a) Effect of construction orders

Any electric powerplant or major fuel-burning installation issued an order pursuant to section 792(c) of title 15 that is pending on the effective date of this chapter shall, notwithstanding the provisions of such section 792(c) or any other provision of this chapter, be subject to the provisions of this chapter as if it were a new electric powerplant or new major fuel-burning installation, as the case may be, except that if such order became final before such date, the provisions of subchapter II of this chapter shall not apply to such powerplant or installation.

(b) Effect of prohibition orders

The provisions of subchapters II and III shall not apply to any powerplant or installation for which an order issued pursuant to section 792(a) of title 15 before the effective date of this chapter is pending or final or which, on review, was held unlawful and set aside on the merits; except that any installation issued such an order under such section 792(a) which is pending on the effective date of this chapter may elect to be covered by subchapter II or III (as the case may be) rather than such section 792. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary shall, within 90 days after November 9, 1978, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary prescribes the form and manner of making such election.

(c) Validity of orders

The preceding provisions of this chapter shall not affect the validity of any order issued under subsection (a), or any final order under subsection (c), of section 792 of title 15, and the authority of the Secretary to amend, repeal, rescind, modify, or enforce any such order, or rules applicable thereto, shall remain in effect notwithstanding any limitation of time otherwise applicable to such authority. Except as provided in this section, the authority of the Secretary under section 792 of title 15 shall terminate on the effective date of this chapter.

(Pub. L. 95–620, title VII, §762(a)–(c), Nov. 9, 1978, 92 Stat. 3345.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as an Effective Date note under section 8301 of this title.

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

§8473. Environmental impact statements under section 4332 of this title

The following actions are not deemed to be major Federal actions for purposes of section 4332(2)(C) of this title:

(1) the grant or denial of any temporary exemption under this chapter for any electric powerplant;

(2) the grant or denial of any permanent exemption under this chapter for any existing electric powerplant, other than an exemption—

(A) under section 8352(c) of this title, relating to cogeneration;

(B) Repealed. Pub. L. 100–42, §1(c)(24)(B), May 21, 1987, 101 Stat. 314;

(C) under section 8352(b) of this title, relating to certain State or local requirements;

(D) under section 8352(g) of this title, relating to certain intermediate load powerplants; and

(3) the grant or denial of any exemption under this chapter for any powerplant for which the Secretary finds, in consultation with the appropriate Federal agency, and publishes such finding

that an environmental impact statement is required in connection with another Federal action and such statement will be prepared by such agency and will reflect the exemption adequately.

Except as provided in the preceding provisions of this section, any determination of what constitutes or does not constitute a major Federal action shall be made under section 4332 of this title.

(Pub. L. 95–620, title VII, §763, Nov. 9, 1978, 92 Stat. 3346; Pub. L. 100–42, §1(c)(24), May 21, 1987, 101 Stat. 314.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

AMENDMENTS

1987—Par. (1). Pub. L. 100–42, §1(c)(24)(A), struck out "or major fuel-burning installation" after "powerplant".

Par. (2). Pub. L. 100–42, §1(c)(24), struck out "or major fuel-burning installation" after "powerplant" and struck out subpar. (B) which read as follows: "under section 8352(l) of this title, relating to scheduled equipment outages;".

Par. (3). Pub. L. 100–42, §1(c)(24)(A), struck out "or major fuel-burning installation" after "powerplant".

SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS

§8481. Repealed. Pub. L. 100–42, §1(a)(7), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95–620, title VIII, §801, Nov. 9, 1978, 92 Stat. 3346, required annual disclosure of extent, characteristics, and productive capacity of coal reserves, and of interests held therein, with discretionary exception for small reserves, and publication of such information by Secretary.

§8482. Repealed. Pub. L. 104–66, title I, §1051(e), Dec. 21, 1995, 109 Stat. 716

Section, Pub. L. 95–620, title VIII, §806, Nov. 9, 1978, 92 Stat. 3348, directed Secretary of Energy to submit annual report to Congress on actions already taken and actions to be taken under this chapter and under section 792 of title 15.

§8483. Submission of reports

Copies of any report required by this chapter to be submitted to the Congress shall be separately submitted to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(Pub. L. 95–620, title VIII, §807, Nov. 9, 1978, 92 Stat. 3348.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to

this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§8484. Electric utility conservation plan

(a) Applicability

An electric utility is subject to this subsection [1] if—

(1) the utility owns or operates any existing electric powerplant in which natural gas was used as a primary energy source at any time during the 1-year period ending on August 13, 1981, and

(2) the utility plans to use natural gas as a primary energy source in any electric powerplant.

(b) Submission and approval of plan

The Secretary shall require each electric utility subject to this section to—

(1) submit, within 1 year after August 13, 1981, and have approved by the Secretary, a conservation plan which meets the requirements of subsection (c); and

(2) implement such plan during the 5-year period beginning on the date of the initial approval of such plan.

(c) Contents of plan

(1) Any conservation plan under this section shall set forth means determined by the utility to achieve conservation of electric energy not later than the 5th year after its initial approval at a level, measured on an annual basis, at least equal to 10 percent of the electric energy output of that utility during the most recent 4 calendar quarters ending prior to August 13, 1981, which is attributable to natural gas.

(2) The conservation plan shall include—

(A) all activities required for such utility by part 1 of title II of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq.];

(B) an effective public information program for conservation; and

(C) such other measures as the utility may consider appropriate.

(3) Any such plan may set forth a program for the use of renewable energy sources (other than hydroelectric power).

(4) Any such plan shall contain procedures to permit the amounts expended by such utility in developing and implementing the plan to be recovered in a manner specified by the appropriate State regulatory authority (or by the utility in the case of a nonregulated utility).

(d) Plan approval

(1) The Secretary shall, by order, approve or disapprove any conservation plan proposed under this subsection [1] by an electric utility within 120 days after its submission. The Secretary shall approve any such proposed plan unless the Secretary finds that such plan does not meet the requirements of subsection (c) and states in writing the reasons therefor.

(2) In the event the Secretary disapproves under paragraph (1) the plan originally submitted, the Secretary shall provide a reasonable period of time for resubmission.

(3) An electric utility may amend any approved plan, except that the plan as amended shall be subject to approval in accordance with paragraph (1).

(Pub. L. 95–620, title VIII, §808, as added Pub. L. 97–35, title X, §1023(a), Aug. 13, 1981, 95 Stat. 616.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsec. (c)(2)(A), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3208. Part 1 of title II of the National Energy Conservation Policy Act was classified generally to part A (§8211 et seq.) of subchapter II of chapter 91 of this title, and was omitted from the Code pursuant to section 8229 of this title which terminated authority under that part June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

[1] So in original. Probably should be "section".

CHAPTER 93—EMERGENCY ENERGY CONSERVATION

Sec.

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§8501. Congressional findings and purposes

(a) Findings

The Congress finds that—

(1) serious disruptions have recently occurred in the gasoline and diesel fuel markets of the United States;

(2) it is likely that such disruptions will recur;

(3) interstate commerce is significantly affected by those market disruptions;

(4) an urgent need exists to provide for emergency conservation and other measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources in potentially short supply in order to cope with market disruptions and protect interstate commerce; and

(5) up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public.

(b) Purposes

The purposes of this chapter are to—

(1) provide a means for the Federal Government, States, and units of local government to establish emergency conservation measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources which may be in short supply;

(2) establish other emergency measures to alleviate disruptions in gasoline and diesel fuel markets;

(3) obtain data concerning such fuels; and

(4) protect interstate commerce.

(Pub. L. 96–102, title II, §201, Nov. 5, 1979, 93 Stat. 757.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 96–102, title III, §302, Nov. 5, 1979, 93 Stat. 770, provided that: "The amendments made by this Act [enacting this chapter, amending sections 6262, 6263, and 6422 of this title, and enacting provisions set out as notes under this section and section 6261 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1979]."

SHORT TITLE

Pub. L. 96–102, §1(a), Nov. 5, 1979, 93 Stat. 749, provided that: "This Act [enacting this chapter, amending sections 6261, 6262, 6263, and 6422 of this title, and enacting provisions set out as notes under this section and section 6261 of this title] may be cited as the 'Emergency Energy Conservation Act of 1979'."

CONGRESSIONAL FINDINGS

Pub. L. 96–102, title I, §101, Nov. 5, 1979, 93 Stat. 750, provided that: "The Congress finds that—

"(1) a standby rationing plan for gasoline and diesel fuel should provide, to the maximum extent practicable, that the burden of reduced supplies of gasoline and diesel fuel be shared by all persons in a fair and equitable manner and that the economic and social impacts of such plan be minimized; and

"(2) such a plan should be sufficiently flexible to respond to changed conditions and sufficiently simple to be effectively administered and enforced."

FUNDING FOR FISCAL YEARS 1979 AND 1980

Pub. L. 96–102, title III, §301, Nov. 5, 1979, 93 Stat. 769, provided that: "For purposes of any law relating to appropriations or authorizations for appropriations as such law relates to the fiscal year ending September 30, 1979, or the fiscal year ending September 30, 1980, the provisions of this Act (including amendments made by this Act) [see Short Title note above] shall be treated as if it were a contingency plan under section 202 or 203 of the Energy Policy and Conservation Act [former sections 6262 and 6263 of this title] which was approved in accordance with the procedures under that Act [see Short Title note set out under section 6201 of this title] or as otherwise provided by law, and funds made available pursuant to such appropriations shall be available to carry out the provisions of this Act and the amendments made by this Act."

§8502. Definitions

For purposes of this chapter—

(1) The term "severe energy supply interruption", when used with respect to motor fuel or any other energy source, means a national energy supply shortage of such energy source which the President determines—

(A) is, or is likely to be, of significant scope and duration;

(B) may cause major adverse impact on national security or the national economy; and

(C) results, or is likely to result, from an interruption in the energy supplies of the United States, including supplies of imported petroleum products, or from sabotage or an act of God.

(2) The term "international energy program" has the meaning given that term in section 6202(7) of this title.

(3) The term "motor fuel" means gasoline and diesel fuel.

(4) The term "person" includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (C) the government or any agency of the United States or any State or political subdivision thereof.

(5) The term "vehicle" means any vehicle propelled by motor fuel and manufactured primarily for use on public streets, roads, and highways.

(6) The term "Secretary" means the Secretary of Energy.

(7) The term "Governor" means the chief executive officer of a State.

(8) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(Pub. L. 96–102, title II, §202, Nov. 5, 1979, 93 Stat. 757.)

SUBCHAPTER I—EMERGENCY ENERGY CONSERVATION PROGRAM

§8511. National and State emergency conservation targets

(a) Determination and publication of targets

(1) Whenever the President finds, with respect to any energy source for which the President determines a severe energy supply interruption exists or is imminent or that actions to restrain domestic energy demand are required in order to fulfill the obligations of the United States under the international energy program, the President, in furtherance of the purposes of this chapter, may establish monthly emergency conservation targets for any such energy source for the Nation generally and for each State.

(2) Any finding of the President under paragraph (1) shall be promptly transmitted to the Congress, accompanied by such information and analysis as is necessary to provide the basis for such finding, and shall be disseminated to the public.

(3)(A) The State conservation target for any energy source shall be equal to (i) the State base period consumption reduced by (ii) a uniform national percentage.

(B) For the purposes of this subsection, the term "State base period consumption" means, for any month, the product of the following factors, as determined by the President:

(i) the consumption of the energy source for which a target is established during the corresponding month in the 12-month period prior to the first month for which the target is established; and

(ii) a growth adjustment factor, which shall be determined on the basis of the trends in the use in that State of such energy source during the 36-month period prior to the first month for which the target is established.

(C)(i) The President shall adjust, to the extent he determines necessary, any State base period consumption to insure that achievement of a target established for that State under this subsection will not impair the attainment of the objectives of section 753(b)(1) [1] of title 15.

(ii) The President may, to the extent he determines appropriate, further adjust any State base period consumption to reflect—

(I) reduction in energy consumption already achieved by energy conservation programs;

(II) energy shortages which may affect energy consumption; and
(III) variations in weather from seasonal norms.

(D) For purposes of this subsection, the uniform national percentage shall be designed by the President to minimize the impact on the domestic economy of the projected shortage in the energy source for which a target is established by saving an amount of such energy source equivalent to the projected shortage, taking into consideration such other factors related to that shortage as the President considers appropriate.

(b) Notification and publication of targets

The President shall notify the Governor of each State of each target established under subsection (a) for that State, and shall publish in the Federal Register, the targets, the base period consumption for each State and other data on which the targets are based, and the factors considered under subsection (a)(3).

(c) Establishment of targets for Federal agencies

In connection with the establishment of any national target under subsection (a) the President shall make effective an emergency energy conservation plan for the Federal Government, which plan shall be designed to achieve an equal or greater reduction in use of the energy source for which a target is established than the national percentage referred to in subsection (a)(3)(D). Such plan shall contain measures which the President will implement, in accordance with other applicable provisions of law, to reduce on an emergency basis the use of energy by the Federal Government. In developing such plan the President shall consider the potential for emergency reductions in energy use—

(1) by buildings, facilities, and equipment owned, leased, or under contract by the Federal Government; and

(2) by Federal employees and officials through increased use of car and van pooling, preferential parking for multipassenger vehicles, and greater use of mass transit.

(d) Review of targets

(1) From time to time, the President shall review and, consistent with subsection (a), modify to the extent the President considers appropriate the national and State energy conservation targets established under this subsection.

(2) Any modification under this paragraph shall be accompanied by such information and analysis as is necessary to provide the basis therefor and shall be available to the Congress and the public.

(3)(A) Before the end of the 12th month following the establishment of any conservation target under this section, and annually thereafter while such target is in effect, the President shall determine, for the energy source for which that target was established, whether a severe energy supply interruption exists or is imminent or that actions to restrain domestic energy demand are required in order to fulfill the obligations of the United States under the international energy program. The President shall transmit to the Congress and make public the information and other data on which any determination under this subparagraph is based.

(B) If the President determines such an energy supply interruption does not exist or is not imminent or such actions are not required, the conservation targets established under this section with respect to such energy source shall cease to be effective.

(e) Determination and publication of actual consumption nationally and State-by-State

Each month the Secretary shall determine and publish in the Federal Register (1) the level of consumption for the most recent month for which the President determines accurate data is available, nationally and for each State, of any energy source for which a target under subsection (a) is in effect, and (2) whether the targets under subsection (a) have been substantially met or are likely to be met.

(f) Presidential authority not to be delegated

Notwithstanding any other provision of law, the authority vested in the President under this section may not be delegated.

(Pub. L. 96–102, title II, §211, Nov. 5, 1979, 93 Stat. 758.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (a)(3)(C)(i), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (d)(3)(A) of this section is listed in the 19th item on page 19), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

[1] *See References in Text note below.*

§8512. State emergency conservation plan

(a) State emergency conservation plans

(1)(A) Not later than 45 days after the date of the publication of an energy conservation target for a State under section 8511(b) of this title, the Governor of that State shall submit to the Secretary a State emergency conservation plan designed to meet or exceed the emergency conservation target in effect for that State under section 8511(a) of this title. Such plan shall contain such information as the Secretary may reasonably require. At any time, the Governor may, with the approval of the Secretary, amend a plan established under this section.

(B) The Secretary may, for good cause shown, extend to a specific date the period for the submission of any State's plan under subparagraph (A) if the Secretary publishes in the Federal Register notice of that extension together with the reasons therefor.

(2) Each State is encouraged to submit to the Secretary a State emergency conservation plan as soon as possible after November 5, 1979, and in advance of such publication of any such target. The Secretary may tentatively approve such a plan in accordance with the provisions of this section. For the purposes of this subchapter such tentative approval shall not be construed to result in a delegation of Federal authority to administer or enforce any measure contained in a State plan.

(b) Conservation measures under State plans

(1) Each State emergency conservation plan under this section shall provide for emergency reduction in the public and private use of each energy source for which an emergency conservation target is in effect under section 8511 of this title. Such State plan shall contain adequate assurances that measures contained therein will be effectively implemented in that State. Such plan may provide for reduced use of that energy source through voluntary programs or through the application of one or more of the following measures described in such plan:

(A) measures which are authorized under the laws of that State and which will be administered and enforced by officers and employees of the State (or political subdivisions of the State) pursuant to the laws of such State (or political subdivisions); and

(B) measures—

(i) which the Governor requests, and agrees to assume, the responsibility for administration and enforcement in accordance with subsection (d);

(ii) which the attorney general of that State has found that (I) absent a delegation of authority under Federal law, the Governor lacks the authority under the laws of the State to invoke, (II) under applicable State law, the Governor and other appropriate State officers and employees are

not prevented from administering and enforcing under a delegation of authority pursuant to Federal law; and (III) if implemented, would not be contrary to State law; and

(iii) which either the Secretary determines are contained in the standby Federal conservation plan established under section 8513 of this title or are approved by the Secretary, in his discretion.

(2) In the preparation of such plan (and any amendment to the plan) the Governor shall, to the maximum extent practicable, provide for consultation with representatives of affected businesses and local governments and provide an opportunity for public comment.

(3) Any State plan submitted to the Secretary under this section may permit persons affected by any measure in such plan to use alternative means of conserving at least as much energy as would be conserved by such measure. Such plan shall provide an effective procedure, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision of such State.

(c) Approval of State plans

(1) As soon as practicable after the date of the receipt of any State plan, but in no event later than 30 days after such date, the Secretary shall review such plan and shall approve it unless the Secretary finds—

(A) that, taken as a whole, the plan is not likely to achieve the emergency conservation target established for that State under section 8511(a) of this title for each energy source involved,

(B) that, taken as a whole, the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof,

(C) that the requirements of this subchapter regarding the plan have not been met, or

(D) that a measure described in subsection (b)(1) is—

(i) inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(ii) an undue burden on interstate commerce, or

(iii) a tax, tariff, or user fee not authorized by State law.

(2) Any measure contained in a State plan shall become effective in that State on the date the Secretary approves the plan under this subsection or such later date as may be prescribed in, or pursuant to, the plan.

(d) State administration and enforcement

(1) The authority to administer and enforce any measure described in subsection (b)(1)(B) which is in a State plan approved under this section is hereby delegated to the Governor of the State and the other State and local officers and employees designated by the Governor. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (e).

(2) All delegation of authority under paragraph (1) with respect to any State shall be considered revoked effective upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

(3) If at any time the conditions of subsection (b)(1)(B)(ii) are no longer satisfied in any State with respect to any measure for which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

(4) Any revocation under paragraph (2) or (3) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability

incurred prior to such revocation.

(e) Civil penalty

(1) Whoever violates the requirements of any measure described in subsection (b)(1)(B) of this section which is in a State plan in effect under this section shall be subject to a civil penalty of not to exceed $1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of measures the authority for which is delegated under subsection (d).

(Pub. L. 96–102, title II, §212, Nov. 5, 1979, 93 Stat. 759.)

§8513. Standby Federal conservation plan

(a) Establishment of standby conservation plan

(1) Within 90 days after November 5, 1979, the Secretary, in accordance with section 7191 of this title, shall establish a standby Federal emergency conservation plan. The Secretary may amend such plan at any time, and shall make such amendments public upon their adoption.

(2) The plan under this section shall be consistent with the attainment of the objectives of section 753(b)(1) [1] of title 15, and shall provide for the emergency reduction in the public and private use of each energy source for which an emergency conservation target is in effect or may be in effect under section 8511 of this title.

(b) Implementation of standby conservation plan

(1) If the President finds—

(A) after a reasonable period of operation, but not less than 90 days, that a State emergency conservation plan approved and implemented under section 8512 of this title is not substantially meeting a conservation target established under section 8511(a) of this title for such State and it is likely that such target will continue to be unmet; and

(B) a shortage exists or is likely to exist in such State for the 60-day period beginning after such finding that is equal to or greater than 8 percent of the projected normal demand, as determined by the President, for an energy source for which such conservation target has been established under section 8511(a) of this title;

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) for such period or periods as the President determines appropriate to achieve the target in that State.

(2) If the President finds after a reasonable period of time, that the conservation target established under section 8511(a) of this title is not being substantially met and it is likely that such target will continue to be unmet in a State which—

(A) has no emergency conservation plan approved under section 8512 of this title; or

(B) the President finds has substantially failed to carry out the assurances regarding implementation set forth in the plan approved under section 8512 of this title,

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) for such period or periods as the President determines appropriate to achieve the target in that State.

(c) Basis for findings

Any finding under subsection (b) shall be accompanied by such information and analysis as is necessary to provide a basis therefor and shall be available to the Congress and the public.

(d) Submission of State emergency conservation plan

(1) [2] The Governor of a State in which all or any portion of the standby Federal conservation plan is or will be in effect may submit at any time a State emergency conservation plan, and if it is approved under section 8512(c) of this title, all or such portion of the standby Federal conservation plan shall cease to be effective in that State. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on such date, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such cessation of effectiveness.

(e) State substitute emergency conservation measures

(1) After the President makes all or any part of the standby Federal conservation plan effective in any State or political subdivision under subsection (b), the Secretary shall provide procedures whereby such State or any political subdivision thereof may submit to the Secretary for approval one or more measures under authority of State or local law to be implemented by such State or political subdivision and to be substituted for any Federal measure in the Federal plan. The measures may include provisions whereby persons affected by such Federal measure are permitted to use alternative means of conserving at least as much energy as would be conserved by such Federal measure. Such measures shall provide effective procedures, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision thereof.

(2) The Secretary may approve the measures under paragraph (1) if he finds—

(A) that such measures when in effect will conserve at least as much energy as would be conserved by such Federal measure which would have otherwise been in effect in such State or political subdivision;

(B) such measures otherwise meet the requirements of this paragraph; and

(C) such measures would be approved under section 8512(c)(1)(B), (C), and (D) of this title.

(3) If the Secretary approves measures under this subsection such Federal measure shall cease to be effective in that State or political subdivision. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on the date the Federal measure ceases to be effective in that State or political subdivision, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such cessation of effectiveness.

(4) If the Secretary finds after a reasonable period of time that the requirements of this subsection are not being met under the measures in effect under this subsection he may reimpose the Federal measure referred to in paragraph (1).

(f) State authority to administer plan

At the request of the Governor of any State, the President may provide that the administration and enforcement of all or a portion of the standby Federal conservation plan made effective in that State under subsection (b) be in accordance with section 8512(d)(1), (2), and (4) of this title.

(g) Presidential authority not to be delegated

Notwithstanding any other provision of law (other than subsection (f)), the authority vested in the President under this section may not be delegated.

(h) Requirements of plan

The plan established under subsection (a) shall—

(1) taken as a whole, be designed so that the plan, if implemented, would be likely to achieve the emergency conservation target under section 8511 of this title for which it would be implemented,

(2) taken as a whole, be designed so as not to impose an unreasonably disproportionate share of

the burden of restrictions on energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof, and

(3) not contain any measure which the Secretary finds—

(A) is inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(B) is an undue burden on interstate commerce,

(C) is a tax, tariff, or user fee, or

(D) is a program for the assignment of rights for end-user purchases of gasoline or diesel fuel, as described in section 6263(a)(1)(A) and (B) [1] of this title.

(i) Plan may not authorize weekend closings of retail gasoline stations

(1) Except as provided in paragraph (2), the plan established under subsection (a) may not provide for the restriction of hours of sale of motor fuel at retail at any time between Friday noon and Sunday midnight.

(2) Paragraph (1) shall not preclude the restriction on such hours of sale if that restriction occurs in connection with a program for restricting hours of sale of motor fuel each day of the week on a rotating basis.

(j) Civil penalties

(1) Whoever violates the requirements of such a plan implemented under subsection (b) shall be subject to a civil penalty not to exceed $1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided under paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of that portion of the standby Federal conservation plan for which authority is delegated to that State under subsection (f).

(Pub. L. 96–102, title II, §213, Nov. 5, 1979, 93 Stat. 762.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (a)(2), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

Section 6263 of this title, referred to in subsec. (h)(3)(D), was repealed by Pub. L. 106–469, title I, §104(1), Nov. 9, 2000, 114 Stat. 2033.

[1] *See References in Text note below.*

[2] *So in original. No par. (2) has been enacted.*

§8514. Judicial review

(a) State actions

(1) Any State may institute an action in the appropriate district court of the United States, including actions for declaratory judgment, for judicial review of—

(A) any target established by the President under section 8511(a) of this title;

(B) any finding by the President under section 8513(b)(1)(A) of this title, relating to the

achievement of the emergency energy conservation target of such State, or 8513(b)(2) of this title, relating to the achievement of the emergency energy conservation target of such State or the failure to carry out the assurances regarding implementation contained in an approved plan of such State; or

(C) any determination by the Secretary disapproving a State plan under section 8512(c) of this title, including any determination by the Secretary under section 8512(c)(1)(B) of this title that the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof.

Such action shall be barred unless it is instituted within 30 calendar days after the date of publication of the establishment of a target referred to in subparagraph (A), the finding by the President referred to in subparagraph (B), or the determination by the Secretary referred to in subparagraph (C), as the case may be.

(2) The district court shall determine the questions of law and upon such determination certify such questions immediately to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(3) Any decision by such court of appeals on a matter certified under paragraph (2) shall be reviewable by the Supreme Court upon attainment of a writ of certiorari. Any petition for such a writ shall be filed no later than 20 days after the decision of the court of appeals.

(b) Repealed. Pub. L. 98–620, title IV, §402(42), Nov. 8, 1984, 98 Stat. 3360

(c) Injunctive relief

With respect to judicial review under subsection (a)(1)(A), the court shall not have jurisdiction to grant any injunctive relief except in conjunction with a final judgment entered in the case.

(Pub. L. 96–102, title II, §214, Nov. 5, 1979, 93 Stat. 764; Pub. L. 98–620, title IV, §402(42), Nov. 8, 1984, 98 Stat. 3360.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–620 struck out subsec. (b) which required the court of appeals to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsec. (a)(2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§8515. Reports

(a) Monitoring

The Secretary shall monitor the implementation of State emergency conservation plans and of the standby Federal conservation plan and make such recommendations to the Governor of each affected State as he deems appropriate for modification to such plans.

(b) Omitted

(Pub. L. 96–102, title II, §215, Nov. 5, 1979, 93 Stat. 765.)

EDITORIAL NOTES

CODIFICATION

Subsec. (b) of this section, which required the President to report annually to Congress on any activities undertaken pursuant to this subchapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 20th item on page 19 of House Document No. 103–7.

SUBCHAPTER II—OTHER AUTOMOBILE FUEL PURCHASE MEASURES

§8521. Minimum automobile fuel purchase measures

(a) General rule

If the provisions of this subsection are made applicable under subsection (c), no person shall purchase motor fuel from a motor fuel retailer in any transaction for use in any automobile or other vehicle unless—

(1) the price for the quantity purchased and placed into the fuel tank of that vehicle equals or exceeds $5.00; or

(2) in any case in which the amount paid for the quantity of motor fuel necessary to fill the fuel tank of that vehicle to capacity is less than $5.00, such person pays to the retailer an additional amount so that the total amount paid in that transaction equals $5.00.

Any person selling motor fuel in transactions to which the provisions of this subsection apply shall display at the point of sale notice of such provisions in accordance with regulations prescribed by the Secretary.

(b) $7.00 to be applicable in case of 8-cylinder vehicles

In applying subsection (a) in the case of any vehicle with an engine having 8 cylinders (or more), "$7.00" shall be substituted for "$5.00".

(c) Applicability

(1) Unless applicable pursuant to paragraph (2), the requirements of subsection (a) shall apply in any State and shall be administered and enforced as provided in subsection (g) only if—

(A) the Governor of that State submits a request to the Secretary to have such requirements applicable in that State; and

(B) the attorney general of that State has found that (i) absent a delegation of authority under a Federal law, the Governor lacks the authority under the laws of the State to invoke comparable requirements, (ii) under applicable State law, the Governor and other appropriate State officers and employees are not prevented from administering and enforcing such requirements under a delegation of authority pursuant to Federal law, and (iii) if implemented such requirements would not be contrary to State law.

Subject to paragraph (2), such provisions shall cease to apply in any State if the Governor of the State withdraws any request under subparagraph (A).

(2) The requirements of subsection (a) shall apply in every State if there is in effect a finding by the President that nationwide implementation of such requirements would be appropriate and consistent with the purposes of this chapter.

(3) Such requirements shall take effect in any State beginning on the 5th day after the Secretary or the President (as the case may be) publishes notice in the Federal Register of the applicability of the requirements to the State pursuant to paragraph (1) or (2).

(4) Notwithstanding any other provision of law, the authority vested in the President under paragraph (2) may not be delegated.

(d) Exemptions

The requirements of subsection (a) shall not apply to any motorcycle or motorpowered bicycle, or to any comparable vehicle as may be determined by the Secretary by regulation.

(e) Adjustment of minimum levels

The Secretary may increase the $5.00 and $7.00 amounts specified in subsections (a) and (b) if the Secretary considers it appropriate. Adjustments under this subsection shall be only in even dollar amounts.

(f) Civil penalties

(1) Whoever violates the requirements of subsection (a) shall be subject to a civil penalty of not to exceed $100 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action under this section brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of the requirements of subsection (a) the authority for which is delegated under subsection (g).

(g) Administration and enforcement delegated to States

(1) There is hereby delegated to the Governor of any State, and other State and local officers and employees designated by the Governor, the authority to administer and enforce, within that State, any provision of this subchapter which is to be administered and enforced in accordance with this section. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (f).

(2)(A) All delegation of authority under paragraph (1) with respect to any State shall be considered revoked effective (i) upon the receipt of a written waiver of authority signed by the Governor of such State or (ii) upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

(B) If at any time the conditions of subsection (c)(1)(B) are no longer satisfied in any State to which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

(C) Any revocation under subparagraph (A) or (B) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based on any act committed or liability incurred prior to such revocation.

(D) The Secretary shall administer and enforce any provision of this subchapter which has been made effective under subsection (c)(2) and for which a delegation of authority is considered revoked under subparagraph (A).

(h) Coordination with other law

The charging and collecting of amounts referred to in subsection (a)(2) under the requirements of subsection (a), or similar amounts collected under comparable requirements under any State law, shall not be considered a violation of—

(1) the Emergency Petroleum Allocation Act of 1973 [1] [15 U.S.C. 751 et seq.] or any regulation thereunder; or

(2) any Federal or State law requiring the labeling or disclosure of the maximum price per gallon of any fuel.

(Pub. L. 96–102, title II, §221, Nov. 5, 1979, 93 Stat. 765.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (h)(1), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, which was classified generally to chapter 16A (§751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

[1] *See References in Text note below.*

§8522. Out-of-State vehicles to be exempted from odd-even motor fuel purchase restrictions

(a) General rule

Notwithstanding any provision of any Federal, State, or local law, any odd-even fuel purchase plan in effect in any State may not prohibit the sale of motor fuel to any person for use in a vehicle bearing a license plate issued by any authority other than that State or a State contiguous to that State.

(b) "Odd-even fuel purchase plan" defined

For purposes of this section the term "odd-even fuel purchase plan" means any motor fuel sales restriction under which a person may purchase motor fuel for use in any vehicle only on days (or other periods of time) determined on the basis of a number or letter appearing on the license plate of that vehicle (or on any similar basis).

(Pub. L. 96–102, title II, §222, Nov. 5, 1979, 93 Stat. 767.)

SUBCHAPTER III—STUDIES

§8531. Study and report

(a) Study of commercial and industrial storage of fuel

Not later than 180 days after November 5, 1979, the Secretary shall conduct a study and report to the Congress regarding the commercial and industrial storage of gasoline and middle distillates (other than storage in facilities which have capacities of less than 500 gallons or storage used exclusively and directly for agricultural, residential, petroleum refining, or pipeline transportation purposes).

(b) Contents of report

Such report shall—

(1) indicate to what extent storage activities have increased since November 1, 1978, and what business establishments (including utilities) have been involved;

(2) the estimated amount of gasoline and middle distillates (in the aggregate and by type and region) which are in storage within the United States at the time of the study, the amounts which were in storage at the same time during the calendar year preceding the study, and the purposes for which such storage is maintained; and

(3) contain such findings and recommendations for legislation and administrative action as the Secretary considers appropriate, including recommendations for improving the availability and quality of data concerning such storage.

(Pub. L. 96–102, title II, §241, Nov. 5, 1979, 93 Stat. 768.)

§8532. Middle distillate monitoring program

(a) Monitoring program

(1) Not later than 60 days after November 5, 1979, the Secretary shall establish and maintain a data collection program for monitoring, at the refining, wholesale, and retail levels, the supply and demand levels of middle distillates on a periodic basis in each State.

(2) The program to be established under paragraph (1) shall provide for—

(A) the prompt collection of relevant demand and supply data under the authority available to the Secretary under other law; and

(B) the submission to Congress of periodic reports each containing a concise narrative analysis of the most recent data which the Secretary determines are accurate, and a discussion on a State-by-State basis of trends in such data which the Secretary determines are significant.

(3) All data and information collected under this program shall be available to the Congress and committees of the Congress, and, in accordance with otherwise applicable law, to appropriate State and Federal agencies and the public.

(4) Nothing in this subsection authorizes the direct or indirect regulation of the price of any middle distillate.

(5) For purposes of this section, the term "middle distillate" has the same meaning as given that term in section 211.51 of title 10, Code of Federal Regulations, as in effect on November 5, 1979.

(b) Report

Before December 31, 1979, the President shall submit a report to Congress in which the President shall examine the middle distillate situation, summarizing the data, information, and analyses described in subsection (a) and discussing in detail matters required to be addressed in findings made pursuant to section 760a(d)(1) [1] of title 15.

(Pub. L. 96–102, title II, §242, Nov. 5, 1979, 93 Stat. 768.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 760a of title 15, referred to in subsec. (b), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

[1] *See References in Text note below.*

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

§8541. Administration

(a) Information

(1) The Secretary shall use the authority provided under section 796 of title 15 for the collection of such information as may be necessary for the enforcement of the provisions of subchapters I and II of this chapter.

(2) In carrying out his responsibilities under this chapter, the Secretary shall insure that timely and adequate information concerning the supplies, pricing, and distribution of motor fuels (and other energy sources which are the subject of targets in effect under section 8511 of this title) is obtained,

analyzed, and made available to the public. Any Federal agency having responsibility for collection of such information under any other authority shall cooperate fully in facilitating the collection of such information.

(b) Effect on other laws

No State law or State program in effect on November 5, 1979, or which may become effective thereafter, shall be superseded by any provision of this chapter, or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with any such provision of section 8513 or 8521 of this title (or any rule, regulation, or order under this subchapter relating thereto) in any case in which measures have been implemented in that State under the authority of section 8513 or 8521 of this title (as the case may be).

(c) Termination

(1) The provisions of subchapters I, II, III, and IV of this chapter, including any actions taken thereunder, shall cease to have effect on July 1, 1983.

(2) Such expiration shall not affect any action or pending proceeding, administrative or civil, not finally determined on such date, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date.

(Pub. L. 96–102, title II, §251, Nov. 5, 1979, 93 Stat. 769.)

CHAPTER 94—LOW-INCOME ENERGY ASSISTANCE

SUBCHAPTER I—HOME ENERGY ASSISTANCE

Sec.

8601 to 8612. Repealed.

SUBCHAPTER II—LOW-INCOME HOME ENERGY ASSISTANCE

8621. Home energy grants.
8622. Definitions.
8623. State allotments.
8624. Applications and requirements.
8625. Nondiscrimination provisions.
8626. Payments to States; fiscal year requirements respecting availability, etc.
8626a. Incentive program for leveraging non-Federal resources.
8626b. Residential Energy Assistance Challenge option (R.E.A.Ch.).
8627. Withholding of funds.
8628. Limitation on use of grants for construction.
8628a. Technical assistance, training, and compliance reviews.
8629. Studies and reports.
8630. Renewable fuels.

SUBCHAPTER I—HOME ENERGY ASSISTANCE

§§8601 to 8612. Repealed. Pub. L. 97–35, title XXVI, §2611, Aug. 13, 1981, 95 Stat. 902

Section 8601, Pub. L. 96–223, title III, §302, Apr. 2, 1980, 94 Stat. 288, set forth Congressional findings and declaration of purpose for low-income energy assistance program.

Section 8602, Pub. L. 96–223, title III, §303, Apr. 2, 1980, 94 Stat. 288, defined "household", "home energy", "lower living standard income level", "Secretary", and "State".

Section 8603, Pub. L. 96–223, title III, §304, Apr. 2, 1980, 94 Stat. 289, related to authorizations for home energy grants.

Section 8604, Pub. L. 96–223, title III, §305, Apr. 2, 1980, 94 Stat. 289, set forth eligibility requirements for households.

Section 8605, Pub. L. 96–223, title III, §306, Apr. 2, 1980, 94 Stat. 289, set forth provisions respecting allotments for grants.

Section 8606, Pub. L. 96–223, title III, §307, Apr. 2, 1980, 94 Stat. 293, set forth limitations on uses of home energy grants for fiscal year 1981.

Section 8607, Pub. L. 96–223, title III, §308, Apr. 2, 1980, 94 Stat. 294, set forth provisions respecting submission, contents, etc., for State plans.

Section 8608, Pub. L. 96–223, title III, §309, Apr. 2, 1980, 94 Stat. 298, related to uniform collection data.

Section 8609, Pub. L. 96–223, title III, §310, Apr. 2, 1980, 94 Stat. 298, related to amount and methods of payment.

Section 8610, Pub. L. 96–223, title III, §311, Apr. 2, 1980, 94 Stat. 298, related to withholding of payments.

Section 8611, Pub. L. 96–223, title III, §312, Apr. 2, 1980, 94 Stat. 298, set forth criminal penalties for violations of provisions.

Section 8612, Pub. L. 96–223, title III, §313(a)–(c)(1), (d)–(g), Apr. 2, 1980, 94 Stat. 298, 299, related to administration and implementation of energy assistance programs.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 97–35, title XXVI, §2611, Aug. 13, 1981, 95 Stat. 902, provided that the repeal made by that section is effective Oct. 1, 1981.

SHORT TITLE

Pub. L. 96–223, title III, §301, Apr. 2, 1980, 94 Stat. 288, provided that title III of Pub. L. 96–223, which enacted sections 8601 to 8612 of this title, and amended section 2014(d) of Title 7, Agriculture, was to be cited as the "Home Energy Assistance Act of 1980", prior to repeal by Pub. L. 97–35, title XXVI, §2611, Aug. 13, 1981, 95 Stat. 902.

SUBCHAPTER II—LOW-INCOME HOME ENERGY ASSISTANCE

§8621. Home energy grants

(a) Authorization

The Secretary is authorized to make grants, in accordance with the provisions of this subchapter, to States to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this subchapter (other than section 8626a of this title), $2,000,000,000 for each of fiscal years 1995 through 1999, such sums as may be necessary for each of fiscal years 2000 and 2001, and $5,100,000,000 for each of fiscal years 2005 through 2007. The authorizations of appropriations contained in this subsection are subject to the program year provisions of subsection (c).

(c) Availability of appropriations

Amounts appropriated under this section for any fiscal year for programs and activities under this subchapter shall be made available for obligation in the succeeding fiscal year.

(d) Authorization of appropriations for leveraged resources

(1) There is authorized to be appropriated to carry out section 8626a of this title, $30,000,000 for each of fiscal years 1999 through 2004, except as provided in paragraph (2).

(2) For any of fiscal years 1999 through 2004 for which the amount appropriated under subsection (b) is not less than $1,400,000,000, there is authorized to be appropriated $50,000,000 to carry out

section 8626a of this title.

(e) Emergency funds

There is authorized to be appropriated in each fiscal year for payments under this subchapter, in addition to amounts appropriated for distribution to all the States in accordance with section 8623 of this title (other than subsection (e) of such section), $600,000,000 to meet the additional home energy assistance needs of one or more States arising from a natural disaster or other emergency. Funds appropriated pursuant to this subsection are hereby designated to be emergency requirements pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 901(b)(2)(D)], except that such funds shall be made available only after the submission to Congress of a formal budget request by the President (for all or a part of the appropriation pursuant to this subsection) that includes a designation of the amount requested as an emergency requirement as defined in such Act [2 U.S.C. 900 et seq.].

(Pub. L. 97–35, title XXVI, §2602, Aug. 13, 1981, 95 Stat. 893; Pub. L. 98–558, title VI, §601, Oct. 30, 1984, 98 Stat. 2889; Pub. L. 99–425, title V, §501, Sept. 30, 1986, 100 Stat. 973; Pub. L. 101–501, title VII, §§701, 702, 707(b), Nov. 3, 1990, 104 Stat. 1258, 1261; Pub. L. 103–43, title XX, §2011, June 10, 1993, 107 Stat. 214; Pub. L. 103–252, title III, §§302–304(a), 311(c)(1), May 18, 1994, 108 Stat. 657, 658, 661; Pub. L. 105–285, title III, §302, Oct. 27, 1998, 112 Stat. 2756; Pub. L. 109–58, title I, §121(a), Aug. 8, 2005, 119 Stat. 616.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (e), is classified to section 901 of Title 2, The Congress. Section 251 was amended by Pub. L. 105–33, title X, §10203(a)(4), Aug. 5, 1997, 111 Stat. 699, and by Pub. L. 112–25, title I, §101, Aug. 2, 2011, 125 Stat. 241. As so amended, section 251(b)(2)(D) no longer refers to "emergency requirements".

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (e), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of this title, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of this title, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 substituted "and $5,100,000,000 for each of fiscal years 2005 through 2007" for "and $2,000,000,000 for each of fiscal years 2002 through 2004".

1998—Subsec. (b). Pub. L. 105–285, §302(a), inserted ", such sums as may be necessary for each of fiscal years 2000 and 2001, and $2,000,000,000 for each of fiscal years 2002 through 2004" after "1995 through 1999".

Subsec. (c). Pub. L. 105–285, §302(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(c)(1) In fiscal year 1993 and each fiscal year thereafter, amounts appropriated under this section for any fiscal year for programs and activities under this subchapter shall be made available for obligation only on the basis of a program year. The program year shall begin on October 1 of the fiscal year following the year in which the appropriation is made.

"(2) Amounts appropriated for fiscal year 1993 shall be available both to fund activities for the period between October 1, 1992, and July 1, 1993, and for the program year beginning July 1, 1993.

"(3) There are authorized to be appropriated such additional sums as may be necessary for the transition to carry out this subsection."

Subsec. (d). Pub. L. 105–285, §302(c), designated existing provisions as par. (1), substituted "There is authorized" for "There are authorized" and "$30,000,000 for each of fiscal years 1999 through 2004, except as provided in paragraph (2)" for "$50,000,000 for each of the fiscal years 1996 and 1997, and such sums as may be necessary for each of the fiscal years 1998 and 1999", and added par. (2).

Subsec. (e). Pub. L. 105–285, §302(d), substituted "There is authorized" for "There are authorized" and

"(other than subsection (e) of such section)" for "(other than subsection (g))".

1994—Subsec. (a). Pub. L. 103–252, §302, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Secretary of Health and Human Services is authorized to make grants, in accordance with the provisions of this subchapter, to States to assist eligible households to meet the costs of home energy."

Subsec. (b). Pub. L. 103–252, §§303(a)(1), 311(c)(1)(A), substituted "this subchapter (other than section 8626a of this title), $2,000,000,000 for each of fiscal years 1995 through 1999" for "this subchapter (other than section 8626a of this title) $2,307,000,000 for fiscal year 1990, $2,150,000,000 for fiscal year 1991, $2,230,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995" and struck out second period at end.

Subsec. (c)(1). Pub. L. 103–252, §311(c)(1)(B), made technical amendment to reference to this subchapter to correct reference to corresponding provision of original act.

Pub. L. 103–252, §303(a)(2), which directed the substitution of "October 1" for "July 1" and "following the year in which" for "for which" in last sentence of subsec. (c), was executed by making the substitutions in last sentence of subsec. (c)(1) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 103–252, §303(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated to carry out section 8626a of this title, $25,000,000 in fiscal year 1992, and $50,000,000 for each of the fiscal years 1993, 1994, and 1995."

Subsec. (e). Pub. L. 103–252, §304(a), added subsec. (e).

1993—Subsec. (b). Pub. L. 103–43, §2011(1), substituted "1993, 1994, and 1995" for "1993 and 1994".

Subsec. (d). Pub. L. 103–43, §2011(2), substituted "for each of the fiscal years 1993, 1994, and 1995" for "in each of the fiscal years 1993 and 1994".

1990—Subsec. (b). Pub. L. 101–501, §707(b)(1), which directed the amendment of this section by inserting "(other than section 8626a of this title)" after "subchapter", was executed to subsec. (b) to reflect the probable intent of Congress.

Pub. L. 101–501, §702, struck out "$2,050,000,000 for fiscal year 1987, $2,132,000,000 for fiscal year 1988, $2,218,000,000 for fiscal year 1989, and" before "$2,307,000,000" and inserted ", $2,150,000,000 for fiscal year 1991, $2,230,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994. The authorizations of appropriations contained in this subsection are subject to the program year provisions of subsection (c)." after "1990".

Subsec. (c). Pub. L. 101–501, §701, added subsec. (c).

Subsec. (d). Pub. L. 101–501, §707(b)(2), added subsec. (d).

1986—Subsec. (b). Pub. L. 99–425 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "There is authorized to be appropriated to carry out the provisions of this subchapter $2,140,000,000 for the fiscal year 1985, and $2,275,000,000 for the fiscal year 1986."

1984—Subsec. (b). Pub. L. 98–558 substituted "$2,140,000,000 for fiscal year 1985, and $2,275,000,000 for fiscal year 1986" for "$1,875,000,000 for each of fiscal years 1982, 1983, and 1984".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–252, title III, §314, May 18, 1994, 108 Stat. 666, provided that: "The amendments and repeals made by this title [see Short Title of 1994 Amendment note below] shall become effective on October 1, 1994."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–501, title X, §1001, Nov. 3, 1990, 104 Stat. 1283, provided that:

"(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act [see Tables for classification] shall take effect on October 1, 1990.

"(b) SPECIAL EFFECTIVE DATES.—(1) The amendment made by section 207(b) [repealing a provision set out as a note preceding section 9861 of this title] shall take effect immediately before October 1, 1990.

"(2) Section 646(b) of the Head Start Act [section 9841(b) of this title], as added by section 115, shall take effect on April 1, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–425, title X, §1001, Sept. 30, 1986, 100 Stat. 978, provided that:

"(a) GENERAL EFFECTIVE DATE.—Except as provided in subsections (b) and (c), this Act and the amendments made by this Act [enacting sections 8628a, 9812a, 9910b, and 10901 to 10905 of this title,

amending this section, sections 8623, 8624, 8629, 9803, 9834, 9835, 9837, 9840, 9862, 9867, 9871, 9874, 9877, 9901 to 9904, 9905a, 9908 to 9910, and 9910a of this title and section 4033 of Title 20, Education, enacting provisions set out as notes under this section and sections 8623, 9801, and 10901 of this title, and amending provisions set out as notes under section 9861 of this title and section 1932 of Title 7, Agriculture] shall take effect on October 1, 1986, or the date of the enactment of this Act [Sept. 30, 1986], whichever occurs later.

"(b) EFFECTIVE DATE FOR ENERGY CRISIS INTERVENTION AMENDMENTS.—The amendments made by section 502(a) [amending section 8623 of this title and enacting provisions set out as a note under section 8623 of this title] shall take effect on December 1, 1986, or 60 days after the date of the enactment of this Act [Sept. 30, 1986], whichever occurs later.

"(c) APPLICATION OF CERTAIN OTHER AMENDMENTS RELATING TO ENERGY ASSISTANCE .—The amendments made by subsections (a), (b), (c), and (d) of section 504 [amending section 8624 of this title] shall not apply with respect to any fiscal year beginning in or before the 60-day period ending on the effective date of this Act [Oct. 1, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–558, title VI, §609, Oct. 30, 1984, 98 Stat. 2893, provided that:

"(a) Except as provided in subsections (b), (c), and (d), the amendments made by this title [amending this section and sections 8622 to 8624, 8626, 8627, and 8629 of this title] shall take effect on the date of enactment of this Act [Oct. 30, 1984].

"(b) The amendments made by section 605 [amending section 8624 of this title] shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act [Oct. 30, 1984].

"(c) The amendments made by section 606 [amending section 8626 of this title] shall apply to amounts held available for fiscal years beginning after September 30, 1985.

"(d) The amendment made by section 607 [amending section 8629 of this title] shall apply to data collected and compiled after the date of the enactment of this Act [Oct. 30, 1984]. Section 2610 of the Act [section 8629 of this title] as in effect before the date of the enactment of this Act shall apply with respect to the report submitted under such section 2610 for fiscal year 1984."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–285, title III, §301, Oct. 27, 1998, 112 Stat. 2756, provided that: "This title [amending this section and sections 8622 to 8624, 8626, 8626b, and 8628a of this title and enacting provisions set out as a note under section 8626b of this title] may be cited as the 'Low-Income Home Energy Assistance Amendments of 1998'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–252, title III, §301(a), May 18, 1994, 108 Stat. 657, provided that: "This title [enacting section 8626b of this title, amending this section and sections 8622 to 8624, 8626, 8626a, 8628a, and 8629 of this title, and enacting provisions set out above] may be cited as the 'Low-Income Home Energy Assistance Amendments of 1994'."

SHORT TITLE

Pub. L. 97–35, title XXVI, §2601, Aug. 13, 1981, 95 Stat. 893, provided that: "This title [enacting this subchapter and repealing subchapter I of this chapter] may be cited as the 'Low-Income Home Energy Assistance Act of 1981'."

§8622. Definitions

As used in this subchapter:

(1) The term "emergency" means—

(A) a natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) a significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a State regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the supplemental nutrition assistance program carried out under the Food and Nutrition Act of 2008

(7 U.S.C. 2011 et seq.), the national program to provide supplemental security income carried out under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or the State temporary assistance for needy families program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), as determined by the head of the appropriate Federal agency;

(F) a significant increase in unemployment, layoffs, or the number of households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, in the discretion of the Secretary, may determine to be appropriate.

(2) The term "energy burden" means the expenditures of the household for home energy divided by the income of the household.

(3) The term "energy crisis" means weather-related and supply shortage emergencies and other household energy-related emergencies.

(4) The term "highest home energy needs" means the home energy requirements of a household determined by taking into account both the energy burden of such household and the unique situation of such household that results from having members of vulnerable populations, including very young children, individuals with disabilities, and frail older individuals.

(5) The term "household" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(6) The term "home energy" means a source of heating or cooling in residential dwellings.

(7) The term "natural disaster" means a weather event (relating to cold or hot weather), flood, earthquake, tornado, hurricane, or ice storm, or an event meeting such other criteria as the Secretary, in the discretion of the Secretary, may determine to be appropriate.

(8) The term "poverty level" means, with respect to a household in any State, the income poverty line as prescribed and revised at least annually pursuant to section 9902(2) of this title, as applicable to such State.

(9) The term "Secretary" means the Secretary of Health and Human Services.

(10) The term "State" means each of the several States and the District of Columbia.

(11) The term "State median income" means the State median income promulgated by the Secretary in accordance with procedures established under section 1397a(a)(6) of this title (as such procedures were in effect on August 12, 1981) and adjusted, in accordance with regulations prescribed by the Secretary, to take into account the number of individuals in the household.

(Pub. L. 97–35, title XXVI, §2603, Aug. 13, 1981, 95 Stat. 894; Pub. L. 97–115, §16, Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98–558, title VI, §602, Oct. 30, 1984, 98 Stat. 2890; Pub. L. 103–252, title III, §§304(b), 311(c)(2), May 18, 1994, 108 Stat. 658, 662; Pub. L. 105–285, title III, §§303, 304(a), Oct. 27, 1998, 112 Stat. 2756; Pub. L. 110–234, title IV, §4002(b)(1)(A), (B), (2)(EE), May 22, 2008, 122 Stat. 1095–1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(A), (B), (2)(EE), June 18, 2008, 122 Stat. 1664, 1857, 1859.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Food and Nutrition Act of 2008, referred to in par. (1)(E), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in par. (1)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. Title XVI of the Act is classified generally to subchapter XVI (§1381 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In par. (11), "August 12, 1981" substituted for "the day before the date of the enactment of this Act", which date of enactment is Aug. 13, 1981.

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Par. (1)(E). Pub. L. 110–246, §4002(b)(1)(A), (B), (2)(EE), substituted "supplemental nutrition assistance program" for "food stamp program" and "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

1998—Pars. (1) to (3). Pub. L. 105–285, §304(a)(3), (4), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively. Former par. (3) redesignated (4).

Par. (4). Pub. L. 105–285, §304(a)(3), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Pub. L. 105–285, §303, substituted "The term" for "the term" and a period for the semicolon at end.

Pars. (5), (6). Pub. L. 105–285, §304(a)(3), redesignated pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (8).

Pars. (7) to (11). Pub. L. 105–285, §304(a)(1), (2), added par. (7) and redesignated formers pars. (6) to (9) as (8) to (11), respectively.

1994—Par. (1). Pub. L. 103–252, §304(b)(1), (2), added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub. L. 103–252, §311(c)(2), which directed the substitution of "The" for "the" and a period for the semicolon at end, could not be executed because the word "the" and a semicolon did not appear in par. (2) after the redesignations by Pub. L. 103–252, §304(b)(1). See below.

Pub. L. 103–252, §304(b)(1), redesignated par. (1) as (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 103–252, §304(b)(3), added par. (3). Former par. (3) redesignated (5).

Par. (4). Pub. L. 103–252, §304(b)(1), redesignated par. (2) as (4). Former par. (4) redesignated (6).

Pars. (5) to (9). Pub. L. 103–252, §304(b)(1), redesignated pars. (3) to (7) as (5) to (9), respectively.

1984—Par. (1). Pub. L. 98–558, §602(a), struck out "intervention" after "energy crisis" and inserted "and other household energy-related emergencies" at the end.

Par. (4). Pub. L. 98–558, §602(b), substituted "the income poverty line as prescribed and revised at least annually pursuant to section 9902(2) of this title," for "the income poverty guidelines for the nonfarm population of the United States as prescribed by the Office of Management and Budget (and as adjusted annually pursuant to section 9902(2) of this title)".

1981—Pub. L. 97–115 designated par. (2)(A) as par. (2), substituted provisions including individuals and groups of individuals who are living together as one economic unit for whom residential energy is customarily purchased in the form of rent in the definition of household, for provisions including individuals who occupy a housing unit in such definition, and struck out par. (2)(B), which provided that for purposes of subpar. (A), one or more rooms shall be treated as a housing unit when occupied as a separate living quarters.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(A), (B), (2)(EE) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 effective Oct. 30, 1984, see section 609(a) of Pub. L. 98–558, set out as a note under section 8621 of this title.

§8623. State allotments

(a) Amount; distribution, computation, etc.

(1)(A) Except as provided in subparagraph (B), the Secretary shall, from that percentage of the

amount appropriated under section 8621(b) of this title for each fiscal year which is remaining after reserving any amount permitted to be reserved under section 8628a of this title and after the amount of allotments for such fiscal year under subsection (b)(1) is determined by the Secretary, allot to each State an amount equal to such remaining percentage multiplied by the State's allotment percentage.

(B) From the sums appropriated therefor after reserving any amount permitted to be reserved under section 8628a of this title, if for any period a State has a plan which is described in section 8624(c)(1) of this title, the Secretary shall pay to such State an amount equal to 100 percent of the expenditures of such State made during such period in carrying out such plan, including administrative costs (subject to the provisions of section 8624(b)(9)(B) of this title), with respect to households described in section 8624(b)(2) of this title.

(2) For purposes of paragraph (1), for fiscal year 1985 and thereafter, a State's allotment percentage is the percentage which expenditures for home energy by low-income households in that State bears to such expenditures in all States, except that States which thereby receive the greatest proportional increase in allotments by reason of the application of this paragraph from the amount they received pursuant to Public Law 98–139 shall have their allotments reduced to the extent necessary to ensure that—

(A)(i) no State for fiscal year 1985 shall receive less than the amount of funds the State received in fiscal year 1984; and

(ii) no State for fiscal year 1986 and thereafter shall receive less than the amount of funds the State would have received in fiscal year 1984 if the appropriations for this subchapter for fiscal year 1984 had been $1,975,000,000, and

(B) any State whose allotment percentage out of funds available to States from a total appropriation of $2,250,000,000 would be less than 1 percent, shall not, in any year when total appropriations equal or exceed $2,250,000,000, have its allotment percentage reduced from the percentage it would receive from a total appropriation of $2,140,000,000.

(3) If the sums appropriated for any fiscal year for making grants under this subchapter are not sufficient to pay in full the total amount allocated to a State under paragraph (1) for such fiscal year, the amount which all States will receive under this subchapter for such fiscal year shall be ratably reduced.

(4) For the purpose of this section, the Secretary shall determine the expenditure for home energy by low-income households on the basis of the most recent satisfactory data available to the Secretary.

(b) Allotments to insular areas

(1) The Secretary shall apportion not less than one-tenth of 1 percent, and not more than one-half of 1 percent, of the amounts appropriated for each fiscal year to carry out this subchapter on the basis of need among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. The Secretary shall determine the total amount to be apportioned under this paragraph for any fiscal year (which shall not exceed one-half of 1 percent) after evaluating the extent to which each jurisdiction specified in the preceding sentence requires assistance under this paragraph for the fiscal year involved.

(2) Each jurisdiction to which paragraph (1) applies may receive grants under this subchapter upon an application submitted to the Secretary containing provisions which describe the programs for which assistance is sought under this subchapter, and which are consistent with the requirements of section 8624 of this title.

(c) Energy crisis intervention

Of the funds available to each State under subsection (a), a reasonable amount based on data from prior years shall be reserved until March 15 of each program year by each State for energy crisis intervention. The program for which funds are reserved by this subsection shall be administered by public or nonprofit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this subchapter,[1] experience in assisting low-income individuals in the area to be served, the capacity to undertake a timely and effective

energy crisis intervention program, and the ability to carry out the program in local communities. The program for which funds are reserved under this subsection shall—

(1) not later than 48 hours after a household applies for energy crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits;

(2) not later than 18 hours after a household applies for crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation; and

(3) require each entity that administers such program—

(A) to accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served by such entity; and

(B) to provide to low-income individuals who are physically infirm the means—

(i) to submit applications for energy crisis benefits without leaving their residences; or

(ii) to travel to the sites at which such applications are accepted by such entity.

The preceding sentence shall not apply to a program in a geographical area affected by a natural disaster in the United States designated by the Secretary, or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974 [1] [42 U.S.C. 5121 et seq.], for so long as such designation remains in effect, if the Secretary determines that such disaster or such emergency makes compliance with such sentence impracticable.

(d) Allotments to Indian tribes

(1) If, with respect to any State, the Secretary—

(A) receives a request from the governing organization of an Indian tribe within the State that assistance under this subchapter be made directly to such organization; and

(B) determines that the members of such tribe would be better served by means of grants made directly to provide benefits under this subchapter;

the Secretary shall reserve from amounts which would otherwise be payable to such State from amounts allotted to it under this subchapter for the fiscal year involved the amount determined under paragraph (2).

(2) The amount determined under this paragraph for a fiscal year is the amount which bears the same ratio to the amount which would (but for this subsection) be allotted to such State under this subchapter for such fiscal year (other than by reason of section 8626(b)(2) of this title) as the number of Indian households described in subparagraphs (A) and (B) of section 8624(b)(2) of this title and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation bears to the number of all households described in subparagraphs (A) and (B) of section 8624(b)(2) of this title in such State, or such greater amount as the Indian tribe and the State may agree upon. In cases where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph.

(3) The sums reserved by the Secretary on the basis of a determination under this subsection shall be granted to—

(A) the tribal organization serving the individuals for whom such a determination has been made; or

(B) in any case where there is no tribal organization serving an individual for whom such a determination has been made, such other entity as the Secretary determines has the capacity to provide assistance pursuant to this subchapter.

(4) In order for a tribal organization or other entity to be eligible for an amount under this subsection for a fiscal year, it shall submit to the Secretary a plan (in lieu of being under the State's plan) for such fiscal year which meets such criteria as the Secretary may by regulations prescribe.

(e) Allotment of emergency funds

Notwithstanding subsections (a) through (d), the Secretary may allot amounts appropriated

pursuant to section 8621(e) of this title to one or more than one State. In determining whether to make such an allotment to a State, the Secretary shall take into account the extent to which the State was affected by the natural disaster or other emergency involved, the availability to the State of other resources under the program carried out under this subchapter or any other program, and such other factors as the Secretary may find to be relevant. Not later than 30 days after making the determination, but prior to releasing an allotted amount to a State, the Secretary shall notify Congress of the allotments made pursuant to this subsection.

(Pub. L. 97–35, title XXVI, §2604, Aug. 13, 1981, 95 Stat. 894; Pub. L. 98–558, title VI, §§603, 604, Oct. 30, 1984, 98 Stat. 2890; Pub. L. 99–425, title V, §§502(a), 503, 505(b), Sept. 30, 1986, 100 Stat. 973–975; Pub. L. 101–501, title VII, §703, Nov. 3, 1990, 104 Stat. 1258; Pub. L. 103–252, title III, §§304(c), 311(c)(3), May 18, 1994, 108 Stat. 659, 662; Pub. L. 105–285, title III, §§304(b), 305, Oct. 27, 1998, 112 Stat. 2757.)

EDITORIAL NOTES

REFERENCES IN TEXT

Public Law 98–139, referred to in subsec. (a)(2), is Pub. L. 98–139, Oct. 31, 1983, 97 Stat. 871, known as the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1984. For complete classification of this Act to the Code see Tables.

The Low-Income Energy Assistance Act of 1980, referred to in subsec. (c), probably means the Home Energy Assistance Act of 1980, which is title III of Pub. L. 96–223, Apr. 2, 1980, 94 Stat. 288, and which was classified generally to subchapter I of this chapter prior to repeal by Pub. L. 97–35, title XXVI, §2611, Aug. 13, 1981, 95 Stat. 902. For complete classification of this Act to the Code, see Tables.

This subchapter, referred to in subsec. (c), was in the original "this Act" which was translated as reading "this title", meaning title XXVI of Pub. L. 97–35, as the probable intent of Congress.

The Disaster Relief Act of 1974, referred to in subsec. (c), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of this title. The 1974 Act was renamed "The Robert T. Stafford Disaster Relief and Emergency Assistance Act", and was substantially revised by Pub. L. 100–707, Nov. 23, 1988, 102 Stat. 4689. Section 102(b) of Pub. L. 100–707 provided that a reference in any other law to a provision of the Disaster Relief Act of 1974 shall be deemed to be a reference to such provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The name of the Act was subsequently changed to the "Robert T. Stafford Disaster Relief and Emergency Assistance Act" by Pub. L. 106–390, title III, §301, Oct. 30, 2000, 1114 Stat. 1572. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–285, §305(1), substituted "and the Commonwealth of the Northern Mariana Islands." for "the Northern Mariana Islands, and the Trust Territory of the Pacific Islands."

Subsec. (c)(3)(B)(ii). Pub. L. 105–285, §305(2), substituted "applications" for "application".

Subsec. (e). Pub. L. 105–285, §305(5), redesignated subsec. (g) as (e).

Subsec. (f). Pub. L. 105–285, §305(3), struck out subsec. (f) relating to optional transfer of funds to block grants for community service programs, preventive health services, etc.

Subsec. (g). Pub. L. 105–285, §305(5), redesignated subsec. (g) as (e).

Pub. L. 105–285, §§304(b), 305(4), substituted "subsections (a) through (d)" for "subsections (a) through (f)" and "In determining whether to make such an allotment to a State, the Secretary shall take into account the extent to which the State was affected by the natural disaster or other emergency involved, the availability to the State of other resources under the program carried out under this subchapter or any other program, and such other factors as the Secretary may find to be relevant. Not later than 30 days after making the determination, but prior to releasing an allotted amount to a State, the Secretary shall notify Congress of the allotments made pursuant to this subsection." for "In determining to which State or States additional funds may be allotted, the Secretary shall take into account the extent to which a State was affected by the emergency or disaster, the availability to an affected State of other resources under this or any other program, and such other factors as the Secretary determines relevant. The Secretary shall notify Congress of the allotment pursuant to this subsection prior to releasing the allotted funds."

1994—Subsec. (b)(1). Pub. L. 103–252, §311(c)(3), inserted "of the United States" after "Virgin Islands".

Subsec. (g). Pub. L. 103–252, §304(c), added subsec. (g).

1990—Subsec. (f). Pub. L. 101–501 designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, substituted "in accordance with paragraph (2) a percentage" for "up to 10 percent", "or a combination" for "or any combination", and "subparagraphs (A), (B), and (C)" for "paragraphs (1), (2), and (3)", and added par. (2).

1986—Subsec. (a)(1)(A). Pub. L. 99–425, §505(b)(1), inserted "after reserving any amount permitted to be reserved under section 8628a of this title and" after "remaining".

Subsec. (a)(1)(B). Pub. L. 99–425, §505(b)(2), inserted "after reserving any amount permitted to be reserved under section 8628a of this title" after "therefor".

Subsec. (c). Pub. L. 99–425, §502(a), substituted "the capacity" for "and the capacity", inserted ", and the ability to carry out the program in local communities", and inserted provisions relating to hourly time periods in which the program must respond, application for benefits, and nonapplicability of the program to areas affected by a natural disaster or major disaster.

Subsec. (d)(2). Pub. L. 99–425, §503, substituted "and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation" for "in such State with respect to which a determination under this subsection is made", inserted ", or such greater amount as the Indian tribe and the State may agree upon", and inserted "In cases where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph."

1984—Subsec. (a)(2). Pub. L. 98–558, §604(a), amended par. (2) generally, substituting provisions relating to State allotment computation for former provisions which also related to computation of State allotment formulas and adding subpars. (A) and (B).

Subsec. (a)(4). Pub. L. 98–558, §604(b), added par. (4).

Subsec. (c). Pub. L. 98–558, §603(a), inserted "until March 15 of each program year" after "reserved" and inserted "The program for which funds are reserved by this subsection shall be administered by public or nonprofit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this subchapter, experience in assisting low-income individuals in the area to be served, and the capacity to undertake a timely and effective energy crisis intervention program."

Subsec. (d)(1). Pub. L. 98–558, §603(b), substituted "otherwise be payable" for "otherwise be paid" in provisions following subpar. (B).

Subsec. (e). Pub. L. 98–558, §603(c), struck out subsec. (e) which related to direct payments to households and State options.

Subsec. (f). Pub. L. 98–558, §603(d), substituted "the funds payable to it" for "its allotment".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 502(a) of Pub. L. 99–425 effective Dec. 1, 1986, and amendment by sections 503 and 505(b) of Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 effective Oct. 30, 1984, see section 609(a) of Pub. L. 98–558, set out as a note under section 8621 of this title.

RULES FOR ENERGY CRISIS INTERVENTION

Pub. L. 99–425, title V, §502(b), Sept. 30, 1986, 100 Stat. 973, provided that: "Not later than 60 days after the date of the enactment of this Act [Sept. 30, 1986], the Secretary of Health and Human Services shall issue rules to carry out the amendments made by subsection (a) [amending this section]."

[1] *See References in Text note below.*

§8624. Applications and requirements

(a) Form; assurances; public hearings

(1) Each State desiring to receive an allotment for any fiscal year under this subchapter shall submit an application to the Secretary. Each such application shall be in such form as the Secretary shall require. Each such application shall contain assurances by the chief executive officer of the State that the State will meet the conditions enumerated in subsection (b).

(2) After the expiration of the first fiscal year for which a State receives funds under this subchapter, no funds shall be allotted to such State for any fiscal year under this subchapter unless such State conducts public hearings with respect to the proposed use and distribution of funds to be provided under this subchapter for such fiscal year.

(b) Certifications required for covered activities

As part of the annual application required by subsection (a), the chief executive officer of each State shall certify that the State agrees to—

(1) use the funds available under this subchapter to—

(A) conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy, consistent with paragraph (5);

(B) intervene in energy crisis situations;

(C) provide low-cost residential weatherization and other cost-effective energy-related home repair; and

(D) plan, develop, and administer the State's program under this subchapter including leveraging programs,

and the State agrees not to use such funds for any purposes other than those specified in this subchapter;

(2) make payments under this subchapter only with respect to—

(A) households in which 1 or more individuals are receiving—

(i) assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.];

(ii) supplemental security income payments under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.];

(iii) supplemental nutrition assistance program benefits under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.]; or

(iv) payments under section 1315, 1521, 1541, or 1542 of title 38, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed the greater of—

(i) an amount equal to 150 percent of the poverty level for such State; or

(ii) an amount equal to 60 percent of the State median income;

except that a State may not exclude a household from eligibility in a fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income;

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this subchapter, and any similar energy-related assistance available under subtitle B of title VI (relating to community

services block grant program) [42 U.S.C. 9901 et seq.] or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] before August 13, 1981;

(4) coordinate its activities under this subchapter with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program) [42 U.S.C. 9901 et seq.], under the supplemental security income program, under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], under title XX of the Social Security Act [42 U.S.C. 1397 et seq.], under the low-income weatherization assistance program under title IV of the Energy Conservation and Production Act [42 U.S.C. 6851 et seq.], or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] before August 13, 1981;

(5) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection;

(6) to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this subchapter, give special consideration, in the designation of such agencies, to any local public or private nonprofit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] or any other provision of law on August 12, 1981, except that—

(A) the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

(B) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made;

(7) if the State chooses to pay home energy suppliers directly, establish procedures to—

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this subchapter;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this subchapter will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) ensure that the provision of vendored payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this subchapter [1] that seek to reduce home energy costs, minimize the risks of home energy crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs;

(8) provide assurances that (A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and (B) the State will treat owners and renters equitably under the program assisted under this subchapter;

(9) provide that—

(A) the State may use for planning and administering the use of funds under this subchapter an amount not to exceed 10 percent of the funds payable to such State under this subchapter for

a fiscal year; and

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this subchapter and will not use Federal funds for such remaining costs (except for the costs of the activities described in paragraph (16));

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this subchapter, including procedures for monitoring the assistance provided under this subchapter, and provide that the State will comply with the provisions of chapter 75 of title 31 (commonly known as the "Single Audit Act");

(11) permit and cooperate with Federal investigations undertaken in accordance with section 8627 of this title;

(12) provide for timely and meaningful public participation in the development of the plan described in subsection (c);

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness;

(14) cooperate with the Secretary with respect to data collecting and reporting under section 8629 of this title;

(15) beginning in fiscal year 1992, provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations (such as community action agencies, area agencies on aging, and not-for-profit neighborhood-based organizations), and in States where such organizations do not administer intake functions as of September 30, 1991, preference in awarding grants or contracts for intake services shall be provided to those agencies that administer the low-income weatherization or energy crisis intervention programs; and

(16) use up to 5 percent of such funds, at its option, to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors, and report to the Secretary concerning the impact of such activities on the number of households served, the level of direct benefits provided to those households, and the number of households that remain unserved.

The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection. The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this subchapter.

Not later than 18 months after May 18, 1994, the Secretary shall develop model performance goals and measurements in consultation with State, territorial, tribal, and local grantees, that the States may use to assess the success of the States in achieving the purposes of this subchapter. The model performance goals and measurements shall be made available to States to be incorporated, at the option of the States, into the plans for fiscal year 1997. The Secretary may request data relevant to the development of model performance goals and measurements.

(c) State plan; revision; public inspection

(1) As part of the annual application required in subsection (a), the chief executive officer of each State shall prepare and furnish to the Secretary, in such format as the Secretary may require, a plan which—

(A) describes the eligibility requirements to be used by the State for each type of assistance to be provided under this subchapter, including criteria for designating an emergency under section 8623(c) of this title;

(B) describes the benefit levels to be used by the State for each type of assistance including assistance to be provided for emergency crisis intervention and for weatherization and other energy-related home repair;

(C) contains estimates of the amount of funds the State will use for each of the programs under such plan and describes the alternative use of funds reserved under section 8623(c) of this title in the event any portion of the amount so reserved is not expended for emergencies;

(D) describes weatherization and other energy-related home repair the State will provide under subsection (k), including any steps the State will take to address the weatherization and energy-related home repair needs of households that have high home energy burdens, and describes any rules promulgated by the Department of Energy for administration of its Low Income Weatherization Assistance Program which the State, to the extent permitted by the Secretary to increase consistency between federally assisted programs, will follow regarding the use of funds provided under this subchapter by the State for such weatherization and energy-related home repairs and improvements;

(E) describes any steps that will be taken (in addition to those necessary to carry out the assurance contained in paragraph (5) of subsection (b)) to target assistance to households with high home energy burdens;

(F) describes how the State will carry out assurances in clauses (3), (4), (5), (6), (7), (8), (10), (12), (13), and (15) of subsection (b);

(G) states, with respect to the 12-month period specified by the Secretary, the number and income levels of households which apply and the number which are assisted with funds provided under this subchapter, and the number of households so assisted with—

(i) one or more members who had attained 60 years of age;

(ii) one or more members who were disabled; and

(iii) one or more young children; and

(H) contains any other information determined by the Secretary to be appropriate for purposes of this subchapter.

The chief executive officer may revise any plan prepared under this paragraph and shall furnish the revised plan to the Secretary.

(2) Each plan prepared under paragraph (1) and each substantial revision thereof shall be made available for public inspection within the State involved in such a manner as will facilitate timely and meaningful review of, and comment upon, such plan or substantial revision.

(3) Not later than April 1 of each fiscal year the Secretary shall make available to the States a model State plan format that may be used, at the option of each State, to prepare the plan required under paragraph (1) for the next fiscal year.

(d) Expending of funds

The State shall expend funds in accordance with the State plan under this subchapter or in accordance with revisions applicable to such plan.

(e) Conduct of audits

Each State shall, in carrying out the requirements of subsection (b)(10), obtain financial and compliance audits of any funds which the State receives under this subchapter. Such audits shall be made public within the State on a timely basis. The audits shall be conducted in accordance with chapter 75 of title 31.

(f) Payments or assistance not to be deemed income or resources for any purpose under Federal or State law; determination of excess shelter expense deduction

(1) Notwithstanding any other provision of law unless enacted in express limitation of this paragraph, the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this subchapter shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law, including any law relating to taxation, supplemental nutrition assistance program benefits, public assistance, or welfare programs.

(2) For purposes of paragraph (1) of this subsection and for purposes of determining any excess

shelter expense deduction under section 5(e) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(e))—

(A) the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household, except that, for purposes of the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), such payments or allowances were greater than $20 annually, consistent with section 5(e)(6)(C)(iv)(I) of that Act (7 U.S.C. 2014(e)(6)(C)(iv)(I)), as determined by the Secretary of Agriculture; and

(B) no distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any of such households.

(g) Repayment of funds expended improperly; offset

The State shall repay to the United States amounts found not to have been expended in accordance with this subchapter or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this subchapter.

(h) Periodic evaluation of expenditures by Comptroller General

The Comptroller General of the United States shall, from time to time [2] evaluate the expenditures by States of grants under this subchapter in order to assure that expenditures are consistent with the provisions of this subchapter and to determine the effectiveness of the State in accomplishing the purposes of this subchapter.

(i) Certain recipients of supplemental security income ineligible for payments or assistance

A household which is described in subsection (b)(2)(A) solely by reason of clause (ii) thereof shall not be treated as a household described in subsection (b)(2) if the eligibility of the household is dependent upon—

(1) an individual whose annual supplemental security income benefit rate is reduced pursuant to section 1611(e)(1) of the Social Security Act [42 U.S.C. 1382(e)(1)] by reason of being in an institution receiving payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] with respect to such individual;

(2) an individual to whom the reduction specified in section 1612(a)(2)(A)(i) of the Social Security Act [42 U.S.C. 1382a(a)(2)(A)(i)] applies; or

(3) a child described in section 1614(f)(2) of the Social Security Act [42 U.S.C. 1382c(f)(2)] who is living together with a parent, or the spouse of a parent, of the child.

(j) State verification of income eligibility; policies and procedures applicable

In verifying income eligibility for purposes of subsection (b)(2)(B), the State may apply procedures and policies consistent with procedures and policies used by the State agency administering programs under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], under title XX of the Social Security Act [42 U.S.C. 1397 et seq.], under subtitle B of title VI of this Act (relating to community services block grant program) [42 U.S.C. 9901 et seq.], under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] before August 13, 1981, or under other income assistance or service programs (as determined by the State).

(k) Limitation on use of funds; waiver

(1) Except as provided in paragraph (2), not more than 15 percent of the greater of—

(A) the funds allotted to a State under this subchapter for any fiscal year; or

(B) the funds available to such State under this subchapter for such fiscal year;

may be used by the State for low-cost residential weatherization or other energy-related home repair for low-income households, particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy.

(2)(A) If a State receives a waiver granted under subparagraph (B) for a fiscal year, the State may

use not more than the greater of 25 percent of—

(i) the funds allotted to a State under this subchapter for such fiscal year; or

(ii) the funds available to such State under this subchapter for such fiscal year;

for residential weatherization or other energy-related home repair for low-income households, particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy.

(B) For purposes of subparagraph (A), the Secretary may grant a waiver to a State for a fiscal year if the State submits a written request to the Secretary after March 31 of such fiscal year and if the Secretary determines, after reviewing such request and any public comments, that—

(i)(I) the number of households in the State that will receive benefits, other than weatherization and energy-related home repair, under this subchapter in such fiscal year will not be fewer than the number of households in the State that received benefits, other than weatherization and energy-related home repair, under this subchapter in the preceding fiscal year;

(II) the aggregate amounts of benefits that will be received under this subchapter by all households in the State in such fiscal year will not be less than the aggregate amount of such benefits that were received under this subchapter by all households in the State in the preceding fiscal year; and

(III) such weatherization activities have been demonstrated to produce measurable savings in energy expenditures by low-income households; or

(ii) in accordance with rules issued by the Secretary, the State demonstrates good cause for failing to satisfy the requirements specified in clause (i).

(l) State tax credits to energy suppliers who supply home energy at reduced rates to low-income households

(1) Any State may use amounts provided under this subchapter for the purpose of providing credits against State tax to energy suppliers who supply home energy at reduced rates to low-income households.

(2) Any such credit provided by a State shall not exceed the amount of the loss of revenue to such supplier on account of such reduced rate.

(3) Any certification for such tax credits shall be made by the State, but such State may use Federal data available to such State with respect to recipients of supplemental security income benefits if timely delivery of benefits to households described in subsection (b) and suppliers will not be impeded by the use of such data.

(Pub. L. 97–35, title XXVI, §2605, Aug. 13, 1981, 95 Stat. 896; Pub. L. 98–558, title VI, §605, Oct. 30, 1984, 98 Stat. 2891; Pub. L. 99–425, title V, §504, Sept. 30, 1986, 100 Stat. 974; Pub. L. 101–501, title VII, §§704, 705, Nov. 3, 1990, 104 Stat. 1259; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–252, title III, §§305–309, 311(a)(1), (b), (c)(4), (5), May 18, 1994, 108 Stat. 659–662; Pub. L. 104–66, title I, §1072(c), Dec. 21, 1995, 109 Stat. 721; Pub. L. 104–193, title I, §110(p), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 105–285, title III, §306, Oct. 27, 1998, 112 Stat. 2758; Pub. L. 110–234, title IV, §4002(b)(1)(B), (E), (2)(EE), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(B), (E), (2)(EE), June 18, 2008, 122 Stat. 1664, 1857, 1859; Pub. L. 113–79, title IV, §4006(b), Feb. 7, 2014, 128 Stat. 787.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(2)(A)(i), (ii), (4), (i)(1), and (j), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Social Security Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. Titles XVI, XIX, and XX of the Social Security Act are classified generally to subchapters XVI (§1381 et seq.), XIX (§1396 et seq.), and XX (§1397 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food and Nutrition Act of 2008, referred to in subsecs. (b)(2)(A)(iii) and (f)(2)(A), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture.

For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, referred to in subsec. (b)(2)(A)(iv), is section 306 of Pub. L. 95–588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 521 of Title 38, Veterans' Benefits.

Subtitle B of title VI, referred to in subsecs. (b)(3), (4) and (j), is subtitle B of title VI of Pub. L. 97–35, §671 et seq., Aug. 13, 1981, 95 Stat. 511, known as the Community Services Block Grant Act, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsecs. (b)(3), (4), (6) and (j), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, which was classified generally to chapter 34 (§2701 et seq.) of this title prior to repeal, except for titles VIII and X, by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§2991 et seq.) and X (§2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

The Energy Conservation and Production Act, referred to in subsec. (b)(4), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1142. Title IV of the Energy Conservation and Production Act is classified principally to subchapter III (§6851 et seq.) of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

This subchapter, referred to in subsec. (b)(7)(D), was in the original "this Act" and was translated as reading "this title", meaning title XXVI of Pub. L. 97–35, known as the Low-Income Home Energy Assistance Act of 1981, to reflect the probable intent of Congress.

CODIFICATION

In subsec. (b)(6), "August 12, 1981" substituted for "the day before the date of the enactment of this Act", which date of enactment is Aug. 13, 1981.

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2014—Subsec. (f)(2)(A). Pub. L. 113–79 inserted before semicolon ", except that, for purposes of the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), such payments or allowances were greater than $20 annually, consistent with section 5(e)(6)(C)(iv)(I) of that Act (7 U.S.C. 2014(e)(6)(C)(iv)(I)), as determined by the Secretary of Agriculture".

2008—Subsec. (b)(2)(A)(iii). Pub. L. 110–246, §4002(b)(1)(B), (E), (2)(EE), substituted "supplemental nutrition assistance program benefits" for "food stamps" and "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

Subsec. (f)(1). Pub. L. 110–246, §4002(b)(1)(E), (2)(EE), substituted "supplemental nutrition assistance program benefits" for "food stamps".

Subsec. (f)(2). Pub. L. 110–246, §4002(b)(1)(B), (2)(EE), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977" in introductory provisions.

1998—Subsec. (b). Pub. L. 105–285, §306(1)(C), (D), struck out "The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection." in provisions after par. (14) and inserted identical language before "The Secretary shall issue" in concluding provisions after par. (16).

Subsec. (b)(9)(A). Pub. L. 105–285, §306(1)(A), struck out "and not transferred pursuant to section 8623(f) of this title for use under another block grant" before the semicolon.

Subsec. (b)(14). Pub. L. 105–285, §306(1)(B), struck out "and" at end.

Subsec. (c)(1)(B). Pub. L. 105–285, §306(2)(A), substituted "State" for "States".

Subsec. (c)(1)(G)(i). Pub. L. 105–285, §306(2)(B), substituted "had" for "has".

Subsec. (k)(1), (2)(A). Pub. L. 105–285, §306(3), inserted before period at end ", particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy".

1996—Subsec. (b)(2)(A)(i). Pub. L. 104–193 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "aid to families with dependent children under the State's plan approved under part A of title IV of the Social Security Act (other than such aid in the form of foster care in accordance with section 408 of such Act);".

1995—Subsec. (h). Pub. L. 104–66 struck out "(but not less frequently than every three years)," after "from time to time".

1994—Subsec. (b). Pub. L. 103–252, §311(c)(4), transferred the sentence immediately preceding par. (15)

to appear as a flush sentence immediately after par. (16).

Pub. L. 103–252, §311(b), inserted at end "Not later than 18 months after May 18, 1994, the Secretary shall develop model performance goals and measurements in consultation with State, territorial, tribal, and local grantees, that the States may use to assess the success of the States in achieving the purposes of this subchapter. The model performance goals and measurements shall be made available to States to be incorporated, at the option of the States, into the plans for fiscal year 1997. The Secretary may request data relevant to the development of model performance goals and measurements."

Subsec. (b)(1). Pub. L. 103–252, §305(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "use the funds available under this subchapter for the purposes described in section 8621(a) of this title and otherwise in accordance with the requirements of this subchapter, and agrees not to use such funds for any payments other than payments specified in this section;".

Subsec. (b)(2)(B). Pub. L. 103–252, §306(a), in concluding provisions substituted "except that a State may not exclude a household from eligibility in a fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income;" for "except that no household may be excluded from eligibility under this subclause for payments under this subchapter for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year".

Subsec. (b)(3). Pub. L. 103–252, §§306(b), 311(c)(3), substituted "disabled" for "handicapped" and "and households with high home energy burdens, are made aware" for "are made aware".

Subsec. (b)(5). Pub. L. 103–252, §306(c), inserted "or needs" after "highest energy costs".

Subsec. (b)(7)(D). Pub. L. 103–252, §311(a)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "assure that any home energy supplier receiving direct payments agrees not to discriminate, either in the cost of the goods supplied or the services provided, against the eligible household on whose behalf payments are made;".

Subsec. (b)(9)(B). Pub. L. 103–252, §305(b)(1), inserted before semicolon at end "(except for the costs of the activities described in paragraph (16))".

Subsec. (b)(10). Pub. L. 103–252, §307(1), substituted "and provide that the State will comply with the provisions of chapter 75 of title 31 (commonly known as the 'Single Audit Act')" for "and provide that at least every two years the State shall prepare an audit of its expenditures of amounts received under this subchapter and amounts transferred to carry out the purposes of this subchapter".

Subsec. (b)(16). Pub. L. 103–252, §305(b)(2), (3), added par. (16).

Subsec. (c)(1)(D). Pub. L. 103–252, §308, inserted before semicolon at end ", including any steps the State will take to address the weatherization and energy-related home repair needs of households that have high home energy burdens, and describes any rules promulgated by the Department of Energy for administration of its Low Income Weatherization Assistance Program which the State, to the extent permitted by the Secretary to increase consistency between federally assisted programs, will follow regarding the use of funds provided under this subchapter by the State for such weatherization and energy-related home repairs and improvements".

Subsec. (c)(1)(E). Pub. L. 103–252, §306(d)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (c)(1)(F). Pub. L. 103–252, §§306(d)(1), 309(1), redesignated subpar. (E) as (F), substituted "(13), and (15)" for "and (13)", and struck out "and" at end. Former subpar. (F) redesignated (H).

Subsec. (c)(1)(G). Pub. L. 103–252, §309(2), added subpar. (G).

Subsec. (c)(1)(H). Pub. L. 103–252, §306(d)(1), redesignated subpar. (F) as (H).

Subsec. (e). Pub. L. 103–252, §307(2), substituted "in accordance with chapter 75 of title 31" for "at least every two years by an organization or person independent of any agency administering activities under this subchapter. The audits shall be conducted in accordance with the Comptroller General's standards for audit of governmental organizations, programs, activities, and functions. Within 30 days after completion of each audit, the chief executive officer of the State shall submit a copy of the audit to the legislature of the State and to the Secretary".

1991—Subsec. (b)(2)(A)(iv). Pub. L. 102–83 substituted "section 1315, 1521, 1541, or 1542 of title 38" for "section 415, 521, 541, or 542 of title 38".

1990—Subsec. (b)(12). Pub. L. 101–501, §704(a)(1), inserted "timely and meaningful" after "provide for".

Subsec. (b)(15). Pub. L. 101–501, §704(a)(2)–(4), added par. (15) at end.

Subsec. (c)(2). Pub. L. 101–501, §704(b), inserted "timely and meaningful" after "will facilitate".

Subsec. (k). Pub. L. 101–501, §705, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, substituted "Except as provided in paragraph (2), not" for "Not", and added par. (2).

1986—Subsec. (b)(5). Pub. L. 99–425, §504(a), substituted "in a timely manner" for "in a manner consistent with the efficient and timely payment of benefits".

Subsec. (b)(14) to (17). Pub. L. 99–425, §504(b), redesignated cl. (17) as (14), and struck out former cls. (14) to (16) which read as follows:

"(14) describe the procedures by which households in the State are identified as eligible to participate under this subchapter and the manner in which the State determines benefit levels;

"(15) describe the amount that the State will reserve in accordance with section 8623(c) of this title in each fiscal year for energy crisis intervention activities together with the administrative procedures (A) for designating an emergency, (B) for determining the assistance to be provided in any such emergency, and (C) for the use of funds reserved under such section for the purposes under this subchapter in the event any portion of the amount so reserved is not expended for emergencies.

"(16) describe energy usage and the average cost of home energy in the State, identified by type of fuel and by region of the State;".

Subsec. (c)(1). Pub. L. 99–425, §504(c), revised provisions relating to requirements for State plans, restating as subpars. (A) to (F), provisions of former subpars. (A) to (E).

Subsec. (c)(3). Pub. L. 99–425, §504(d), added par. (3).

Subsec. (f). Pub. L. 99–425, §504(e), designated existing provisions as par. (1), substituted "provided directly to, or indirectly for the benefit of" for "provided to", and added par. (2).

1984—Subsec. (b). Pub. L. 98–558, §605(a)(9), inserted at end "The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this subchapter."

Subsec. (b)(1). Pub. L. 98–558, §605(a)(1), substituted "section" for "subsection".

Subsec. (b)(2)(B). Pub. L. 98–558, §605(a)(2), inserted "except that no household may be excluded from eligibility under this subclause for payments under this subchapter for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year".

Subsec. (b)(5). Pub. L. 98–558, §605(a)(3), inserted ", except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection".

Subsec. (b)(7)(C). Pub. L. 98–558, §605(a)(4), substituted "adversely" for "any differently".

Subsec. (b)(8). Pub. L. 98–558, §605(a)(5), designated existing provisions as subpar. (B) and added subpar. (A).

Subsec. (b)(9)(A). Pub. L. 98–558, §605(a)(6), in amending subpar. (A) generally, struck out "in each fiscal year" before "the State may" and substituted "for a fiscal year and not transferred pursuant to section 8623(f) of this title for use under another block grant" for "for such fiscal year".

Subsec. (b)(10). Pub. L. 98–558, §605(a)(7), substituted "every two years" for "every year".

Subsec. (b)(14) to (17). Pub. L. 98–558, §605(a)(8), which directed amendment of subsec. (b) by adding pars. (14) to (17) at the end thereof, was executed by adding those pars. after par. (13) to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 98–558, §605(b)(1), in amending par. (1) generally, designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (c)(2). Pub. L. 98–558, §605(b)(2), inserted "and each substantial revision thereof" and "or substantial revision" at the end.

Subsec. (d). Pub. L. 98–558, §605(c), in amending subsec. (d) generally, substituted provisions that the State shall expend funds in accordance with the State plan or revisions thereto for former provisions which related to waiver of requirements.

Subsec. (e). Pub. L. 98–558, §605(d), in amending subsec. (e) generally, inserted provisions requiring that the audits be made public and that they shall be conducted in accordance with the Comptroller General's standards.

Subsec. (f). Pub. L. 98–558, §605(e), inserted "unless enacted in express limitation of this paragraph".

Subsec. (h). Pub. L. 98–558, §605(f), inserted "(but not less frequently than every three years)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–79 effective 30 days after Feb. 7, 2014 and applicable with respect to certification periods that begin after that date, with State option to delay implementation for current recipients of standard utility allowance, see section 4006(c) of Pub. L. 113–79, set out as a note under section 2014 of Title 7, Agriculture.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (E), (2)(EE) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 504(a)–(d) of Pub. L. 99–425 not applicable with respect to any fiscal year beginning in or before the 60-day period ending on Oct. 1, 1986, and amendment by section 504(e) effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 effective on first day of first fiscal year beginning after Oct. 30, 1984, see section 609(b) of Pub. L. 98–558, set out as a note under section 8621 of this title.

CLARIFICATION ON UTILITY ALLOWANCES

Pub. L. 102–550, title IX, §927, Oct. 28, 1992, 106 Stat. 3885, as amended by Pub. L. 103–185, §1, Dec. 14, 1993, 107 Stat. 2244, provided that:

"(a) ELIGIBILITY.—Tenants who—

"(1) are responsible for making out-of-pocket payments for utility bills; and

"(2) receive energy assistance through utility allowances that include energy costs under programs identified in subsection (c);

shall not have their eligibility or benefits under other programs designed to assist low-income people with increases in energy costs since 1978 reduced or eliminated, except as provided in subsection (d).

"(b) EQUAL TREATMENT IN BENEFIT PROGRAMS.—Tenants described in subsection (a) shall be treated identically with other households eligible for or receiving energy assistance, including in the determination of the home energy costs for which they are individually responsible and in the determination of their incomes for any program in which eligibility or benefits are based on need, except as provided in subsection (d).

"(c) APPLICABILITY.—This section applies to programs under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], and title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

"(d) SPECIAL RULE FOR LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.—For purposes of the Low-Income Home Energy Assistance Program, tenants described in subsection (a)(2) who are responsible for paying some or all heating or cooling costs shall not have their eligibility automatically denied. A State may consider the amount of the heating or cooling component of utility allowances received by tenants described in subsection (a)(2) when setting benefit levels under the Low-Income Home Energy Assistance Program. The size of any reduction in Low-Income Home Energy Assistance Program benefits must be reasonably related to the amount of the heating or cooling component of the utility allowance received and must ensure that the highest level of assistance will be furnished to those households with the lowest incomes and the highest energy costs in relation to income, taking into account family size, in

compliance with section 2605(b)(5) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(b)(5))."

[1] *See References in Text note below.*

[2] *So in original. Probably should be followed by a comma.*

§8625. Nondiscrimination provisions

(a) Prohibitions

No person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 also shall apply to any such program or activity.

(b) Procedures applicable to secure compliance

Whenever the Secretary determines that a State that has received a payment under this subchapter has failed to comply with subsection (a) or an applicable regulation, he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 794 of title 29, as may be applicable; or (3) take such other action as may be provided by law.

(c) Maintenance of civil actions

When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that the State is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(Pub. L. 97–35, title XXVI, §2606, Aug. 13, 1981, 95 Stat. 900.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a) and (b), is title III of Pub. L. 94–135, Nov. 28, 1975, 78 Stat. 728, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§8626. Payments to States; fiscal year requirements respecting availability, etc.

(a)(1) From its allotment under section 8623 of this title, the Secretary shall make payments to each State in accordance with section 6503(a) of title 31, for use under this subchapter.

(2) Each State shall notify the Secretary, not later than 2 months prior to the close of a fiscal year, of the amount (if any) of its allotment for such year that will not be obligated in such year, and, if

such State elects to submit a request described in subsection (b)(2), such State shall submit such request at the same time. The Secretary shall make no payment under paragraph (1) to a State for a fiscal year unless the State has complied with this paragraph with respect to the prior fiscal year.

(b)(1) If—

(A) the Secretary determines that, as of September 1 of any fiscal year, an amount allotted to a State under section 8623 of this title for any fiscal year will not be used by such State during such fiscal year;

(B) the Secretary—

(i) notifies the chief executive officer of such State; and

(ii) publishes a timely notice in the Federal Register;

that, after the 30-day period beginning on the date of the notice to such chief executive officer, such amount may be reallotted; and

(C) the State does not request, under paragraph (2), that such amount be held available for such State for the following fiscal year;

then such amount shall be treated by the Secretary for purposes of this subchapter as an amount appropriated for the following fiscal year to be allotted under section 8623 of this title for such following fiscal year.

(2)(A) Any State may request that an amount allotted to such State for a fiscal year be held available for such State for the following fiscal year. Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year. Any amount so held available for the following fiscal year shall not be taken into account in computing the allotment of or the amount payable to such State for such fiscal year under this subchapter.

(B) No amount may be held available under this paragraph for a State from a prior fiscal year to the extent such amount exceeds 10 percent of the amount payable to such State for such prior fiscal year. For purposes of the preceding sentence, the amount payable to a State for a fiscal year shall be determined without regard to any amount held available under this paragraph for such State for such fiscal year from the prior fiscal year.

(C) The Secretary shall reallot amounts made available under this paragraph for the fiscal year following the fiscal year of the original allotment in accordance with paragraph (1) of this subsection.

(3) During the 30-day period described in paragraph (1)(B), comments may be submitted to the Secretary. After considering such comments, the Secretary shall notify the chief executive officer of the State of any decision to reallot funds, and shall publish such decision in the Federal Register.

(Pub. L. 97–35, title XXVI, §2607, Aug. 13, 1981, 95 Stat. 900; Pub. L. 98–558, title VI, §606, Oct. 30, 1984, 98 Stat. 2892; Pub. L. 101–501, title VII, §706, Nov. 3, 1990, 104 Stat. 1260; Pub. L. 103–252, title III, §310, May 18, 1994, 108 Stat. 661; Pub. L. 105–285, title III, §307, Oct. 27, 1998, 112 Stat. 2758.)

EDITORIAL NOTES

CODIFICATION

In subsec. (a)(1), "section 6503(a) of title 31" substituted for "section 203 of the Intergovernmental Cooperation Act of 1968 [42 U.S.C. 4213]" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1998—Subsec. (b)(2)(B). Pub. L. 105–285 struck out "and not transferred pursuant to section 8623(f) of this title" after "such prior fiscal year" in first sentence and "but not transferred by the State" after "the amount payable to a State" in second sentence.

1994—Subsec. (a). Pub. L. 103–252 designated existing provisions as par. (1) and added par. (2).

1990—Subsec. (b)(2)(B). Pub. L. 101–501 substituted "10 percent" for "15 percent".

1984—Subsec. (b)(2)(A). Pub. L. 98–558, §606(a), inserted "Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year." and "or the amount payable to" after "computing the allotment of".

Subsec. (b)(2)(B). Pub. L. 98–558, §606(b), substituted "15 percent" for "25 percent", "payable to such State for such prior fiscal year and not transferred pursuant to section 8623(f) of this title" for "allotted to such State for such prior fiscal year", and "payable to a State but not transferred by the State" for "allotted to a State" in second sentence.

Subsec. (b)(2)(C). Pub. L. 98–558, §606(c), added subpar. (C).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 applicable to amounts held available for fiscal years beginning after Sept. 30, 1985, see section 609(c) of Pub. L. 98–558, set out as a note under section 8621 of this title.

§8626a. Incentive program for leveraging non-Federal resources

(a) Allotment of funds

Beginning in fiscal year 1992, the Secretary may allocate amounts appropriated under section 8621(d) of this title to provide supplementary funds to States that have acquired non-Federal leveraged resources for the program established under this subchapter.

(b) "Leveraged resources" defined

For purposes of this section, the term "leveraged resources" means the benefits made available to the low-income home energy assistance program of the State, or to federally qualified low-income households, that—

(1) represent a net addition to the total energy resources available to State and federally qualified households in excess of the amount of such resources that could be acquired by such households through the purchase of energy at commonly available household rates; and

(2)(A) result from the acquisition or development by the State program of quantifiable benefits that are obtained from energy vendors through negotiation, regulation or competitive bid; or

(B) are appropriated or mandated by the State for distribution—

(i) through the State program; or

(ii) under the plan referred to in section 8624(c)(1)(A) of this title to federally qualified low-income households and such benefits are determined by the Secretary to be integrated with the State program.

(c) Formula for distribution of amounts

(1) Distribution of amounts made available under this section shall be based on a formula developed by the Secretary that is designed to take into account the success in leveraging existing appropriations in the preceding fiscal year as measured under subsection (d). Such formula shall take into account the size of the allocation of the State under this subchapter and the ratio of leveraged resources to such allocation.

(2) A State may expend funds allocated under this subchapter as are necessary, not to exceed 0.08 percent of such allocation or $35,000 each fiscal year, whichever is greater, to identify, develop, and

demonstrate leveraging programs. Funds allocated under this section shall only be used for increasing or maintaining benefits to households.

(d) Dollar value of leveraged resources

Each State shall quantify the dollar value of leveraged resources received or acquired by such State under this section by using the best available data to calculate such leveraged resources less the sum of any costs incurred by the State to leverage such resources and any cost imposed on the federally eligible low-income households in such State.

(e) Report to Secretary

Not later than 2 months after the close of the fiscal year during which the State provided leveraged resources to eligible households, as described in subsection (b), each State shall prepare and submit, to the Secretary, a report that quantifies the leveraged resources of such State in order to qualify for assistance under this section for the following fiscal year.

(f) Determination of State share; regulations; documentation

The Secretary shall determine the share of each State of the amounts made available under this section based on the formula described in subsection (c) and the State reports. The Secretary shall promulgate regulations for the calculation of the leveraged resources of the State and for the submission of supporting documentation. The Secretary may request any documentation that the Secretary determines necessary for the verification of the application of the State for assistance under this section.

(Pub. L. 97–35, title XXVI, §2607A, as added Pub. L. 101–501, title VII, §707(a), Nov. 3, 1990, 104 Stat. 1260; amended Pub. L. 103–252, title III, §311(a)(2), (c)(6), May 18, 1994, 108 Stat. 661, 662.)

EDITORIAL NOTES

AMENDMENTS

1994—Subsec. (c)(2). Pub. L. 103–252, §311(c)(6), substituted "0.08 percent" for ".0008 percent".

Subsec. (e). Pub. L. 103–252, §311(a)(2), substituted "2 months after the close of the fiscal year during which the State provided leveraged resources to eligible households, as described in subsection (b) of this section" for "July 31, of each year".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as an Effective Date of 1990 Amendment note under section 8621 of this title.

§8626b. Residential Energy Assistance Challenge option (R.E.A.Ch.)

(a) Purpose

The purpose of the Residential Energy Assistance Challenge (in this section referred to as "R.E.A.Ch.") program is to—

(1) minimize health and safety risks that result from high energy burdens on low-income Americans;

(2) prevent homelessness as a result of inability to pay energy bills;

(3) increase the efficiency of energy usage by low-income families; and

(4) target energy assistance to individuals who are most in need.

(b) Funding

(1) Allocation

For each fiscal year, the Secretary may allocate not more than 25 percent of the amount made available pursuant to section 8621(d) of this title for such fiscal year to a R.E.A.Ch. fund for the purpose of making incentive grants to States that submit qualifying plans that are approved by the Secretary as R.E.A.Ch. initiatives. States may use such grants for the costs of planning, implementing, and evaluating the initiative.

(2) Reservation

The Secretary shall reserve from any funds allocated under this subsection, funds to make additional payments to State R.E.A.Ch. programs that—

(A) have energy efficiency education services plans that meet quality standards established by the Secretary in consultation with the Secretary of Energy; and

(B) have the potential for being replicable model designs for other programs.

States shall use such supplemental funds for the implementation and evaluation of the energy efficiency education services.

(c) Criteria

(1) In general

Not later than May 31, 1995, the Secretary shall establish criteria for approving State plans required by subsection (a), for energy efficiency education quality standards described in subsection (b)(2)(A), and for the distribution of funds to States with approved plans.

(2) Documentation

Notwithstanding the limitations of section 8624(b) of this title regarding the authority of the Secretary with respect to plans, the Secretary may require a State to provide appropriate documentation that its R.E.A.Ch. activities conform to the State plan as approved by the Secretary.

(d) Focus

The State may designate all or part of the State, or all or part of the client population, as a focus of its R.E.A.Ch. initiative.

(e) State plans

(1) In general

Each State plan shall include each of the elements described in paragraph (2), to be met by State and local agencies.

(2) Elements of State plans

Each State plan shall include—

(A) an assurance that such State will deliver services through community-based nonprofit entities in such State, by—

(i) awarding grants to, or entering into contracts with, such entities for the purpose of providing such services and payments directly to individuals eligible for benefits; or

(ii) if a State makes payments directly to eligible individuals or energy suppliers, making contracts with such entities to administer such programs, including—

(I) determining eligibility;

(II) providing outreach services; and

(III) providing benefits other than payments;

(B) an assurance that, in awarding grants or entering into contracts to carry out its R.E.A.Ch. initiative, the State will give priority to organizations that—

(i) are described in section 9902(1) of this title, except where significant geographic portions of the State are not served by such entities;

(ii) the Secretary has determined have a record of successfully providing services under the Low-Income Home Energy Assistance Program; and

(iii) receive weatherization assistance program funds under part A of title IV of the Energy Conservation and Production Act [42 U.S.C. 6861 et seq.];

except that a State may not require any such entity to operate a R.E.A.Ch. program;

(C) an assurance that, subject to subparagraph (D), each entity that receives a grant or enters into a contract under subparagraph (A)(i) will provide a variety of services and benefits, including—

(i) payments to, or on behalf of, individuals eligible for residential energy assistance services and benefits under section 8624(b) of this title for home energy costs;

(ii) energy efficiency education;

(iii) residential energy demand management services, including any other energy related residential repair and energy efficiency improvements in coordination with, or delivered by, Department of Energy weatherization assistance programs at the discretion of the State;

(iv) family services, such as counseling and needs assessment, related to energy budget management, payment plans, and related services; and

(v) negotiation with home energy suppliers on behalf of households eligible for R.E.A.Ch. services and benefits;

(D) a description of the methodology the State and local agencies will use to determine—

(i) which households will receive one or more forms of benefits under the State R.E.A.Ch. initiative;

(ii) the cases in which nonmonetary benefits are likely to provide more cost-effective long-term outcomes than payment benefits alone; and

(iii) the amount of such benefit required to meet the goals of the program;

(E) a method for targeting nonmonetary benefits;

(F) a description of the crisis and emergency assistance activities the State will undertake that are designed to—

(i) discourage family energy crises;

(ii) encourage responsible vendor and consumer behavior; and

(iii) provide only financial incentives that encourage household payment;

(G) a description of the activities the State will undertake to—

(i) provide incentives for recipients of assistance to pay home energy costs; and

(ii) provide incentives for vendors to help reduce the energy burdens of recipients of assistance;

(H) an assurance that the State will require each entity that receives a grant or enters into a contract under this section to solicit and be responsive to the views of individuals who are financially eligible for benefits and services under this section in establishing its local program;

(I) a description of performance goals for the State R.E.A.Ch. initiative including—

(i) a reduction in the energy costs of participating households over one or more fiscal years;

(ii) an increase in the regularity of home energy bill payments by eligible households; and

(iii) an increase in energy vendor contributions towards reducing energy burdens of eligible households;

(J) a description of the indicators that will be used by the State to measure whether the performance goals have been achieved;

(K) a demonstration that the plan is consistent with section 8622 of this title, paragraphs (2), (3), (4), (5), (7), (9), (10), (11), (12), (13), and (14) of section 8624(b) of this title, subsections

(d), (e), (f), (g), (h), (i), and (j) of section 8624 of this title, and section 8625 of this title;

(L) an assurance that benefits and services will be provided in addition to other benefit payments and services provided under this subchapter and in coordination with such benefit payments and services; and

(M) an assurance that no regulated utility covered by the plan will be required to act in a manner that is inconsistent with applicable regulatory requirements.

(f) Cost or function

None of the costs of providing services or benefits under this section shall be considered to be an administrative cost or function for purposes of any limitation on administrative costs or functions contained in this subchapter.

(Pub. L. 97–35, title XXVI, §2607B, as added Pub. L. 103–252, title III, §312, May 18, 1994, 108 Stat. 662; amended Pub. L. 105–285, title III, §308(c), (d), Oct. 27, 1998, 112 Stat. 2758.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (e)(2)(B)(iii), is Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1125. Part A of title IV of the Act is classified generally to part A (§6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–285, §308(c), substituted "For each fiscal year" for "For each of the fiscal years 1996 through 1999".

Subsec. (e)(2)(E) to (H). Pub. L. 105–285, §308(d)(1)(A), redesignated subpars. (F) to (I) as (E) to (H), respectively.

Subsec. (e)(2)(I). Pub. L. 105–285, §308(d)(1)(A), redesignated subpar. (J) as (I). Former subpar. (I) redesignated (H).

Subsec. (e)(2)(I)(i). Pub. L. 105–285, §308(d)(1)(B), substituted "of" for "on".

Subsec. (e)(2)(J) to (N). Pub. L. 105–285, §308(d)(1)(A), redesignated subpars. (K) to (N) as (J) to (M), respectively.

Subsecs. (f), (g). Pub. L. 105–285, §308(d)(2), redesignated subsec. (g) as (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 8621 of this title.

EVALUATION AND REPORT ON RESIDENTIAL ENERGY ASSISTANCE CHALLENGE OPTION

Pub. L. 105–285, title III, §308(a), (b), Oct. 27, 1998, 112 Stat. 2758, provided that the Comptroller General of the United States would conduct an evaluation of the Residential Energy Assistance Challenge program described in this section, and, not later than 2 years after Oct. 27, 1998, submit to Congress a report containing the findings of the evaluation and the State evaluations described in paragraphs (1) and (2) of subsec. (b) of this section.

§8627. Withholding of funds

(a) Improper utilization of funds; response to complaints respecting improprieties

(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not utilize its allotment substantially in accordance with the provisions of this subchapter and the assurances such State provided under section 8624 of this title.

(2) The Secretary shall respond in writing in no more than 60 days to matters raised in complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this subchapter or the assurances provided by the State under section 8624 of this title. For purposes of this paragraph, a violation of any one of the assurances contained in section 8624(b) of this title that constitutes a disregard of such assurance shall be considered a serious complaint.

(b) Investigations; conduct, etc.

(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this subchapter in order to evaluate compliance with the provisions of this subchapter.

(2) Whenever the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this subchapter by such State in order to ensure compliance with the provisions of this subchapter.

(3) The Comptroller General of the United States may conduct an investigation of the use of funds received under this subchapter by a State in order to ensure compliance with the provisions of this subchapter.

(c) Inspection of books, documents, etc.

Pursuant to an investigation conducted under subsection (b) of this section, a State shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(d) Request for information not readily available

In conducting any investigation under subsection (b), the Secretary may not request any information not readily available to such State or require that any information be compiled, collected, or transmitted in any new form not already available.

(Pub. L. 97–35, title XXVI, §2608, Aug. 13, 1981, 95 Stat. 901; Pub. L. 98–558, title VI, §608, Oct. 30, 1984, 98 Stat. 2893; Pub. L. 101–501, title VII, §708, Nov. 3, 1990, 104 Stat. 1261.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101–501 substituted "in writing in no more than 60 days to matters raised in" for "in an expeditious and speedy manner to".

1984—Subsec. (b)(2). Pub. L. 98–558 substituted "the Secretary" for "he" before "shall conduct".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 effective Oct. 30, 1984, see section 609(a) of Pub. L. 98–558 set out as a note under section 8621 of this title.

§8628. Limitation on use of grants for construction

Grants made under this subchapter may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this subchapter, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

(Pub. L. 97–35, title XXVI, §2609, Aug. 13, 1981, 95 Stat. 902.)

§8628a. Technical assistance, training, and compliance reviews

(a) Of the amounts appropriated under section 8621(b) of this title for any fiscal year, not more than $300,000 of such amounts may be reserved by the Secretary—

(1) to—

(A) make grants to State and public agencies and private nonprofit organizations; or

(B) enter into contracts or jointly financed cooperative arrangements or interagency agreements with States and public agencies (including Federal agencies) and private nonprofit organizations;

to provide for training and technical assistance related to the purposes of this subchapter, including collection and dissemination of information about programs and projects assisted under this subchapter, and ongoing matters of regional or national significance that the Secretary finds would assist in the more effective provision of services under this subchapter; or

(2) to conduct onsite compliance reviews of programs supported under this subchapter.

(b) No provision of this section shall be construed to prevent the Secretary from making a grant pursuant to subsection (a) to one or more private nonprofit organizations that apply jointly with a business concern to receive such grant.

(Pub. L. 97–35, title XXVI, §2609A, as added Pub. L. 99–425, title V, §505(a), Sept. 30, 1986, 100 Stat. 975; amended Pub. L. 103–252, title III, §311(a)(3), May 18, 1994, 108 Stat. 661; Pub. L. 105–285, title III, §309, Oct. 27, 1998, 112 Stat. 2759.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, the first and second time appearing in subsec. (a)(1), was in the original "this subtitle" which was translated as "this title", meaning title XXVI of Pub. L. 97–35, as the probable intent of Congress.

AMENDMENTS

1998—Pub. L. 105–285, §309(b), substituted "Technical assistance, training, and compliance reviews" for "Technical assistance and training" as section catchline.

Subsec. (a). Pub. L. 105–285, §309(a), substituted "$300,000" for "$250,000" in introductory provisions, designated existing provisions as par. (1) and inserted "to—", redesignated former par. (1) as subpar. (A), realigned margin, and substituted "make grants" for "to make grants", redesignated former par. (2) as subpar. (B), realigned margin, substituted "enter into" for "to enter into" and inserted "or interagency agreements" after "cooperative arrangements" and "(including Federal agencies)" after "public agencies", realigned margin of concluding provisions and substituted "; or" for period at end, and added par. (2).

1994—Subsec. (a). Pub. L. 103–252 substituted "$250,000" for "$500,000" in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

§8629. Studies and reports

(a) The Secretary, after consultation with the Secretary of Energy, shall provide for the collection of data, including—

(1) information concerning home energy consumption;

(2) the amount, cost and type of fuels used for households eligible for assistance under this subchapter;

(3) the type of fuel used by various income groups;

(4) the number and income levels of households assisted by this subchapter;

(5) the number of households which received such assistance and include one or more individuals who are 60 years or older or disabled or include young children; and

(6) any other information which the Secretary determines to be reasonably necessary to carry out the provisions of this subchapter.

Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government.

(b) The Secretary shall, no later than June 30 of each fiscal year, submit a report to the Congress containing a detailed compilation of the data under subsection (a) with respect to the prior fiscal year, and a report that describes for the prior fiscal year—

(1) the manner in which States carry out the requirements of clauses (2), (5), (8), and (15) of section 8624(b) of this title; and

(2) the impact of each State's program on recipient and eligible households.

(Pub. L. 97–35, title XXVI, §2610, Aug. 13, 1981, 95 Stat. 902; Pub. L. 98–558, title VI, §607, Oct. 30, 1984, 98 Stat. 2893; Pub. L. 99–425, title V, §506, Sept. 30, 1986, 100 Stat. 976; Pub. L. 103–252, title III, §311(c)(7), May 18, 1994, 108 Stat. 662.)

EDITORIAL NOTES

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–252, §311(c)(7)(A), struck out semicolon after "used" and inserted semicolon after "subchapter".

Subsec. (a)(5). Pub. L. 103–252, §311(c)(7)(B), substituted "disabled or include young children" for "handicapped".

1986—Subsec. (b). Pub. L. 99–425 inserted provisions relating to report describing for prior fiscal year the manner of carrying out requirements of clauses of section 8624 of this title and impact of State programs on recipient and eligible households.

1984—Subsec. (a). Pub. L. 98–558, §607(c), inserted at end "Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government."

Subsec. (a)(2). Pub. L. 98–558, §607(a), inserted "amount," before "cost" and inserted at end "for households eligible for assistance under this subchapter".

Subsec. (a)(5), (6). Pub. L. 98–558, §607(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (b). Pub. L. 98–558, §607(d), in amending subsec. (b) generally, inserted "no later than June 30 of each fiscal year," and substituted "a detailed compilation of the data under subsection (a) with respect to the prior fiscal year" for "a summary of data collected under subsection (a)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 314 of Pub. L. 103–252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–558 applicable to data collected and compiled after Oct. 30, 1984, and this section as in effect before Oct. 30, 1984, applicable with respect to the report submitted under this section for fiscal year 1984, see section 609(d) of Pub. L. 98–558, set out as a note under section 8621 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 12th item on page 93 identifies a reporting provision which, as amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§8630. Renewable fuels

In providing assistance pursuant to this subchapter, a State, or any other person with which the State makes arrangements to carry out the purposes of this subchapter, may purchase renewable fuels, including biomass.

(Pub. L. 97–35, title XXVI, §2612, as added Pub. L. 109–58, title I, §121(b), Aug. 8, 2005, 119 Stat. 616.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPORT TO CONGRESS

Pub. L. 109–58, title I, §121(c), Aug. 8, 2005, 119 Stat. 616, provided that: "The Secretary [of Energy] shall report to Congress on the use of renewable fuels in providing assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.)."

CHAPTER 95—UNITED STATES SYNTHETIC FUELS CORPORATION

§8701. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 96–294, title I, §100, June 30, 1980, 94 Stat. 616, which related to Congressional findings, declarations, and purposes, was omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

SUBCHAPTER I—INTRODUCTORY PROVISIONS

§8702. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 96–294, title I, §112, June 30, 1980, 94 Stat. 633, which defined terms for this chapter, was omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

SUBCHAPTER II—ESTABLISHMENT OF CORPORATION

§§8711 to 8719. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8711 to 8719 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8711, Pub. L. 96–294, title I, §115, June 30, 1980, 94 Stat. 636, created the Corporation, provided for its offices and residence status, and referred to its general powers.

Section 8712, Pub. L. 96–294, title I, §116, June 30, 1980, 94 Stat. 636, provided for board of directors of Corporation.

Section 8713, Pub. L. 96–294, title I, §117, June 30, 1980, 94 Stat. 638; Pub. L. 98–473, title I, §101(c) [title II, §201], Oct. 12, 1984, 98 Stat. 1837, 1860, related to officers and employees of Corporation.

Section 8714, Pub. L. 96–294, title I, §118, June 30, 1980, 94 Stat. 638, related to conflicts of interest and financial disclosure.

Section 8715, Pub. L. 96–294, title I, §119, June 30, 1980, 94 Stat. 639, related to delegation of authority and transfer of functions.

Section 8716, Pub. L. 96–294, title I, §120, June 30, 1980, 94 Stat. 640, authorized administrative expenses.

Section 8717, Pub. L. 96–294, title I, §121, June 30, 1980, 94 Stat. 641, related to public access to information.

Section 8718, Pub. L. 96–294, title I, §122, June 30, 1980, 94 Stat. 641, related to Inspector General of Corporation.

Section 8719, Pub. L. 96–294, title I, §123, June 30, 1980, 94 Stat. 644, established an Advisory Committee to the Board of Directors. For continuation of Advisory Committee, see section 7404(c) of Pub. L. 99–272, set out as a note under section 8791 of this title.

SUBCHAPTER III—PRODUCTION GOAL OF THE CORPORATION

§§8721 to 8725. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8721 to 8725 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8721, Pub. L. 96–294, title I, §125, June 30, 1980, 94 Stat. 644, established a national synthetic fuel production goal.

Section 8722, Pub. L. 96–294, title I, §126, June 30, 1980, 94 Stat. 644, related to production strategy.

Section 8723, Pub. L. 96–294, title I, §127, June 30, 1980, 94 Stat. 649, related to solicitation of proposals.

Section 8724, Pub. L. 96–294, title I, §128, June 30, 1980, 94 Stat. 650, related to Congressional disapproval procedure.

Section 8725, Pub. L. 96–294, title I, §129, June 30, 1980, 94 Stat. 652, related to Congressional approval procedure.

SUBCHAPTER IV—FINANCIAL ASSISTANCE

§§8731 to 8740. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8731 to 8740 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8731, Pub. L. 96–294, title I, §131, June 30, 1980, 94 Stat. 654, authorized financial assistance.

Section 8732, Pub. L. 96–294, title I, §132, June 30, 1980, 94 Stat. 658, related to loans made by Corporation.

Section 8733, Pub. L. 96–294, title I, §133, June 30, 1980, 94 Stat. 660, related to loan guarantees made by Corporation.

Section 8734, Pub. L. 96–294, title I, §134, June 30, 1980, 94 Stat. 661, related to price guarantees by Corporation.

Section 8735, Pub. L. 96–294, title I, §135, June 30, 1980, 94 Stat. 661, related to purchase agreements made by Corporation.

Section 8736, Pub. L. 96–294, title I, §136, June 30, 1980, 94 Stat. 662, related to joint ventures by Corporation.

Section 8737, Pub. L. 96–294, title I, §137, June 30, 1980, 94 Stat. 663, related to control of assets.

Section 8738, Pub. L. 96–294, title I, §138, June 30, 1980, 94 Stat. 665, related to unlawful contracts.

Section 8739, Pub. L. 96–294, title I, §139, June 30, 1980, 94 Stat. 665, related to fees and application of receipts.

Section 8740, Pub. L. 96–294, title I, §140, June 30, 1980, 94 Stat. 665, related to disposition of securities.

SUBCHAPTER V—CORPORATION CONSTRUCTION PROJECTS

§§8741 to 8745. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8741 to 8745 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8741, Pub. L. 96–294, title I, §141, June 30, 1980, 94 Stat. 665, related to construction and operation of synthetic fuel projects.

Section 8742, Pub. L. 96–294, title I, §142, June 30, 1980, 94 Stat. 666, limited construction projects.

Section 8743, Pub. L. 96–294, title I, §143, June 30, 1980, 94 Stat. 666, subjected construction projects and joint ventures to certain Federal laws and provided for monitoring of environmental and health related emissions.

Section 8744, Pub. L. 96–294, title I, §144, June 30, 1980, 94 Stat. 667, related to construction project reports.

Section 8745, Pub. L. 96–294, title I, §145, June 30, 1980, 94 Stat. 667, related to financial record requirements for contract recipients.

SUBCHAPTER VI—CAPITALIZATION AND FINANCE

§§8751 to 8755. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8751 to 8755 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8751, Pub. L. 96–294, title I, §151, June 30, 1980, 94 Stat. 667, related to issue by Corporation of obligations purchasable by United States only.

Section 8752, Pub. L. 96–294, title I, §152, June 30, 1980, 94 Stat. 668, related to limitations on total amount of obligational authority.

Section 8753, Pub. L. 96–294, title I, §153, June 30, 1980, 94 Stat. 669, related to budgetary treatment.

Section 8754, Pub. L. 96–294, title I, §154, June 30, 1980, 94 Stat. 669, related to receipts of Corporation.

Section 8755, Pub. L. 96–294, title I, §155, June 30, 1980, 94 Stat. 669, related to tax status of Corporation.

SUBCHAPTER VII—UNLAWFUL ACTS, PENALTIES, AND SUITS AGAINST THE CORPORATION

§§8761 to 8768. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8761 to 8768 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8761, Pub. L. 96–294, title I, §161, June 30, 1980, 94 Stat. 670, related to penalty for false statements.

Section 8762, Pub. L. 96–294, title I, §162, June 30, 1980, 94 Stat. 670, related to penalty for forgery.

Section 8763, Pub. L. 96–294, title I, §163, June 30, 1980, 94 Stat. 671, related to penalties and injunctive relief for misappropriation of funds and for unauthorized activities.

Section 8764, Pub. L. 96–294, title I, §164, June 30, 1980, 94 Stat. 671, related to penalty for conspiracy.

Section 8765, Pub. L. 96–294, title I, §165, June 30, 1980, 94 Stat. 672, related to deceptive use of corporate name.

Section 8766, Pub. L. 96–294, title I, §166, June 30, 1980, 94 Stat. 672, authorized an action for damages by Corporation in addition to penalties prescribed for violations.

Section 8767, Pub. L. 96–294, title I, §167, June 30, 1980, 94 Stat. 672, related to actions by Attorney General.

Section 8768, Pub. L. 96–294, title I, §168, June 30, 1980, 94 Stat. 672; Pub. L. 98–473, title I, §101(c) [title II, §201], Oct. 12, 1984, 98 Stat. 1837, 1860, related to civil actions against Corporation.

SUBCHAPTER VIII—GENERAL PROVISIONS

§§8771 to 8780. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8771 to 8780 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8771, Pub. L. 96–294, title I, §171, June 30, 1980, 94 Stat. 673, related to general powers of Corporation.

Section 8772, Pub. L. 96–294, title I, §172, June 30, 1980, 94 Stat. 674, related to coordination by Corporation with Federal entities.

Section 8773, Pub. L. 96–294, title I, §173, June 30, 1980, 94 Stat. 675, related to patents.

Section 8774, Pub. L. 96–294, title I, §174, June 30, 1980, 94 Stat. 676, related to utilization of small and disadvantaged businesses.

Section 8775, Pub. L. 96–294, title I, §175, June 30, 1980, 94 Stat. 676; Pub. L. 98–426, §27(d)(2), Sept. 28, 1984, 98 Stat. 1654, provided relationship to other Federal laws.

Section 8776, Pub. L. 96–294, title I, §176, June 30, 1980, 94 Stat. 678, provided for severability of provisions.

Section 8777, Pub. L. 96–294, title I, §177, June 30, 1980, 94 Stat. 678, specified Corporation's fiscal year and provided for audits and reports.

Section 8778, Pub. L. 96–294, title I, §178, June 30, 1980, 94 Stat. 679, related to water rights.

Section 8779, Pub. L. 96–294, title I, §179, June 30, 1980, 94 Stat. 679, related to Western Hemisphere projects.

Section 8780, Pub. L. 96–294, title I, §180, June 30, 1980, 94 Stat. 680, related to a lender financial protection and completion guarantee study.

SUBCHAPTER IX—DISPOSAL OF ASSETS

§§8781, 8782. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8781 and 8782 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8781, Pub. L. 96–294, title I, §181, June 30, 1980, 94 Stat. 680, related to disposal of corporate tangible assets.

Section 8782, Pub. L. 96–294, title I, §182, June 30, 1980, 94 Stat. 681, related to disposal of assets other than as provided for in section 8781.

SUBCHAPTER X—TERMINATION OF CORPORATION

§§8791 to 8793. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 8791 to 8793 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note below.

Section 8791, Pub. L. 96–294, title I, §191, June 30, 1980, 94 Stat. 681, related to dates for termination of awards or commitments by Corporation.

Section 8792, Pub. L. 96–294, title I, §192, June 30, 1980, 94 Stat. 681, related to termination of Corporation's affairs.

Section 8793, Pub. L. 96–294, title I, §193, June 30, 1980, 94 Stat. 681, transferred Corporation's powers to

Department of the Treasury.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF UNITED STATES SYNTHETIC FUELS CORPORATION

Pub. L. 99–272, title VII, subtitle E, Apr. 7, 1986, 100 Stat. 143, as amended by Pub. L. 101–508, title VI, §6401, Nov. 5, 1990, 104 Stat. 1388–319, provided that:

"SEC. 7401. SHORT TITLE.

"This subtitle may be cited as the 'Synthetic Fuels Corporation Act of 1985'.

"SEC. 7402. CESSATION OF FINANCIAL ASSISTANCE AUTHORITY.

"Effective on the date of enactment of this Act [Apr. 7, 1986], the United States Synthetic Fuels Corporation (hereafter in this subtitle referred to as the 'Corporation') may not make any legally binding awards or commitments for financial assistance (including any changes in an existing award or commitment) pursuant to the Energy Security Act [Pub. L. 96–294; see Short Title note set out under section 8801 of this title] for synthetic fuel project proposals, except that nothing in this Act [see Tables for classification] shall impair or alter the powers, duties, rights, obligations, privileges, or liabilities of the Corporation, its Board or Chairman, or project sponsors in the performance and completion of the terms and undertakings of a legally binding award or commitment entered into prior to the date of enactment of this Act.

"SEC. 7403. TERMINATION OF THE CORPORATION.

"(a) Within 60 days of the date of enactment of this Act [Apr. 7, 1986], the Directors of the Corporation shall terminate their duties under the Energy Security Act [Pub. L. 96–294; see Short Title note set out under section 8801 of this title] and be discharged.

"(b) Within 120 days of the date of enactment of this Act [Apr. 7, 1986], the Corporation shall terminate, except as otherwise provided in this subtitle, in accordance with subtitle J of part B of title I of the Energy Security Act [42 U.S.C. 8791 to 8793].

"SEC. 7404. DUTIES OF SECRETARY OF THE TREASURY.

"(a) Within 60 days of the date of enactment of this Act [Apr. 7, 1986] (or earlier, in the event of absence of a Chairman of the Board of Directors of the Corporation), the Secretary of the Treasury shall assume the duties of the Chairman of the Board of Directors of the Corporation. The Secretary of the Treasury shall have the authority to negotiate and execute agreements modifying an existing contract relating to the production of synthetic crude oil from oil shale, entered into under the Defense Production Act Amendments of 1980 [Pub. L. 96–294, title I, part A, see Short Title of 1980 Amendment note set out under section 4501 of Title 50, War and National Defense] and subsequently transferred to the Secretary of the Treasury for administration, provided the terms and conditions of any modification(s) are revenue neutral or result in a fiscal savings to the United States Government, and in no event would increase the financial exposure of the United States Government under the contract: *Provided, however*, That the Secretary of the Treasury shall have no authority to increase the total amount of funds originally authorized for the existing contract: *And provided further*, That the Secretary shall have no authority to negotiate and execute any agreement modifying the existing contract if such modification(s) would increase or accelerate the financial support per unit for the synthetic fuel to be produced under the contract.

"(b) Notwithstanding any other provision of law, the duties and responsibilities of the Secretary of the Treasury under subtitle J of part B of title I of the Energy Security Act [42 U.S.C. 8791 to 8793] or this Act [see Tables for classification] may not be transferred to any other Federal department or agency.

"(c) Notwithstanding such termination of the Corporation, the Advisory Committee established under section 123 of the Energy Security Act (42 U.S.C 8719) shall remain in effect to advise the Secretary of the Treasury regarding the administration of any contract or obligation of the Corporation pursuant to subtitle D of part B of title I of such Act [42 U.S.C. 8731 to 8740].

"(d) To the extent that the Secretary of the Treasury may be required to take an action under section 131(q) of the Energy Security Act [42 U.S.C. 8731(q)] in connection with an award or commitment of financial assistance under such Act [Pub. L. 96–294; see Short Title note set out under section 8801 of this title], the Secretary shall complete such action within 30 days of the date of enactment of this Act [Apr. 7, 1986].

"SEC. 7405. SALARIES AND COMPENSATION RIGHTS.

"(a) The Director of the Office of Personnel Management shall, before February 1, 1986, determine the amount of compensation or benefits which each Director, officer, or employee of the Corporation shall be legally entitled to under any contract as of the date of enactment of this Act [Apr. 7, 1986].

"(b) Effective on the date of enactment of this Act [Apr. 7, 1986], no change in any Director, officer, or employee compensation or benefits shall be allowed or permitted, unless the Director of the Office of Personnel Management agrees that such change is reasonable.

"(c) Effective on the date of enactment of this Act [Apr. 7, 1986]—

"(1) no officer or employee of the Corporation shall receive a salary in excess of the rate of basic pay payable for level IV of the Executive Schedule under title 5 of the United States Code; and

"(2) the Corporation shall not waive any requirements in its By-Laws which are necessary for a Director, officer, or employee to qualify for pension or termination benefits under the By-Laws and written personnel policies and procedures in effect on the date of enactment of this Act [Apr. 7, 1986].

"SEC. 7406. REPORT TO THE CONGRESS.

"The Corporation shall, within 60 days of the date of enactment of this Act [Apr. 7, 1986], transmit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Energy and Commerce and Committee on Banking, Housing and Urban Affairs of the House of Representatives a report—

"(1) containing a review of implementation of its Phase I Business Plan dated February 19, 1985; and

"(2) fulfilling the requirements of section 126(b)(3) of the Energy Security Act (42 U.S.C. 8722(b)(3))."

Similar provisions were contained in Pub. L. 99–190, §101(d) [title II, §201], Dec. 19, 1985, 99 Stat. 1224, 1249.

SUBCHAPTER XI—DEPARTMENT OF THE TREASURY

§8795. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 96–294, title I, §195, June 30, 1980, 94 Stat. 682, which authorized appropriations to purchase corporate obligations and authorized public debt status for purchases and redemptions of corporate obligations, was omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

CHAPTER 96—BIOMASS ENERGY AND ALCOHOL FUELS

Sec.

8801. Congressional findings.
8802. Definitions.
8803. Funding.
8804. Coordination with other authorities and programs.

SUBCHAPTER I—GENERAL BIOMASS ENERGY DEVELOPMENT

8811. Biomass energy development plans.
8812. Program responsibility and administration and effect on other programs.
8813. Insured loans.
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8815. Price guarantees.
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8817. General requirements regarding financial assistance.
8818. Reports.
8819. Review; reorganization.
8820. Office of Alcohol Fuels.
8821. Termination of authorities; modification of terms and conditions of conditional

commitments for loan guarantees.
SUBCHAPTER II—MUNICIPAL WASTE BIOMASS ENERGY
8831. Municipal waste energy development plan.
8832. Construction loans.
8833. Guaranteed construction loans.
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8835. General requirements regarding financial assistance.
8836. Financial assistance program administration.
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8838. Jurisdiction of Department of Energy and Environmental Protection Agency.
8839. Office of Energy from Municipal Waste.
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SUBCHAPTER III—RURAL, AGRICULTURAL, AND FORESTRY BIOMASS ENERGY
8851. Model demonstration biomass energy facilities; establishment, public inspection, etc.; authorization of appropriations.
8852. Coordination of research and extension activities; consultative requirements.
8853. Lending for energy production and conservation projects by production credit associations, Federal land banks, and banks for cooperatives.
8854. Utilization of National Forest System in wood energy development projects.
8855. Forest Service leases and permits.
SUBCHAPTER IV—MISCELLANEOUS BIOMASS PROVISIONS
8871. Use of gasohol in Federal motor vehicles.

§8801. Congressional findings

The Congress finds that—

(1) the dependence of the United States on imported petroleum and natural gas must be reduced by all economically and environmentally feasible means, including the use of biomass energy resources; and

(2) a national program for increased production and use of biomass energy that does not impair the Nation's ability to produce food and fiber on a sustainable basis for domestic and export use must be formulated and implemented within a multiple-use framework.

(Pub. L. 96–294, title II, §202, June 30, 1980, 94 Stat. 683.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–294, §1, June 30, 1980, 94 Stat. 611, provided: "That this Act [enacting chapters 95 to 97, and sections 6347, 7361 to 7364, 7371 to 7375, 8235 to 8235i, 8281 to 8284, 8285 to 8285c, and 8286 to 8286b of this title, sections 1435 and 3129 of Title 7, Agriculture, sections 3601 to 3620 of Title 12, Banks and Banking, section 3391a of Title 15, Commerce and Trade, sections 1146, 1147, 1501, 1511 to 1516, 1521, 1522, 1531, 1541, and 1542 of Title 30, Mineral Lands and Mining, sections 4515 and 4516 of Title 50, War and National Defense, and sections 2095 to 2098 of the former Appendix to Title 50, amending sections 6240, 6862 to 6872, 8211, 8213, 8214, 8216, 8217, 8221, 8255, 8271, and 8274 to 8276 of this title, sections 341, 342, 3104, and 3154 of Title 7, section 7430 of Title 10, Armed Forces, sections 1451, 1454, 1717, 1723g, and 1723h of Title 12, section 753 of Title 15, sections 590h, 796, 824a–3, 824i, 824j, 1642, 2705, and 2708 of Title 16, Conservation, sections 1141 and 1143 of Title 30, sections 4502, 4531 to 4533, 4551, 4561, and 4564 of Title 50, repealing section 1723f of Title 12, and enacting provisions set out as notes under this section and sections 6240, 7371, 8211, 8235, 8701, and 8901 of this title, section 3601 of Title 12, section 2701 of Title 16, section 1501 of Title 30, and sections 4501 and 4502 of Title 50] may be cited as the 'Energy Security Act'."

Pub. L. 96–294, title II, §201, June 30, 1980, 94 Stat. 683, provided that: "This title [enacting this chapter,

sections 1435 and 3129 of Title 7, Agriculture, and section 3391a of Title 15, Commerce and Trade, and amending sections 341, 342, 3104, and 3154 of Title 7, section 753 of Title 15, and sections 590h and 1642 of Title 16, Conservation] may be cited as the 'Biomass Energy and Alcohol Fuels Act of 1980'."

§8802. Definitions

As used in this chapter—

(1) The term "alcohol" means alcohol (including methanol and ethanol) which is produced from biomass and which is suitable for use by itself or in combination with other substances as a fuel or as a substitute for petroleum or petrochemical feedstocks.

(2)(A) The term "biomass" means any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, municipal wastes, and aquatic plants.

(B) For purposes of subchapter I, such term does not include municipal wastes; and for purposes of subchapter III, such term does not include aquatic plants and municipal wastes.

(3) The term "biomass fuel" means any gaseous, liquid, or solid fuel produced by conversion of biomass.

(4) The term "biomass energy" means—

(A) biomass fuel; or

(B) energy or steam derived from the direct combustion of biomass for the generation of electricity, mechanical power, or industrial process heat.

(5) The term "biomass energy project" means any facility (or portion of a facility) located in the United States which is primarily for—

(A) the production of biomass fuel (and byproducts); or

(B) the combustion of biomass for the purpose of generating industrial process heat, mechanical power, or electricity (including cogeneration).

(6) The term "Btu" means British thermal unit.

(7) The term "cogeneration" means the combined generation by any facility of—

(A) electrical or mechanical power, and

(B) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes.

(8) The term "cooperative" means any agricultural association, as that term is defined in section 1141j(a) of title 12.

(9)(A) The term "construction" means—

(i) the construction or acquisition of any biomass energy project;

(ii) the conversion of any facility to a biomass energy project; or

(iii) the expansion or improvement of any biomass energy project which increases the capacity or efficiency of that facility to produce biomass energy.

(B) Such term includes—

(i) the acquisition of equipment and machinery for use in or at the site of a biomass energy project; and

(ii) the acquisition of land and improvements thereon for the construction, expansion, or improvement of such a project, or the conversion of a facility to such a project.

(C) Such term does not include the acquisition of any facility which was operated as a biomass energy project before the acquisition.

(10) The term "Federal agency" means any Executive agency, as defined in section 105 of title 5.

(11)(A) The term "financial assistance" means any of the following forms of financial

assistance provided under this chapter, or any combination of such forms:

(i) loans,

(ii) loan guarantees,

(iii) price guarantees, and

(iv) purchase agreements.

(B) Such term includes any commitment to provide such assistance.

(12) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(13) The term "motor fuel" means gasoline, kerosene, and middle distillates (including diesel fuel).

(14)(A) The term "municipal waste" means any organic matter, including sewage, sewage sludge, and industrial or commercial waste, and mixtures of such matter and inorganic refuse—

(i) from any publicly or privately operated municipal waste collection or similar disposal system, or

(ii) from similar waste flows (other than such flows which constitute agricultural wastes or residues, or wood wastes or residues from wood harvesting activities or production of forest products).

(B) Such term does not include any hazardous waste, as determined by the Secretary of Energy for purposes of this chapter.

(15)(A) The term "municipal waste energy project" means any facility (or portion of a facility) located in the United States primarily for—

(i) the production of biomass fuel (and byproducts) from municipal waste; or

(ii) the combustion of municipal waste for the purpose of generating steam or forms of useful energy, including industrial process heat, mechanical power, or electricity (including cogeneration).

(B) Such term includes any necessary transportation, preparation, and disposal equipment and machinery for use in or at the site of the facility involved.

(16) The term "Office of Alcohol Fuels" means the Office of Alcohol Fuels established under section 8820 of this title.

(17) The term "person" means any individual, company, cooperative, partnership, corporation, association, consortium, unincorporated organization, trust, estate, or any entity organized for a common business purpose, any State or local government (including any special purpose district or similar governmental unit) or any agency or instrumentality thereof, or any Indian tribe or tribal organization.

(18) The term "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(19) The term "small scale biomass energy project" means a biomass energy project with an anticipated annual production capacity of not more than 1,000,000 gallons of ethanol per year, or its energy equivalent of other forms of biomass energy.

(Pub. L. 96–294, title II, §203, June 30, 1980, 94 Stat. 683.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in introductory provisions and pars. (11)(A) and (14)(B), was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and

Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

Subchapter III, referred to in par. (2)(B), was in the original "subtitle C", meaning subtitle C (§§251–262) of title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 705, which enacted subchapter III of this chapter and sections 1435 and 3129 of Title 7, Agriculture, and amended sections 341, 342, 3104, and 3154 of Title 7 and sections 590h and 1642 of Title 16, Conservation. For complete classification of subtitle C to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in par. (12), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§8803. Funding

(a) Authorization of appropriations

To the extent provided in advance in appropriation Acts, for the two year period beginning October 1, 1980, there is authorized to be appropriated and transferred $1,170,000,000 from the Energy Security Reserve established in the Treasury of the United States under title II of the Act entitled "An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1980, and for other purposes" (Public Law 96–126; 93 Stat. 970) and made available for obligation by such Act only to the extent provided in advance in appropriation Acts, as follows:

(1) $460,000,000 to the Secretary of Agriculture for carrying out activities under subchapter I, except of the amount of the financial assistance provided by the Secretary of Agriculture under subchapter I, up to one-third shall be for small-scale biomass energy projects;

(2) $460,000,000 to the Secretary of Energy for carrying out biomass energy activities under subchapter I, of which at least $500,000,000 [1] shall be available to the Office of Alcohol Fuels for carrying out its activities, and any amount not made available to the Office of Alcohol Fuels shall be available to the Secretary to carry out the purposes of subchapter I under available authorities of the Secretary, including authorities under subchapter I; and

(3) $250,000,000 shall be available to the Secretary of Energy for carrying out activities under subchapter II.

(b) Availability of funds until expended

Funds made available under subsection (a) shall remain available until expended.

(c) Determinations respecting amount of appropriations remaining available

(1) For purposes of determining the amount of such appropriations which remain available for purposes of this chapter—

(A) loans shall be counted at the initial face value of the loan;

(B) loan guarantees shall be counted at the initial face value of such loan guarantee;

(C) price guarantees and purchase agreements shall be counted at the value determined by the Secretary concerned as of the date of each such contract based upon the Secretary's determination of the maximum potential liability of the United States under the contract; and

(D) any increase in the liability of the United States pursuant to any amendment or other modification to a contract for a loan, loan guarantee, price guarantee, or purchase agreement, shall be counted to the extent of such increase.

(2) Determinations under paragraph (1) shall be made in accordance with generally accepted

accounting principles, consistently applied.

(3) If more than one form of financial assistance is to be provided to any one project, the obligations and commitments thereunder shall be counted at the maximum potential exposure of the United States on such project at any time during the life of such project.

(4) Any commitment to provide financial assistance shall be treated the same as such assistance for purposes of this subsection; except that any such commitment which is nullified or voided for any reason shall not be considered for purposes of this subsection.

(d) Financial assistance provided only to extent advanced in appropriation Acts

Financial assistance may be provided under this chapter only to the extent provided in advance in appropriation Acts.

(Pub. L. 96–294, title II, §204, June 30, 1980, 94 Stat. 685; Pub. L. 97–35, title X, §§1061–1063, Aug. 13, 1981, 95 Stat. 622.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Security Reserve established in the Treasury of the United States under title II of the Act entitled "An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1980, and for other purposes" (Public Law 96–126; 93 Stat. 970), referred to in subsec. (a), was established by Pub. L. 96–126, title II, §201, Nov. 27, 1979, 93 Stat. 970, which is set out as a note under section 5915 of this title.

This chapter, referred to in subsecs. (c)(1) and (d), was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35, §1063, substituted "$1,170,000,000" for "$1,450,000,000".

Subsec. (a)(1). Pub. L. 97–35, §1061, substituted "$460,000,000" for "$600,000,000".

Subsec. (a)(2). Pub. L. 97–35, §1062, substituted "$460,000,000" for "$600,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97–35, set out as a note under section 6240 of this title.

[1] So in original. Pub. L. 97–35 decreased appropriation to $460,000,000 from $600,000,000 without amending sum of $500,000,000.

§8804. Coordination with other authorities and programs

The authorities in this chapter are in addition to and do not modify (except to the extent expressly provided for in this chapter) authorities and programs of the Department of Energy and of the Department of Agriculture under other provisions of law.

(Pub. L. 96–294, title II, §205, June 30, 1980, 94 Stat. 686.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified

principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

SUBCHAPTER I—GENERAL BIOMASS ENERGY DEVELOPMENT

§8811. Biomass energy development plans

(a) Plan respecting maximized production and use by December 31, 1982; preparation, transmission, etc.

Not later than 180 days after June 30, 1980, the Secretary of Agriculture and the Secretary of Energy shall jointly prepare, and transmit to the President and the Congress, a plan for maximizing in accordance with this subchapter biomass energy production and use. Such plan shall be designed to achieve a total level of alcohol production and use within the United States of at least 60,000 barrels per day of alcohol by December 31, 1982.

(b) Comprehensive plan respecting maximized production and use from January 1, 1983, to December 31, 1990, preparation, transmission, etc.

(1) Not later than January 1, 1982, the Secretary of Agriculture and the Secretary of Energy shall jointly prepare, and transmit to the President and the Congress, a comprehensive plan for maximizing in accordance with this subchapter biomass energy production and use, for the period beginning January 1, 1983, and ending December 31, 1990. Such plan shall be designed to achieve a level of alcohol production within the United States equal to at least 10 percent of the level of gasoline consumption within the United States as estimated by the Secretary of Energy for the calendar year 1990.

(2) The plan prepared under this subsection shall evaluate the feasibility of reaching the goals set forth in such subsection.

(c) Required guidelines

The plans prepared under subsections (a) and (b) shall each include guidelines for use in awarding financial assistance under this subchapter which are designed to increase, during the period covered by the plan, the amount of motor fuel displaced by biomass energy.

(Pub. L. 96–294, title II, §211, June 30, 1980, 94 Stat. 686.)

§8812. Program responsibility and administration and effect on other programs

(a) Duties and functions of Secretary of Agriculture and Secretary of Energy over projects

(1) Except as provided in paragraph (2), in the case of any financial assistance under this subchapter for a biomass energy project, the Secretary concerned shall be—

(A) the Secretary of Agriculture, in the case of any biomass energy project which will have an anticipated annual production capacity of less than 15,000,000 gallons of ethanol (or the energy equivalent of other forms of biomass energy) and which will use feedstocks other than aquatic plants; and

(B) the Secretary of Energy, in the case of any biomass energy project which will use aquatic plants as feedstocks or which will have an anticipated annual production capacity of 15,000,000 gallons or more of ethanol (or the energy equivalent of other forms of biomass energy).

(2)(A) Either the Secretary of Agriculture or the Secretary of Energy may be the Secretary concerned in the case of any biomass energy project which will have an anticipated annual production capacity of 15,000,000 gallons or more of ethanol (or the energy equivalent of other forms of biomass energy) and—

(i) which will use wood or wood wastes or residue, or

(ii) which is owned and operated by a cooperative and will use feedstocks other than aquatic plants.

(B) Financial assistance may not be provided by either Secretary under subparagraph (A) without the written concurrence of the other Secretary. Such concurrence shall be granted or denied by such Secretary in accordance with subparagraph (C) and on the same standards as that Secretary applies in making his own awards of financial assistance under this paragraph.

(C)(i) In the case of a project described in subparagraph (A), the Secretary concerned shall provide the other Secretary a copy of the application and such supporting information as may be material, and shall provide the other Secretary at least 15 days to review the project. If during such 15-day period the reviewing Secretary provides written notification to the Secretary concerned specifying reasons why such project should not proceed, the Secretary concerned shall defer the final decision on the application for an additional 30 days. During such 30-day period, both Secretaries shall attempt to reach agreement regarding all issues raised in the written notice. Before the end of the 30-day period, the reviewing Secretary shall notify the Secretary concerned of his decision regarding concurrence. If the reviewing Secretary fails to provide such notice before the end of such period, concurrence shall be deemed to have been given.

(ii) The project applicant may reapply for financial assistance for such project, after making such modifications to the project as may be necessary to address issues raised by the reviewing Secretary in the original notice of objection. The subsequent review of such project by the reviewing Secretary shall be limited to the issues originally raised by the reviewing Secretary and any issues raised by changed circumstances.

(D) Both Secretaries may jointly act as the Secretary concerned in accordance with such procedures as the Secretaries may jointly prescribe, in which case—

(i) subparagraphs (B) and (C) and subsection (c) shall not apply, and

(ii) the proportion of financial assistance provided by each Secretary shall be determined in accordance with the procedures jointly prescribed.

(b) Procedural requirements applicable

(1) Each Secretary shall take such action as may be necessary to assure that—

(A) guidelines for soliciting and receiving applications for financial assistance are established within 90 days after June 30, 1980;

(B) applications for financial assistance for biomass energy projects are initially solicited within 30 days after such guidelines are established;

(C) additional applications for financial assistance are solicited within 1 year after the date of the initial solicitation;

(D) any application is evaluated and a decision made on such application within 120 days after the receipt of the application, including review under subsections (a)(2)(C), (a)(2)(D), or (c); and

(E) all interested persons are provided the easiest possible access to the application process, including procedures which assure that—

(i) information concerning financial assistance from either Secretary is available through all appropriate offices of the Department of Agriculture and the Department of Energy, and other regional and local offices of the Federal Government, as may be appropriate;

(ii) all such locations where such information is available will be able to accept and file applications, and will forward them to the Secretary concerned; and

(iii) the procedures established for accepting, evaluating, and awarding financial assistance will provide for categories of biomass energy projects, according to size and provide to the maximum extent practicable the simplest procedures for small producers.

(2) The procedural requirements of subparagraphs (A) through (D) of paragraph (1) shall not apply to either Secretary to the extent that the Secretary finds that other procedures are adopted for the solicitation, evaluation, and awarding of financial assistance which will result in applications being processed more expeditiously.

(c) Notice to and reviewing functions of other Secretary concerning application for financial assistance

(1) After evaluating any application and before awarding any financial assistance on the basis of that application, the Secretary concerned shall provide the other Secretary with—

(A) a copy of the application and such supporting material as may be appropriate, and

(B) an opportunity of not less than 15 days to review the application.

This subsection shall not apply in the case of a project subject to review under subsection (a)(2)(C).

(2) If the reviewing Secretary provides written notice specifying any issues regarding matters subject to the Secretary's review to the Secretary concerned before the end of the 15-day review period, the Secretary concerned shall defer a final decision on the application for an additional 30 days to provide an opportunity for both Secretaries to answer and resolve such issues. At the expiration of the 30-day period, the Secretary concerned may make a final decision with respect to the application, using the best judgment of the Secretary concerned to resolve any remaining issues.

(3) Reviews of projects under the provisions of subsection (a)(2)(C) or paragraph (1)(B) by the Secretary of Agriculture shall be for the purpose of considering the national, regional, and local agricultural policy impacts of such project on agricultural supply, production, and use, and reviews by the Secretary of Energy under such provisions shall be for the purpose of considering national energy policy impacts and the technical feasibility of the project.

(4) The Secretary of Agriculture and the Secretary of Energy may jointly establish categories of projects to which paragraphs (1) and (2) shall not apply. Within 90 days after June 30, 1980, the Secretaries shall identify potential categories and make an initial determination of exempted categories.

(d) Notification of applicant upon disapproval of application for financial assistance

If any application for financial assistance under this subchapter is disapproved, the applicant shall be provided written notice of the reasons for the disapproval.

(e) Implementation of functions assigned to Secretary of Agriculture by administrative entities within Department of Agriculture; issuance of regulations; coordination of functions by designated entities

(1) The functions assigned under this subchapter to the Secretary of Agriculture may be carried out by any of the administrative entities in the Department of Agriculture which the Secretary of Agriculture may designate. Within 30 days after June 30, 1980, the Secretary of Agriculture shall make such designations and notify the Congress of the administrative entity or entities so designated and the officials in such administrative entity or entities who are to be responsible for such functions.

(2) The Secretary of Agriculture may issue such regulations as are necessary to carry out functions assigned to the Secretary of Agriculture under this subchapter.

(3) The entities or entity designated under paragraph (1) shall coordinate the administration of functions assigned to it under this subsection with any other biomass energy programs within the Department of Agriculture established under other provisions of law.

(f) Implementation of functions assigned to Secretary of Energy by Office of Alcohol Fuels

The functions under this subchapter which are assigned to the Secretary of Energy and which relate to alcohol production shall be carried out by the Office of Alcohol Fuels.

(g) Energy equivalency determinations respecting biomass energy and ethanol

For purposes of this subchapter, the quantity of any biomass energy which is the energy equivalent to 15,000,000 gallons of ethanol shall be prescribed jointly by the Secretary of Agriculture and the Secretary of Energy within 30 days after June 30, 1980.

(Pub. L. 96–294, title II, §212, June 30, 1980, 94 Stat. 687.)

§8813. Insured loans

(a) Authority of Secretary of Agriculture; maximum amount per project

Subject to sections 8812 and 8817 of this title, the Secretary of Agriculture may commit to make, and make, insured loans in amounts not to exceed $1,000,000 per project for the construction of small-scale biomass energy projects.

(b) Estimated project construction costs as determinative of initial and revised amount of loan; interest rate

(1) Any insured loan under this section—

(A) may not exceed 90 per centum of the total estimated cost of construction of the biomass energy project involved, and

(B) shall bear interest at rates determined by the Secretary of Agriculture, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus not to exceed one per centum, as determined by the Secretary of Agriculture, and adjusted to the nearest one-eighth of one per centum.

(2) In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Agriculture, the Secretary may in addition, upon application therefor, make an insured loan for so much of the additional estimated total costs as does not exceed 10 per centum of the total costs initially estimated.

(c) Funding requirements; "insured loan" defined

(1) The Secretary of Agriculture shall make insured loans under this section using, to the extent provided in advance in appropriations Acts, the Agricultural Credit Insurance Fund in section 309 of the Consolidated Farm and Rural Development Act [7 U.S.C. 1929] or the Rural Development Insurance Fund in section 309A of such Act [7 U.S.C. 1929a] (hereinafter in this section referred to as the "Funds"). The Secretary of Agriculture may not use an aggregate amount of funds to make or commit to make insured loans under this section in excess of the aggregate amount for insured loans and administrative costs appropriated and transferred under section 8803 of this title. The terms, conditions, and requirements applicable to such insured loans shall be in accordance with this subchapter.

(2) There shall be reimbursed to the Funds, from appropriations made under section 8803 of this title, amounts equal to the operating and administrative costs incurred by the Secretary of Agriculture in insuring loans under this section.

(3) Notwithstanding any provision of the Consolidated Farm and Rural Development Act [7 U.S.C. 1921 et seq.], no funds made available to the Secretary of Agriculture under this section for insured loans shall be used for any other purpose.

(4) For purposes of this section, the term "insured loan" means a loan which is made, sold, and insured.

(d) Preconditions

An insured loan may not be made under this section unless the applicant for such loan has established to the satisfaction of the Secretary that the applicant is unable without such a loan to obtain sufficient credit elsewhere at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which such loan is sought.

(Pub. L. 96–294, title II, §213, June 30, 1980, 94 Stat. 690.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consolidated Farm and Rural Development Act, referred to in subsec. (c)(3), is title III of Pub. L.

87–128, Aug. 8, 1961, 75 Stat. 307, which is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

§8814. Loan guarantees

(a) Authority of Secretary concerned

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to guarantee, and guarantee, against loss of principal and interest, loans which are made to provide funds for the construction of biomass energy projects.

(b) Estimated project construction costs as determinative of initial and revised amount of guarantee

(1) Any guarantee of a loan under this section may not exceed 90 per centum of the cost of the construction of the biomass energy project involved, as estimated by the Secretary on the date of the guarantee or commitment to guarantee.

(2) In the event the construction costs of the project are thereafter estimated by the Secretary concerned to exceed the construction costs initially estimated by the Secretary, the Secretary may in addition, upon application therefor, guarantee, against loss of principal and interest, a loan for up to 60 per centum of the difference between the construction costs then estimated and the construction costs initially estimated.

(c) Debt obligation; ineligibility for purchase, etc., by Federal Financing Bank or any Federal agency

Notwithstanding the provisions of the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq.) or any other provision of law (except as may be specifically provided by reference to this subsection in any Act enacted after June 30, 1980), no debt obligation which is guaranteed or committed to be guaranteed by the Secretary of Agriculture or the Secretary of Energy under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank or any Federal agency.

(d) Terms and conditions

The terms and conditions of loan guarantees under this section shall provide that, if the Secretary concerned makes a payment of principal or interest upon the default by a borrower, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the loan guarantee or related agreements).

(e) Termination, cancellation, or revocation, and conclusive nature of guarantee

Any loan guarantee under this section shall not be terminated, canceled, or otherwise revoked, except in accordance with the terms thereof and shall be conclusive evidence that such guarantee complies fully with the provisions of this chapter and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee.

(f) Payment to lender

If the Secretary concerned determines that—

(1) the borrower is unable to meet payments and is not in default,

(2) it is in the public interest to permit the borrower to continue with such project, and

(3) the probable net benefit to the United States in paying the principal and interest due under the loan will be greater than that which would result in the event of a default,

then the Secretary may pay to the lender under a loan guarantee agreement an amount not greater than the principal and interest which the borrower is obligated to pay to such lender, if the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which the Secretary determines are sufficient to protect the financial interests of the United States.

(g) Preconditions

(1) A loan may not be guaranteed under this section unless the applicant for such loan has established to the satisfaction of the Secretary concerned that the lender is not willing without such a guarantee to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which such loan is sought.

(2) The Secretary concerned shall ensure that the lender bears a reasonable degree of risk in the financing of such project.

(Pub. L. 96–294, title II §214, June 30, 1980, 94 Stat. 690.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Financing Bank Act of 1973, referred to in subsec. (c), is Pub. L. 93–224, Dec. 29, 1973, 87 Stat. 937, which is classified generally to chapter 24 (§2281 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of Title 12 and Tables.

This chapter, referred to in subsec. (e), was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFAULTED LOANS UNDER DEPARTMENT OF ENERGY ALCOHOL FUELS LOAN GUARANTEE PROGRAM; SALE OF ASSETS; UNOBLIGATED FUNDS

Pub. L. 101–121, title II, Oct. 23, 1989, 103 Stat. 732, provided that:

"Notwithstanding 31 U.S.C. 3302, funds derived from the sale of assets as a result of defaulted loans made under the Department of Energy Alcohol Fuels Loan Guarantee program, or any other funds received in connection with this program, shall hereafter be credited to the Biomass Energy Development account, and shall be available solely for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program for loans guaranteed prior to January 1, 1987.

"Unobligated balances available in the 'Alternative fuels production' account may hereafter be used for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program, subject to the determination by the Secretary of Energy that such unobligated funds are not needed for carrying out the purposes of the Alternative Fuels Production program: *Provided*, That the use of these unobligated funds for payment of defaulted loans and associated costs shall be available only for loans guaranteed prior to January 1, 1987: *Provided further*, That such funds shall be used only after the unobligated balance in the Department of Energy Alcohol Fuel Loan Guarantee reserve has been exhausted."

§8815. Price guarantees

(a) Authority of Secretary concerned; minimum sales price

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to guarantee, and guarantee, that the price that the owner or operator of any biomass energy project will receive for all or part of the production from that project shall not be less than a specified sales price determined as of the date of execution of the price guarantee or commitment to guarantee.

(b) Cost-plus arrangements as basis

(1) No price guarantee under this section may be based upon a cost-plus arrangement, or variant thereof, which guarantees a profit to the owner or operator involved.

(2) The use of a cost-of-service pricing mechanism by a person pursuant to law, or by a regulatory body establishing rates for a regulated person, shall not be deemed to be a cost-plus arrangement, or

variant thereof, for purposes of paragraph (1).

(c) Maximum dollar amount of liability of United States

Each price guarantee, or commitment to guarantee, which is made under this section shall specify the maximum dollar amount of liability of the United States under that guarantee.

(d) Renegotiation of sales price and maximum liability

If the Secretary determines, in the discretion of the Secretary, that—

(1) a biomass energy project would not otherwise be satisfactorily completed or continued, and

(2) completion or continuation of such project would be necessary to achieve the purposes of this chapter,

the sales price set forth in the price guarantee, and maximum liability under such guarantee, may be renegotiated.

(Pub. L. 96–294, title II, §215, June 30, 1980, 94 Stat. 692.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(2), was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

§8816. Purchase agreements

(a) Authority of Secretary concerned; consultative requirements

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to make, and make, purchase agreements for all or part of the biomass energy production of any biomass energy project, if the Secretary determines—

(1) that such biomass energy is of a type, quantity, and quality that can be used by Federal agencies; and

(2) that the quantity of such biomass energy, if delivery is accepted, would not exceed the likely needs of Federal agencies.

Each Secretary concerned shall consult with the other Secretary before making any determination under paragraph (2).

(b) Maximum sales price

The sales price specified in a purchase agreement under this section may not exceed the estimated prevailing market price as of the date of delivery, as determined by the Secretary of Energy, unless the Secretary concerned determines that such sales price must exceed the estimated prevailing market price in order to ensure the production of biomass energy to achieve the purposes of this chapter.

(c) Assurances required

The Secretary concerned in entering into, or committing to enter into, a purchase agreement under this section shall require—

(1) assurances that the quality of the biomass energy purchased will meet standards for the use for which such energy is purchased;

(2) assurances that the ordered quantities of such energy will be delivered on a timely basis; and

(3) such other assurances as may reasonably be required.

(d) Arrangements for delivery pursuant to agreement; charge to Federal agency receiving

delivery

The Secretary concerned may take delivery of biomass energy pursuant to a purchase agreement under this section if appropriate arrangements have been made for its distribution to and use by one or more Federal agencies. Any Federal agency receiving such energy shall be charged (in accordance with otherwise applicable law), from sums appropriated to such Federal agency, for the prevailing market price as of the date of delivery, as determined by the Secretary of Energy, for the product which the biomass energy is replacing.

(e) Consultative requirements

The Secretary concerned shall consult with the Secretary of Defense and the Administrator of the General Services Administration in carrying out this section.

(f) Terms and conditions

Each purchase agreement, and commitment to enter into a purchase agreement, under this section shall provide that the Secretary concerned retains the right to refuse delivery of the biomass energy involved upon such terms and conditions as shall be specified in the purchase agreement.

(g) Maximum dollar amount of liability of United States

Each purchase agreement, or commitment to enter into a purchase agreement, which is made under this section shall specify the maximum dollar amount of liability of the United States under that agreement.

(h) Renegotiation of sales price and maximum liability

If the Secretary concerned determines, in the discretion of the Secretary, that—

(1) a biomass energy project would not otherwise be satisfactorily completed or continued, and

(2) completion or continuation of such project would be necessary to achieve the purposes of this chapter,

the sales price set forth in the purchase agreement, and maximum liability under such agreement, may be renegotiated.

(Pub. L. 96–294, title II, §216, June 30, 1980, 94 Stat. 692.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (h)(2), was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

§8817. General requirements regarding financial assistance

(a) Priorities, terms, availability, etc.

(1) Priority for financial assistance under this subchapter, and the most favorable financial terms available, shall be provided to a person for any biomass energy project that—

(A) uses a primary fuel other than petroleum or natural gas in the production of biomass fuel, such as geothermal energy resources, solar energy resources, or waste heat; or

(B) applies new technologies which expand the possible feedstocks, produces new forms of biomass energy, or produces biomass fuel using improved or new technologies.

Nothing in this paragraph shall be construed to exclude financial assistance for any project which does not use such a fuel or apply such a technology.

(2)(A) Financial assistance under this subchapter shall be available for a biomass energy project only if the Secretary concerned finds that the Btu content of the motor fuels to be used in the facility

involved to produce the biomass fuel will not exceed the Btu content of the biomass fuel produced in the facility.

(B) In making the determination under subparagraph (A), the Secretary concerned shall take into account any displacement of motor fuel or other petroleum products which the applicant has demonstrated to the satisfaction of the Secretary would result from the use of the biomass fuel produced in the facility involved.

(3) No financial assistance may be provided under this subchapter to any person for any biomass energy project if the Secretary concerned finds that the process to be used by the project will not extract the protein content of the feedstock for utilization as food or feed for readily available markets in any case in which to do so would be technically and economically practicable.

(4) Financial assistance may not be provided under this subchapter to any person unless the Secretary concerned—

(A) finds that necessary feedstocks are available and it is reasonable to expect they will continue to be available in the future, and, for biomass energy projects using wood or wood wastes or residues from the National Forest System, there shall be taken into account current levels of use by then existing facilities;

(B) has obtained assurance that the person receiving such financial assistance will bear a reasonable degree of risk in the construction and operation of the project; and

(C) has determined that the amount of financial assistance provided for the project is not greater than is necessary to achieve the purposes of this chapter.

(5) In providing financial assistance under this subchapter, the Secretary concerned shall give due consideration to promoting competition.

(6) In determining the amount of financial assistance for any biomass energy project which will yield byproducts in addition to biomass energy, the Secretary shall consider the potential value of such byproducts and the costs attributable to their production.

(b) Terms, conditions, maturity, etc., for insured loans, and loan guarantees

An insured loan may not be made, and a loan guarantee may not be issued, under this subchapter unless the Secretary concerned determines that the terms, conditions, maturity, security, and schedule and amounts of repayments with respect to such loan are reasonable and meet such standards as the Secretary determines are sufficient to protect the financial interests of the United States.

(c) Application requirements

(1) No financial assistance may be provided to any person under this subchapter unless an application therefor—

(A) has been submitted to the Secretary concerned by that person in such form and under such procedures as the Secretary shall prescribe, consistent with the requirements of this subchapter, and

(B) has been approved by the Secretary in accordance with such procedures.

(2) Each such application shall include information regarding the construction costs of the biomass energy project involved, and estimates of operating costs and income relating to that project (including the sale of any byproducts from that project). In addition, each applicant shall provide—

(A) access at reasonable times to such other information, and

(B) such assurances,

as the Secretary concerned may require.

(d) Reports and recordkeeping

(1) Every recipient of financial assistance under this subchapter shall, as a condition precedent thereto, consent to such examinations and reports regarding the biomass energy project involved as the Secretary concerned may require.

(2) With respect to each biomass energy project for which financial assistance is provided under this subchapter, the Secretary shall—

(A) require from the recipient of financial assistance such reports and records relating to that project as the Secretary deems necessary;

(B) prescribe the manner in which such recipient shall keep such records; and

(C) have access to such records at reasonable times for the purpose of ensuring compliance with the terms and conditions upon which financial assistance is provided.

(e) Contracts and instruments of Secretary concerned backed by full faith and credit of United States

All contracts and instruments of the Secretary concerned to provide, or providing, for financial assistance shall be general obligations of the United States backed by its full faith and credit.

(f) Contestability of contracts

Subject to the conditions of any contract for financial assistance, such contract shall be incontestable in the hands of the holder, except as to fraud or material misrepresentation on the part of the holder.

(g) Fees for loan guarantees, etc.

(1) A fee or fees may be charged and collected by the Secretary concerned for any loan guarantee, price guarantee, or purchase agreement provided under this subchapter.

(2) The amount of such fee shall be based on the estimated administrative costs and risk of loss, except that such fee may not exceed 1 per centum of the amount of the financial assistance provided.

(h) Deposit of amounts received by Secretary concerned

All amounts received by the Secretary of Agriculture or the Secretary of Energy as fees, interest, repayment of principal, and any other moneys received by either Secretary from activities under this subchapter shall be deposited in the Treasury of the United States as miscellaneous receipts. The preceding sentence shall not apply to insured loans made under section 8813 of this title.

(Pub. L. 96–294, title II, §217, June 30, 1980, 94 Stat. 693.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4)(C), was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

§8818. Reports

(a) Repealed. Pub. L. 99–386, title I, §101(a), Aug. 22, 1986, 100 Stat. 821

(b) Comprehensive list of loans, grants, etc.

Within 120 days after June 30, 1980, the Secretary of Energy and the Secretary of Agriculture shall submit to the Congress a comprehensive list of all the types of loans, grants, incentives, rebates, or any other such private, State, or Federal economic or financial benefits now in effect or proposed which can be or have been used for production of alcohol to be used as a motor fuel or petroleum substitute.

(c) Annual reports; report evaluating overall impact and plan for termination of Office of Alcohol Fuels

(1)(A) The Office of Alcohol Fuels shall submit to the Congress and the President annual reports containing a general description of the Office's operations during the year and a description and evaluation of each biomass energy project for which financial assistance by the Office is then in

effect.

(B) Each annual report shall describe progress made toward meeting the goals of this subchapter and contain specific recommendations on what actions the Congress could take in order to facilitate the work of the Office in achieving such goals.

(C) Each annual report under this subsection shall contain financial statements prepared by the Office.

(2) On or before September 30, 1990, the Office shall submit to the Congress and the President a report evaluating the overall impact made by the Office and describing the status of each biomass energy project which has received financial assistance under this subchapter from the Office. Such report shall contain a plan for the termination of the work of the Office.

(Pub. L. 96–294, title II, §218, June 30, 1980, 94 Stat. 695; Pub. L. 99–386, title I, §101(a), Aug. 22, 1986, 100 Stat. 821.)

EDITORIAL NOTES

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–386 struck out subsec. (a) which related to submission of quarterly reports to the President and Congress by Secretary of Agriculture and Secretary of Energy.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(1) of this section relating to the requirement that the Office of Alcohol Fuels submit annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 91 of House Document No. 103–7.

§8819. Review; reorganization

(a) The President shall review periodically the progress of the Secretary of Agriculture and the Secretary of Energy in carrying out the purposes of this subchapter.

(b) If the President determines it necessary in order to achieve such purposes the President may, in accordance with the provisions of chapter 9 of title 5, provide for a reorganization, including any required realignment of the respective programs of the Secretaries under this subchapter.

(Pub. L. 96–294, title II, §219, June 30, 1980, 94 Stat. 695.)

§8820. Office of Alcohol Fuels

(a) Establishment in Department of Energy; appointment and compensation of Director

There is hereby established within the Department of Energy an Office of Alcohol Fuels (hereinafter in this section referred to as the "Office") to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) Responsibilities of Director

(1) The Director shall be responsible for carrying out the functions of the Secretary of Energy under this subchapter which relate to alcohol, including the terms and conditions of financial assistance and the selection of recipients for that assistance, subject to the general supervision of the Secretary of Energy.

(2) The Director shall be responsible directly to the Secretary of Energy.

(c) Annual authorization and appropriation requests for support of Office

In each annual authorization and appropriation request, the Secretary shall identify the portion thereof intended for the support of the Office and include a statement by the Office (1) showing the amount requested by the Office in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Office. Whenever the Office submits to the Secretary, the President, or the Office of Management and Budget, any formal legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Office shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(d) Consultations respecting coordination of programs

The Secretary of Energy, after consultation with the Director, shall consult with the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of Commerce, the Administrator of the Community Services Administration, the Administrator of the Environmental Protection Agency, or their appointed representatives, in order to coordinate the programs under the Director's responsibility with other programs within the Department of Energy and in such Federal agencies, which are related to the production of alcohol.

(Pub. L. 96–294, title II, §220, June 30, 1980, 94 Stat. 696.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, which was established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97–35, which is classified to 42 U.S.C. 9905.

§8821. Termination of authorities; modification of terms and conditions of conditional commitments for loan guarantees

No insured loan, loan guarantee, price guarantee, or purchase agreement may be committed to or made under this subchapter after September 30, 1984, except that all conditional commitments for loan guarantees under this subchapter which were in existence on September 30, 1984, are hereby extended through June 30, 1987. This section shall not be construed to affect the authority of the Secretary concerned to spend funds after such date pursuant to any contract for financial assistance made on or before that date under this subchapter. Notwithstanding any other provision of this subchapter, the Secretary of Energy may modify the terms and conditions of any conditional commitment for a loan guarantee under this subchapter made before October 1, 1984, including the amount of the loan guarantee. Nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments under this Act.

(Pub. L. 96–294, title II, §221, June 30, 1980, 94 Stat. 696; Pub. L. 99–24, §1(a), Apr. 16, 1985, 99 Stat. 50; Pub. L. 99–190, §101(a), Dec. 19, 1985, 99 Stat. 1185; Pub. L. 99–272, title VII, §7301, Apr. 7, 1986, 100 Stat. 143; Pub. L. 99–500, §101(h) [title III, §318], Oct. 18, 1986, 100 Stat. 1783–242, 1783–286, and Pub. L. 99–591, §101(h) [title III, §318], Oct. 30, 1986, 100 Stat. 3341–242, 3341–287; Pub. L. 100–202, §106, Dec. 22, 1987, 101 Stat. 1329–433.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96–294, June 30, 1980, 94 Stat. 611, known as the Energy Security Act. For complete classification of this Act to the Code, see Short Title note set out under section 8801 of this

title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of section by Pub. L. 99–190 is based on section 630 of title VI of H.R. 3037 [Agriculture, Rural Development, and Related Agencies Appropriations Act, 1986], as incorporated by reference by section 101(a) of Pub. L. 99–190, and enacted into law by section 106 of Pub. L. 100–202.

AMENDMENTS

1987—For amendment by Pub. L. 100–202, see 1985 Amendment note below.

1986—Pub. L. 99–500 and Pub. L. 99–591 substituted "through June 30, 1987" for "through June 30, 1986".

Pub. L. 99–272 made amendment substantially identical to that by Pub. L. 99–190, substituting "through June 30, 1986" for "through September 30, 1985" and inserting provisions authorizing the Secretary of Energy to modify the terms and conditions of any conditional commitment for a loan guarantee under this subchapter made before Oct. 1, 1984, including the amount of the guarantee, and further providing that nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments.

1985—Pub. L. 99–190, §101(a), as enacted by Pub. L. 100–202, substituted "through June 30, 1986" for "through September 30, 1985" and inserted provisions authorizing the Secretary of Energy to modify the terms and conditions of any conditional commitment for a loan guarantee under this subchapter made before Oct. 1, 1984, including the amount of the guarantee, and further providing that nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments. See Codification note above.

Pub. L. 99–24 inserted ", except that all conditional commitments for loan guarantees under this subchapter which were in existence on September 30, 1984, are hereby extended through September 30, 1985".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 100–202, §106, Dec. 22, 1987, 101 Stat. 1329–434, provided that the amendment made by that section is effective on date of enactment [Dec. 19, 1985] of the "pertinent joint resolution" making continuing appropriations for fiscal year 1986 [Pub. L. 99–190].

PENDING CONDITIONAL COMMITMENTS

Pub. L. 99–24, §1(b), Apr. 16, 1985, 99 Stat. 50, provided that: "Enactment of this Act [amending this section] shall not be interpreted as indicating congressional approval with respect to any pending conditional commitments under this Act."

SUBCHAPTER II—MUNICIPAL WASTE BIOMASS ENERGY

§8831. Municipal waste energy development plan

(a) Preparation by Secretary of Energy; consultative requirements

The Secretary of Energy shall prepare a comprehensive plan for carrying out this subchapter. In the preparation of such plan, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the head of such other Federal agencies as the Secretary deems appropriate.

(b) Transmittal to President and Congress

Not later than 90 days after June 30, 1980, the Secretary shall transmit the comprehensive plan to the President and the Congress.

(c) Required statements

The comprehensive plan under this section shall include a statement setting forth—

(1) the anticipated research, development, demonstration, and commercialization objectives to be achieved;

(2) the management structure and approach to be adopted to carry out such plan;

(3) the program strategies, including detailed milestone goals to be achieved;

(4) the specific funding requirements for individual program elements and activities, including the total estimated construction costs of proposed projects; and

(5) the estimated relative financial contributions of the Federal Government and non-Federal participants in the program.

(d) Report to President and Congress; contents

Not later than January 1, 1982, the Secretary shall prepare and submit to the President and the Congress a report containing a complete description of any financial, institutional, environmental, and social barriers to the development and application of technologies for the recovery of energy from municipal wastes.

(Pub. L. 96–294, title II, §231, June 30, 1980, 94 Stat. 696.)

§8832. Construction loans

(a) Authority of Secretary of Energy

Subject to sections 8835 and 8836 of this title, the Secretary of Energy may commit to make, and make, loans for the construction of municipal waste energy projects.

(b) Estimated project construction costs as determinative of initial and revised amount of loan; interest rate

(1) Any loan under this section—

(A) may not exceed 80 per centum of the total estimated cost of the construction of the municipal waste energy project involved, and

(B) shall bear interest at a rate determined by the Secretary of Energy (taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans) plus not to exceed one per centum, as determined by the Secretary of Energy, and adjusted to the nearest one-eighth of one per centum.

(2) In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Energy, the Secretary may in addition, upon application therefor, make a loan for so much of the additional estimated costs as does not exceed 10 per centum of the initial total estimated costs of construction.

(c) Preconditions

A loan may not be made under this section unless the person applying for such loan has established to the satisfaction of the Secretary of Energy that the applicant is unable without such a loan to obtain sufficient credit elsewhere at reasonable rates and terms, taking into consideration prevailing market rates and terms for loans for similar periods of time, to finance the construction of the project for which such loan is sought.

(Pub. L. 96–294, title II, §232, June 30, 1980, 94 Stat. 697.)

§8833. Guaranteed construction loans

(a) Authority of Secretary of Energy

Subject to sections 8835 and 8836 of this title, the Secretary of Energy may commit to guarantee, and guarantee, against loss on up to 90 per centum of the principal and interest, any loan which is

made solely to provide funds for the construction of a municipal waste energy project and which does not exceed 90 per centum of the cost of the construction of the project involved, as estimated by the Secretary on the date of the guarantee or commitment to guarantee.

(b) Estimated project construction costs as determinative of revised amount of guarantee

In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Energy, the Secretary may in addition, upon application therefor, guarantee, against loss on up to 90 per centum of the principal and interest, a loan for so much of the additional estimated total costs as does not exceed 10 per centum of the total estimated costs.

(c) Terms and conditions

The terms and conditions of loan guarantees under this section shall provide that, if the Secretary of Energy makes a payment of principal or interest upon the default by a borrower, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the loan guarantee or related agreements).

(d) Termination, cancellation, or revocation, and conclusive nature of guarantee

Any loan guarantee under this section shall not be terminated, canceled, or otherwise revoked, except in accordance with the terms thereof and shall be conclusive evidence that such guarantee complies fully with the provisions of this chapter and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee.

(e) Payment to lender

If the Secretary of Energy determines that—

(1) the borrower is unable to meet payments and is not in default,

(2) it is in the public interest to permit the borrower to continue to pursue the purposes of such project, and

(3) the probable net benefit to the United States in paying the principal and interest due under a loan guarantee agreement will be greater than that which would result in the event of a default,

then the Secretary may pay to the lender under a loan guarantee agreement an amount not greater than the principal and interest which the borrower is obligated to pay to such lender, if the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which the Secretary determines are sufficient to protect the financial interests of the United States.

(f) Preconditions

A loan may not be guaranteed under this section unless the applicant for such loan has established to the satisfaction of the Secretary of Energy that the lender is not willing without such a guarantee to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing market rates and terms for loans for similar periods of time, to finance the construction of the project for which such loan is sought.

(g) Payment of interest; tax consequences

(1) With respect to any loan or debt obligation which is—

(A) issued after June 30, 1980, by, or on behalf of, any State or any political subdivision or governmental entity thereof,

(B) guaranteed by the Secretary of Energy under this section, and

(C) not supported by the full faith and credit of the issuer as a general obligation of the issuer,

the interest paid on such obligation and received by the purchaser thereof (or the purchaser's successors in interest) shall be included in gross income for the purposes of chapter 1 of title 26.

(2) With respect to the amount of obligations described in paragraph (1) that the issuer would have been able to issue as tax exempt obligations (other than obligations secured by the full faith and credit of the issuer as a general obligation of the issuer), the Secretary of Energy is authorized to pay only to the issuer any portion of the interest on such obligations, as determined by the Secretary of

the Treasury after taking into account the interest rate which would have been paid on the obligations had they been issued as tax exempt obligations without being so guaranteed by the Secretary of Energy and the interest rate actually paid on the obligations when issued as taxable obligations. Such payments shall be made in amounts determined by the Secretary of Energy, and in accordance with such terms and conditions as the Secretary of the Treasury shall require.

(h) Fees

(1) A fee or fees may be charged and collected by the Secretary of Energy for any loan guarantee under this section.

(2) The amount of such fee shall be based on the estimated administrative costs and risk of loss, except that such fee may not exceed 1 per centum of the maximum of the guarantee.

(Pub. L. 96–294, title II, §233, June 30, 1980, 94 Stat. 698; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which enacted this chapter, sections 1435 and 3129 of Title 7, Agriculture, and section 3391a of Title 15, Commerce and Trade, and amended sections 341, 342, 3104, and 3154 of Title 7, section 753 of Title 15, and sections 590h and 1642 of Title 16, Conservation. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

AMENDMENTS

1986—Subsec. (g)(1). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

§8834. Price support loans and price guarantees

(a) Authority of Secretary of Energy with respect to loans for existing projects; disbursements, etc.

(1) In the case of any existing municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price support loan in amounts determined under paragraph (3) for the operation of such project. Payments under any such loan shall be disbursed on an annual basis, as determined (in accordance with paragraph (3)) on the basis of the amount of biomass energy produced and sold by that project during the 12-month period involved and the type and cost of fuel displaced by the biomass energy sold.

(2)(A) [1] In the case of any support loan under this section for an existing municipal waste energy project—

(i) disbursements under such loan may not be made for more than 5 consecutive 12-month periods;

(ii) the amount of the disbursement for the second and any subsequent 12-month period for which disbursements are to be made under the support loan shall be reduced by an amount determined by multiplying the amount calculated under paragraph (3) by a factor determined by dividing the number of 12-month periods for which disbursements are made under the support loan into the number of such periods which have elapsed;

(iii) commencing at the end of the last of such 12-month periods, the support loan shall be repayable over a period equal to the then remaining useful life of the project (as determined by the Secretary) or 10 years, whichever is shorter; and

(iv) commencing at the end of such last 12-month period, such loan shall bear interest at a rate determined by the Secretary of Energy (taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity

comparable to the average maturities of such loans) plus not to exceed one per centum, as determined by the Secretary of Energy, and adjusted to the nearest one-eighth of one per centum.

(3) The amount of the loan payment to be disbursed under this subsection for any year with respect to each type of biomass energy produced and sold by an existing municipal waste energy project shall be equal to—

(A)(i) the standard support price reduced by the cost of the fuel displaced by the biomass energy sold, or (ii) $2.00, whichever is lower, multiplied by

(B) the amount of such biomass energy sold (in millions of Btu's).

(b) Authority of Secretary of Energy with respect to loans for new projects; disbursements, etc.

(1) In the case of any new municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price support loan in amounts determined in accordance with the provisions of subsection (a), except as provided in paragraph (2).

(2) In the case of any loan under this subsection for a new municipal waste energy project—

(A) disbursements under such loan may not be made for more than 7 consecutive 12-month periods (with reductions as provided in subsection (a)(2)(A)(ii));

(B) such loan shall bear interest at a rate not in excess of the rate prescribed under subsection (a); and

(C) the principal of or interest on such loan shall, in accordance with the support loan agreement, be repayable, commencing at the end of the last 12-month period covered by the support loan, over a period not in excess of the period equal to the then remaining useful life of the project (as determined by the Secretary) or 15 years, whichever is shorter.

(c) Authority of Secretary of Energy with respect to guarantees for new projects; pricing determinations, etc.

(1) In the case of any new municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price guarantee for the operation of such project which guarantees that the price the owner or operator will receive for all or part of the production from that project shall not be less than a specified sales price determined as of the date of execution of the guarantee agreement.

(2)(A) No price guarantee under this section may be based upon a cost-plus arrangement, or variant thereof, which guarantees a profit to the owner or operator involved.

(B) The use of a cost-of-service pricing mechanism by a person pursuant to law, or by a regulatory body establishing rates for a regulated person, shall not be deemed to be a cost-plus arrangement, or variant thereof, for purposes of subparagraph (A).

(3) In the case of any price guarantee under this subsection for a new municipal waste energy project—

(A) disbursements under such guarantee may not be made for more than 7 consecutive 12-month periods; and

(B) amounts paid under this subsection may be required to be repaid to the Secretary of Energy under such terms and conditions as the Secretary may prescribe, including interest at a rate not in excess of the rate prescribed under subsection (a).

(d) Definitions; sale price of retained fuel; rules relating to fuel displacement

For purposes of this section—

(1) The term "new municipal waste energy project" means any municipal waste energy project which—

(A) is initially placed in service after June 30, 1980; or

(B) if initially placed in service before June 30, 1980, has an increased capacity by reason of additional construction, and as such is placed in service after such date.

(2) The term "existing municipal waste energy project" means any municipal waste energy project which is not a new municipal waste project.

(3) The term "placed in service" means operated at more than 50 percent of the estimated operational capacity.

(4)(A) Except as provided in subparagraphs (B) and (C), the term "standard support price" means the average price (per million Btu's) for No. 6 fuel oil imported into the United States on June 30, 1980, as determined, by rule, by the Secretary of Energy not later than 90 days after June 30, 1980.

(B) In any case in which the fuel displaced is No. 6 fuel oil or any higher grade of petroleum (as determined by the Secretary of Energy), the term "standard support price" means 125 per centum of the price determined by rule under subparagraph (A).

(C) In any case in which biomass energy produced and sold by a project is steam or electricity, the term "standard support price" means the price determined by rule under subparagraph (A), subject to such adjustments as the Secretary of Energy may authorize by rule.

(5) The term "cost of the fuel displaced" means the cost of the fuel (per million Btu's) which the purchaser of biomass energy would have purchased if the biomass energy had not been available for sale to that purchaser.

(6) Any biomass energy produced by a municipal waste energy project which may be retained for use by the owner or operator of such project shall be considered to be sold at such price as the Secretary of Energy determines.

(7) Not later than 90 days after June 30, 1980, the Secretary of Energy shall prescribe, by rule, the manner of determining the fuel displaced by the sale of any biomass energy, and the price of the fuel displaced.

(Pub. L. 96–294, title II, §234, June 30, 1980, 94 Stat. 699.)

[1] *So in original. No subpar. (B) has been enacted.*

§8835. General requirements regarding financial assistance

(a) Priorities, terms, availability, etc.

(1) Priority for financial assistance under the provisions of sections 8832, 8833, and 8834 of this title and the most favorable financial terms available, shall be provided for any municipal waste energy project that will—

(A) produce a liquid fuel from municipal waste; or

(B) will displace petroleum or natural gas as a fuel.

(2)(A) With respect to projects producing biomass energy other than biomass fuel, financial assistance under the provisions of sections 8832, 8833, and 8834 of this title shall be available only if the Secretary of Energy finds that the project does not use petroleum or natural gas except for flame stabilization or start-up.

(B) With respect to projects producing biomass fuel, financial assistance under such provisions shall be available to such project only if the Secretary of Energy finds that the Btu content of the biomass fuel produced substantially exceeds the Btu content of any petroleum or natural gas used in the project to produce the biomass fuel.

(3) Financial assistance may not be provided under section 8832, 8833, or 8834 of this title unless the Secretary of Energy finds that necessary municipal waste feedstocks are available and it is reasonable to expect they will continue to be available for the expected economic life of the project.

(4) In providing financial assistance under section 8832, 8833, or 8834 of this title, the Secretary of Energy shall give due consideration to promoting competition.

(5) In determining the amount of financial assistance for any municipal waste energy project which will yield byproducts in addition to biomass energy, the Secretary shall consider the value of such byproducts and the costs attributable to their production.

(6) The Secretary of Energy shall not provide financial assistance under section 8832, 8833, or 8834 of this title for any municipal waste energy unless the Secretary determines—

(A) the project will be technically and economically viable;

(B) the financial assistance provided encourages and supplements, but does not compete with nor supplant, any private capital investment which otherwise would be available to the proposed municipal waste energy project on reasonable terms and conditions which would permit such project to be undertaken;

(C) assurances are provided that the project will not use, in any substantial quantities, waste paper which would otherwise be recycled for a use other than as a fuel and will not substantially compete with facilities in existence on the date of the financial assistance which are engaged in the separation or recovery of reuseable materials from municipal waste; and

(D) that the amount of financial assistance provided for the project is not greater than is necessary to achieve the purposes of this chapter.

(b) Terms, conditions, maturity, etc.

Financial assistance may not be provided under section 8832, 8833, or 8834 of this title unless the Secretary of Energy determines that—

(1) the terms, conditions, maturity, security and schedule and amounts of repayments with respect to such assistance are reasonable and meet such standards as the Secretary determines are sufficient to protect the financial interests of the United States; and

(2) the person receiving such financial assistance will bear a reasonable degree of risk with respect to the project.

(c) Application requirements

(1) No financial assistance may be provided to any person under section 8832, 8833, or 8834 of this title unless an application therefor—

(A) has been submitted to the Secretary of Energy by such person in such form and under such procedures as the Secretary shall prescribe, consistent with the requirements of this subchapter, and

(B) has been approved by the Secretary in accordance with such procedures.

(2) Each such application shall include information regarding the construction costs of the municipal waste energy project involved (if appropriate), and estimates of operating costs and income relating to that project (including the sale of any byproducts from that project). In addition, each applicant shall provide—

(A) access at reasonable times to such other information, and

(B) such assurances,

as the Secretary of Energy may require.

(d) Reports and recordkeeping

(1) Every person receiving financial assistance under section 8832, 8833, or 8834 of this title shall, as a condition precedent thereto, consent to such examinations and reports thereon regarding the municipal waste energy project involved as the Secretary of Energy may require.

(2) With respect to each municipal waste energy project for which financial assistance is provided under section 8832, 8833, or 8834 of this title, the Secretary shall—

(A) require from the recipient of financial assistance such reports and records relating to that project as the Secretary deems necessary;

(B) prescribe the manner in which such recipient shall keep such records; and

(C) have access to such records at reasonable times for the purpose of ensuring compliance with the terms and conditions upon which financial assistance is provided.

(e) Deposit of amounts received

All amounts received by the Secretary of Energy as fees, interest, repayment of principal, and any other moneys received by the Secretary from operations under section 8832, 8833, or 8834 of this title shall be deposited in the general fund of [1] Treasury of the United States as miscellaneous receipts.

(f) Contracts and instruments backed by full faith and credit of United States

All contracts and instruments of the Secretary of Energy to provide, or providing, for financial assistance shall be general obligations of the United States backed by its full faith and credit.

(g) Contestability of contracts

Subject to the conditions of any contract for financial assistance, such contract shall be incontestable in the hands of the holder, except as to fraud or material misrepresentation on the part of the holder.

(h) Eligibility of debt obligations for purchase, sale, or issuance to Federal Financing Bank or any Federal agency

Notwithstanding the provisions of the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq.) or any other provision of law (except as may be specifically provided by reference to this subsection in any Act enacted after June 30, 1980), no debt obligation which is made or committed to be made, or which is guaranteed or committed to be guaranteed by the Secretary of Energy under section 8832, 8833, or 8834 of this title shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank or any Federal agency.

(Pub. L. 96–294, title II, §235, June 30, 1980, 94 Stat. 701.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(6)(D), was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

The Federal Financing Bank Act of 1973, referred to in subsec. (h), is Pub. L. 93–224, Dec. 29, 1973, 87 Stat. 937, which is classified generally to chapter 24 (§2281 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of Title 12 and Tables.

[1] So in original. Probably should be "of the".

§8836. Financial assistance program administration

The Secretary of Energy shall establish procedures and take such other actions as may be necessary regarding the solicitation, review, and evaluation of applications, and awarding of financial assistance under section 8832, 8833, or 8834 of this title as may be necessary to carry out the plan established under section 8831 of this title.

(Pub. L. 96–294, title II, §236, June 30, 1980, 94 Stat. 703.)

§8837. Commercialization demonstration program pursuant to Federal nonnuclear energy research and development

(a) Establishment and conduct pursuant to other Federal statutory authorities; required undertakings subsequent to consultations

(1) The Secretary of Energy shall establish and conduct, pursuant to the authorities contained in the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5901 et seq.], an accelerated research, development, and demonstration program for promoting the commercial viability of processes for the recovery of energy from municipal wastes.

(2) The provisions of subsections (d), (m), and (x)(2) of section 19 of such Act [1] shall not apply

with respect to the program established under this section.

(3) As part of the program established under this section, the Secretary, after consulting with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, shall undertake—

(A) the research, development, and demonstration of technologies to recover energy from municipal wastes;

(B) the development and application of new municipal waste-to-energy recovery technologies;

(C) the assessment, evaluation, demonstration, and improvement of the performance of existing municipal waste-to-energy recovery technologies with respect to capital costs, operating and maintenance costs, total project financing, recovery efficiency, and the quality of recovered energy and energy intensive materials;

(D) the evaluation of municipal waste energy projects for the purpose of developing a base of engineering data that can be used in the design of future municipal waste energy projects to recover energy from municipal wastes; and

(E) research studies on the size and other significant characteristics of potential markets for municipal waste-to-energy recovery technologies, and recovered energy, and energy intensive materials.

(b) Financial assistance

Under such program, the Secretary of Energy may provide financial assistance consisting of price supports, loans, and loan guarantees, for the cost of planning, designing, constructing, operating, and maintaining demonstration facilities, and, in the case of existing facilities, modifications of such facilities solely for demonstration purposes, for the conversion of municipal wastes into energy or the recovery of materials.

(c) Priority for funding

Priority for funding of activities under subsection (a) and financial assistance under subsection (b) shall be provided for any activity or project for the demonstration of technologies for the production of liquid fuels or biomass energy which substitute for petroleum or natural gas.

(d) Obligation and expenditure of funds

The Secretary of Energy may not obligate or expend any funds authorized under this chapter in carrying out subsection (b) of this section until the plan required under section 8831(a) of this title has been prepared and submitted to the Congress.

(e) Deposit of moneys received

All amounts received by the Secretary of Energy as fees, interest, repayment of principal, and any other moneys received by the Secretary from operations under this section shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(Pub. L. 96–294, title II, §237, June 30, 1980, 94 Stat. 703.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (a)(1), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, which is classified generally to chapter 74 (§5901 et seq.) of this title. Section 19 of the Act was classified to section 5919 of this title prior to repeal by Pub. L. 109–58, title X, §1009(b)(12), Aug. 8, 2005, 119 Stat. 936. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

This chapter, referred to in subsec. (d), was in the original "this title", meaning title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 683, known as the Biomass Energy and Alcohol Fuels Act of 1980, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

[1] *See References in Text note below.*

§8838. Jurisdiction of Department of Energy and Environmental Protection Agency

The provisions of section 5920(c) [1] of this title, relating to the responsibilities of the Environmental Protection Agency and the Department of Energy, shall apply with respect to actions under this subchapter to the same extent and in the same manner as such provisions apply to actions under section 5920 [1] of this title.

(Pub. L. 96–294, title II, §238, June 30, 1980, 94 Stat. 704.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 5920 of this title, referred to in text, was repealed by Pub. L. 109–58, title X, §1009(b)(12), Aug. 8, 2005, 119 Stat. 936.

[1] See References in Text note below.

§8839. Office of Energy from Municipal Waste

(a) Establishment in Department of Energy; appointment of Director

There is hereby established within the Department of Energy an Office of Energy from Municipal Waste (hereinafter in this section referred to as the "Office") to be headed by a Director, who shall be appointed by the Secretary of Energy.

(b) Functions

It shall be the function of the Office to perform—

(1) the research, development, demonstration, and commercialization activities authorized under this subchapter (including those authorized under section 8837 of this title), and

(2) such other duties relating to the production of energy from municipal waste as the Secretary of Energy may assign to the Office.

(c) Consultations respecting implementation of functions

In carrying out functions tranferred [1] or assigned to the Office, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the heads of such other Federal agencies, as appropriate.

(d) Transfer of related functions and personnel from Department of Energy

The Secretary shall provide for the transfer to the Office of the functions relating to, and personnel of the Department who are responsible for the administration of, programs in existence on June 30, 1980, which relate to the research, development, demonstration, and commercialization of technologies for the recovery of energy from municipal waste.

(Pub. L. 96–294, title II, §239, June 30, 1980, 94 Stat. 704.)

[1] So in original. Probably should be "transferred".

§8840. Termination of authorities

No financial assistance may be committed to or made under this subchapter after September 30, 1984. This section shall not be construed to affect the authority of the Secretary of Energy to spend funds after such date pursuant to any award of financial assistance made on or before that date.

(Pub. L. 96–294, title II, §240, June 30, 1980, 94 Stat. 705.)

SUBCHAPTER III—RURAL, AGRICULTURAL, AND FORESTRY BIOMASS ENERGY

§8851. Model demonstration biomass energy facilities; establishment, public inspection, etc.; authorization of appropriations

(a) The Secretary of Agriculture shall establish not more than ten model demonstration biomass energy facilities for purposes of exhibiting the most advanced technology available for producing biomass energy. Such facilities and information regarding the operation of such facilities shall be available for public inspection, and, to the extent practicable, such facilities shall be established in various regions in the United States. Such facilities may be established in cooperation with appropriate departments or agencies of the States, or appropriate in various regions in the United States. Such facilities may be established in cooperation with appropriate departments or agencies of the States, or appropriate departments, agencies, or other instrumentalities of the United States.

(b) For purposes of carrying out subsection (a), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1981, 1982, 1983, and 1984.

(Pub. L. 96–294, title II, §251, June 30, 1980, 94 Stat. 705.)

§8852. Coordination of research and extension activities; consultative requirements

(a) The Secretary of Agriculture shall coordinate the applied research and extension programs conducted under this subchapter [1] and under the amendments made by this subchapter to section 1419 [7 U.S.C. 3154][1] and subtitle B of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 [7 U.S.C. 3129],[1] section 1 of the Bankhead-Jones Act [7 U.S.C. 3104], section 3 of the Forest and Rangeland Renewable Resources Research Act of 1978 [16 U.S.C. 1642], and sections 1 and 2 of the Smith-Lever Act [7 U.S.C. 341, 342] with the programs of the Department of Energy.

(b) In carrying out this subchapter and the amendments made by this subchapter, the Secretary of Agriculture shall consult on a continuing basis with—

(1) the Subcommittee on Food, Agricultural, and Forestry Research of the Federal Coordinating Council for Science, Engineering, and Technology;

(2) the Joint Council on Food and Agricultural Sciences; and

(3) the National Agricultural Research and Extension Users Advisory Board;

for the purpose of coordinating research and extension activities.

(Pub. L. 96–294, title II, §257, June 30, 1980, 94 Stat. 708; Pub. L. 97–98, title XIV, §1406(c), Dec. 22, 1981, 95 Stat. 1299.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle C (§§251–262) of title II of Pub. L. 96–294, June 30, 1980, 94 Stat. 705, which enacted this subchapter and sections 1435 and 3129 of Title 7, Agriculture, and amended sections 341, 342, 3104, and 3154 of Title 7 and sections 590h and 1642 of Title 16, Conservation. For complete classification of subtitle C to the Code, see Tables.

7 U.S.C. 3154, referred to in subsec. (a), was repealed by Pub. L. 110–246, title VII, §7110(a), June 18,

2008, 122 Stat. 1980.

7 U.S.C. 3129, referred to in subsec. (a), was repealed by Pub. L. 101–624, title XVI, §1601(f)(1)(C), Nov. 28, 1990, 104 Stat. 3704.

AMENDMENTS

1981—Subsec. (b)(1). Pub. L. 97–98 substituted "Subcommittee on Food, Agricultural, and Forestry Research" for "Subcommittee on Food and Renewable Resources".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97–98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

[1] *See References in Text note below.*

§8853. Lending for energy production and conservation projects by production credit associations, Federal land banks, and banks for cooperatives

The Farm Credit Administration shall encourage production credit associations, Federal land banks, and banks for cooperatives to use existing authorities to make loans to eligible persons for commercially feasible biomass energy projects.

(Pub. L. 96–294, title II, §258, June 30, 1980, 94 Stat. 709.)

§8854. Utilization of National Forest System in wood energy development projects

The Secretary of Agriculture may make available the timber resources of the National Forest System, in accordance with appropriate timber appraisal and sale procedures, for use by biomass energy projects.

(Pub. L. 96–294, title II, §261, June 30, 1980, 94 Stat. 710.)

§8855. Forest Service leases and permits

It is the intent of the Congress that the Secretary of Agriculture shall process applications for leases of National Forest System lands and for permits to explore, drill, and develop resources on land leased from the Forest Service, notwithstanding the current status of any plan being prepared under section 1604 of title 16.

(Pub. L. 96–294, title II, §262, June 30, 1980, 94 Stat. 710.)

SUBCHAPTER IV—MISCELLANEOUS BIOMASS PROVISIONS

§8871. Use of gasohol in Federal motor vehicles

(a) Exercise of President's authority pursuant to executive order respecting use

The President shall, by executive order, require that motor vehicles which are owned or leased by Federal agencies and are capable of operating on gasohol shall use gasohol where available at reasonable prices and in reasonable quantities.

(b) Exceptions

The President may provide for exceptions to the requirement of subsection (a) where necessary, including to protect the national security.

(c) Gasohol requirements

Such executive order shall specify the alcohol-gasoline mixture or mixtures which shall constitute "gasohol" for purposes of such order, as well as specifications for its use.

(Pub. L. 96–294, title II, §271, June 30, 1980, 94 Stat. 710.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPORT ON EXEMPTIONS AND SENSE OF CONGRESS REGARDING PURCHASE OF DOMESTIC GASOHOL

Pub. L. 102–190, div. A, title VIII, §841(c), (d), Dec. 5, 1991, 105 Stat. 1449, provided that:

"(c) REPORT ON EXEMPTIONS.—The Secretary of Defense shall review all exemptions granted for the Department of Defense, and the Administrator of the General Services Administration shall review all exemptions granted for Federal agencies and departments, to the requirements of section 2398 of title 10, United States Code, and section 271 of the Energy Security Act (Public Law 96–294; 42 U.S.C. 8871) and shall terminate any exemption that the Secretary or the Administrator determines is no longer appropriate. Not later than 90 days after the date of the enactment of this Act [Dec. 5, 1991], the Secretary and the Administrator shall submit jointly to Congress a report on the results of the review, with a justification for the exemptions that remain in effect under those provisions of law.

"(d) SENSE OF CONGRESS.—It is the sense of Congress that whenever any motor vehicle capable of operating on gasoline or alcohol-gasoline blends that is owned or operated by the Department of Defense or any other department or agency of the Federal Government is refueled, it shall be refueled with an alcohol-gasoline blend containing at least 10 percent domestically produced alcohol if available along the normal travel route of the vehicle at the same or lower price than unleaded gasoline."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12261. IMPLEMENTATION OF USE OF GASOHOL IN FEDERAL MOTOR VEHICLES

Ex. Ord. No. 12261, Jan. 5, 1981, 46 F.R. 2023, provided:

By the authority vested in me as President of the United States of America by Section 271 of the Energy Security Act (94 Stat. 710; Public Law 96–294; 42 U.S.C. 8871), in order to require Federal agencies which own or lease motor vehicles to use gasohol in those vehicles which are capable of operating on gasohol where it is available at reasonable prices and in reasonable quantities, it is hereby ordered as follows:

1–101. In procurement actions for unleaded gasoline motor fuel, Federal agencies shall, whenever feasible, specify that gasohol is an acceptable substitute motor fuel. In such procurements there shall be a preference for the purchase of gasohol.

1–102. Agencies may procure the components of gasohol and do their own blending.

1–103. In determining the feasibility of specifying gasohol as a substitute motor fuel in procurement actions for unleaded gasoline, agencies shall include in their considerations such factors as the availability of storage facilities for bulk purchases and the number of vehicles capable of operating on gasohol.

1–104. Agencies shall designate those vehicles which are capable of using gasohol, consistent with overall agency needs and sound vehicle management practices. Agencies shall specify the conditions governing the use of gasohol, including when gasohol shall be purchased from normal retail outlets by vehicle operators.

1–105. The use of gasohol by the Department of Defense pursuant to this Order shall be in accordance with Section 815 of the Department of Defense Authorization Act, 1980 (93 Stat. 817; Public Law 96–107; 10 U.S.C. 2388 note) which provides for the use of gasohol to the maximum extent feasible and consistent with overall defense needs and sound vehicle management practices, as determined by the Secretary of Defense.

1–106. Vehicles used in experimental programs to test fuels other than gasohol are excepted from this Order.

1–107. The authority vested in the President by Section 271(b) of the Energy Security Act (42 U.S.C. 8871(b)) is delegated to the Secretary of Defense with respect to gasohol use by the Department of Defense, and delegated to the Administrator of General Services with respect to gasohol use by other agencies.

1–108. Federal agencies shall make available to the Department of Energy, upon request, relevant data or information they possess concerning agency gasohol usage.

1–109. For purposes of this Order "Gasohol" means a motor fuel which has an octane rating of not less than 87 (R+M)/2 and which consists of approximately 90 percent unleaded gasoline and approximately 10 percent anhydrous (199 proof or above) ethyl alcohol derived from biomass, as defined in Section 203(2)(A) of the Energy Security Act (94 Stat. 683; Public Law 96–294; 42 U.S.C. 8802(2)(A)).

1–110. (a) The Secretary of Defense with respect to gasohol use by the Department of Defense, and the Administrator of General Services with respect to gasohol use by other agencies, shall issue such guidelines for the implementation of this Order as they deem appropriate.

(b) Such guidelines shall provide for a determination of reasonable prices and reasonable quantities based on the local prevailing price of unleaded gasolines, the octane requirements for vehicles in the Federal fleet, local market availability of gasohol or its components, and other such factors, as may be appropriate.

JIMMY CARTER.

CHAPTER 97—ACID PRECIPITATION PROGRAM AND CARBON DIOXIDE STUDY

SUBCHAPTER I—ACID PRECIPITATION

Sec.
8901. Introductory provisions.
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SUBCHAPTER I—ACID PRECIPITATION

§8901. Introductory provisions

(a) Congressional statement of findings and purpose

The Congress finds and declares that acid precipitation resulting from other than natural sources—

(1) could contribute to the increasing pollution of natural and man-made water systems;

(2) could adversely affect agricultural and forest crops;

(3) could adversely affect fish and wildlife and natural ecosystems generally;

(4) could contribute to corrosion of metals, wood, paint, and masonry used in construction and ornamentation of buildings and public monuments;

(5) could adversely affect public health and welfare; and

(6) could affect areas distant from sources and thus involve issues of national and international policy.

(b) Congressional declaration of purpose

The Congress declares that it is the purpose of this subchapter—

(1) to identify the causes and sources of acid precipitation;

(2) to evaluate the environmental, social, and economic effects of acid precipitation; and

(3) based on the results of the research program established by this subchapter and to the extent consistent with existing law, to take action to the extent necessary and practicable (A) to limit or

eliminate the identified emissions which are sources of acid precipitation, and (B) to remedy or otherwise ameliorate the harmful effects which may result from acid precipitation.

(c) "Acid precipitation" defined

For purposes of this subchapter the term "acid precipitation" means the wet or dry deposition from the atmosphere of acid chemical compounds.

(Pub. L. 96–294, title VII, §702, June 30, 1980, 94 Stat. 770.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Section 701 of title VII Pub. L. 96–294 provided that: "This title [enacting this chapter] may be cited as the 'Acid Precipitation Act of 1980'."

§8902. Comprehensive ten-year program

(a) Implementation by Acid Precipitation Task Force; membership, etc., of Task Force

There is hereby established a comprehensive ten-year program to carry out the provisions of this subchapter; and to implement this program there shall be formed an Acid Precipitation Task Force (hereafter in this subchapter referred to as the "Task Force"), of which the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the Administrator of the National Oceanic and Atmospheric Administration shall be joint chairmen. The remaining membership of the Task Force shall consist of—

(1) one representative each from the Department of the Interior, the Department of Health and Human Services, the Department of Commerce, the Department of Energy, the Department of State, the National Aeronautics and Space Administration, the Council on Environmental Quality, the National Science Foundation, and the Tennessee Valley Authority;

(2) the director of the Argonne National Laboratory, the director of the Brookhaven National Laboratory, the director of the Oak Ridge National Laboratory, and the director of the Pacific Northwest National Laboratory; and

(3) four additional members to be appointed by the President.

(b) Research management consortium; membership, responsibilities, etc.

The four National Laboratories (referred to in subsection (a)(2)) shall constitute a research management consortium having the responsibilities described in section 8903(b)(13) of this title as well as the general responsibilities required by their representation on the Task Force. In carrying out these responsibilities the consortium shall report to, and act pursuant to direction from, the joint chairmen of the Task Force.

(c) Director of research program

The Administrator of the National Oceanic and Atmospheric Administration shall serve as the director of the research program established by this subchapter.

(Pub. L. 96–294, title VII, §703, June 30, 1980, 94 Stat. 771.)

§8903. Comprehensive research plan

(a) Preparation by Task Force for ten-year program; purposes

The Task Force shall prepare a comprehensive research plan for the ten-year program (hereafter in this subchapter referred to as the "comprehensive plan"), setting forth a coordinated program (1) to identify the causes and effects of acid precipitation and (2) to identify actions to limit or ameliorate the harmful effects of acid precipitation.

(b) Scope

The comprehensive plan shall include programs for—

(1) identifying the sources of atmospheric emissions contributing to acid precipitation;

(2) establishing and operating a nationwide long-term monitoring network to detect and measure levels of acid precipitation;

(3) research in atmospheric physics and chemistry to facilitate understanding of the processes by which atmospheric emissions are transformed into acid precipitation;

(4) development and application of atmospheric transport models to enable prediction of long-range transport of substances causing acid precipitation;

(5) defining geographic areas of impact through deposition monitoring, identification of sensitive areas, and identification of areas at risk;

(6) broadening of impact data bases through collection of existing data on water and soil chemistry and through temporal trend analysis;

(7) development of dose-response functions with respect to soils, soil organisms, aquatic and amphibious organisms, crop plants, and forest plants;

(8) establishing and carrying out system studies with respect to plant physiology, aquatic ecosystems, soil chemistry systems, soil microbial systems, and forest ecosystems;

(9) economic assessments of (A) the environmental impacts caused by acid precipitation on crops, forests, fisheries, and recreational and aesthetic resources and structures, and (B) alternative technologies to remedy or otherwise ameliorate the harmful effects which may result from acid precipitation;

(10) documenting all current Federal activities related to research on acid precipitation and ensuring that such activities are coordinated in ways that prevent needless duplication and waste of financial and technical resources;

(11) effecting cooperation in acid precipitation research and development programs, ongoing and planned, with the affected and contributing States and with other sovereign nations having a commonality of interest;

(12) subject to subsection (f)(1), management by the Task Force of financial resources committed to Federal acid precipitation research and development;

(13) subject to subsection (f)(2), management of the technical aspects of Federal acid precipitation research and development programs, including but not limited to (A) the planning and management of research and development programs and projects, (B) the selection of contractors and grantees to carry out such programs and projects, and (C) the establishment of peer review procedures to assure the quality of research and development programs and their products; and

(14) analyzing the information available regarding acid precipitation in order to formulate and present periodic recommendations to the Congress and the appropriate agencies about actions to be taken by these bodies to alleviate acid precipitation and its effects.

(c) Procedures applicable

The comprehensive plan—

(1) shall be submitted in draft form to the Congress, and for public review, within six months after June 30, 1980;

(2) shall be available for public comment for a period of sixty days after its submission in draft form under paragraph (1);

(3) shall be submitted in final form, incorporating such needed revisions as arise from comments received during the review period, to the President and the Congress within forty-five days after the close of the period allowed for comments on the draft comprehensive plan under paragraph (2); and

(4) shall constitute the basis on which requests for authorizations and appropriations are to be made for the nine fiscal years following the fiscal year in which the comprehensive plan is submitted in final form under paragraph (3).

(d) Convening of Task Force

The Task Force shall convene as necessary, but no less than twice during each fiscal year of the

ten-year period covered by the comprehensive plan.

(e) Submission of annual report to President and Congress by Task Force

The Task Force shall submit to the President and the Congress by January 15 of each year an annual report which shall detail the progress of the research program under this subchapter and which shall contain such recommendations as are developed under subsection (b)(14).

(f) Applicability of other statutory provisions to Task Force or plan

(1) Subsection (b)(12) shall not be construed as modifying, or as authorizing the Task Force or the comprehensive plan to modify, any provision of an appropriation Act (or any other provision of law relating to the use of appropriated funds) which specifies (A) the department or agency to which funds are appropriated, or (B) the obligations of such department or agency with respect to the use of such funds.

(2) Subsection (b)(13) shall not be construed as modifying, or as authorizing the Task Force or the comprehensive plan to modify, any provision of law (relating to or involving a department or agency) which specifies (A) procurement practices for the selection, award, or management of contracts or grants by such department or agency, or (B) program activities, limitations, obligations, or responsibilities of such department or agency.

(Pub. L. 96–294, title VII, §704, June 30, 1980, 94 Stat. 771.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e) of this section relating to the requirement that the Task Force submit an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 153 of House Document No. 103–7.

§8904. Implementation of comprehensive plan; new or existing regulatory authorities, etc., not granted or modified

(a) The comprehensive plan shall be carried out during the nine fiscal years following the fiscal year in which the comprehensive plan is submitted in its final form under section 8903(c)(3) of this title; and—

(1) shall be carried out in accord with, and meet the program objectives specified in, paragraphs (1) through (11) of section 8903(b) of this title;

(2) shall be managed in accord with paragraphs (12) through (14) of such section; and

(3) shall be funded by annual appropriations, subject to annual authorizations which shall be made for each fiscal year of the program (as provided in section 8905 of this title) after the submission of the Task Force progress report which under section 8903(e) of this title is required to be submitted by January 15 of the calendar year in which such fiscal year begins.

(b) Nothing in this subchapter shall be deemed to grant any new regulatory authority or to limit, expand, or otherwise modify any regulatory authority under existing law, or to establish new criteria, standards, or requirements for regulation under existing law.

(Pub. L. 96–294, title VII, §705, June 30, 1980, 94 Stat. 773.)

§8905. Authorization of appropriations

(a) For the purpose of establishing the Task Force and developing the comprehensive plan under section 8903 of this title there is authorized to be appropriated to the National Oceanic and Atmospheric Administration for fiscal year 1981 the sum of $5,000,000 to remain available until

expended.

(b) Authorizations of appropriations for the nine fiscal years following the fiscal year in which the comprehensive plan is submitted in final form under section 8903(c)(3) of this title, for purposes of carrying out the comprehensive ten-year program established by section 8902(a) of this title and implementing the comprehensive plan under sections 8903 and 8904 of this title, shall be provided on an annual basis in authorization Acts hereafter enacted; but the total sum of dollars authorized for such purposes for such nine fiscal years shall not exceed $45,000,000 except as may be specifically provided by reference to this paragraph in the authorization Acts involved.

(Pub. L. 96–294, title VII, §706, June 30, 1980, 94 Stat. 773.)

§8906. Updated data base on acid content in precipitation; new monitoring site not required

(a)(1) The National Weather Service of the National Oceanic and Atmospheric Administration shall maintain an updated data base describing the acid content in precipitation in the United States, using information from Federal acid precipitation monitoring sites.

(2) Such data shall be available to interested parties by Weather Service Forecast Offices in the National Weather Service, or through such other facilities or means as the Assistant Administrator for Weather Services, National Oceanic and Atmospheric Administration, shall direct, for those areas of the United States where and at such time as such information is presently available, within 120 days after November 17, 1988.

(3) Where other Federal agencies collect such data in the course of carrying out their statutory missions, the heads of those agencies and the Administrator of the National Oceanic and Atmospheric Administration shall arrange for the transfer of such data to the National Weather Service.

(b) Nothing in this section shall be construed to require any Federal agency to establish any new acid precipitation monitoring site.

(Pub. L. 100–685, title IV, §414, Nov. 17, 1988, 102 Stat. 4101.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, and not as part of the Acid Precipitation Act of 1980 which comprises this chapter.

SUBCHAPTER II—CARBON DIOXIDE

§8911. Comprehensive study of projected impact on atmospheric levels of fossil fuel combustion, etc.

(a) Implementing agreement between Director of Office of Science and Technology and National Academy of Sciences; contents; conduct; status report by President respecting negotiations of Office

(1) The Director of the Office of Science and Technology Policy shall enter into an agreement with the National Academy of Sciences to carry out a comprehensive study of the projected impact, on the level of carbon dioxide in the atmosphere, of fossil fuel combustion, coal-conversion and related synthetic fuels activities authorized in this Act, and other sources. Such study should also include an assessment of the economic, physical, climatic, and social effects of such impacts. In conducting such study the Office and the Academy are encouraged to work with domestic and

foreign governmental and non-governmental entities, and international entities, so as to develop an international, worldwide assessment of the problems involved and to suggest such original research on any aspect of such problems as the Academy deems necessary.

(2) The President shall report to the Congress within six months after June 30, 1980, regarding the status of the Office's negotiations to implement the study required under this section.

(b) Final report by Office and Academy; contents; prior clearance or review of work of Academy; recommendations

A report including the major findings and recommendations resulting from the study required under this section shall be submitted to the Congress by the Office and the Academy not later than three years after June 30, 1980. The Academy contribution to such report shall not be subject to any prior clearance or review, nor shall any prior clearance or conditions be imposed on the Academy as part of the agreement made by the Office with the Academy under this section. Such report shall in any event include recommendations regarding—

(1) how a long-term program of domestic and international research, monitoring, modeling, and assessment of the causes and effects of varying levels of atmospheric carbon dioxide should be structured, including comments by the Office on the interagency requirements of such a program and comments by the Secretary of State on the international agreements required to carry out such a program;

(2) how the United States can best play a role in the development of such a long-term program on an international basis;

(3) what domestic resources should be made available to such a program;

(4) how the ongoing United States Government carbon dioxide assessment program should be modified so as to be of increased utility in providing information and recommendations of the highest possible value to government policy makers; and

(5) the need for periodic reports to the Congress in conjunction with any long-term program the Office and the Academy may recommend under this section.

(c) Information from other Federal agencies and departments

The Secretary of Energy, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the Director of the National Science Foundation shall furnish to the Office or the Academy upon request any information which the Office or the Academy determines to be necessary for purposes of conducting the study required by this section.

(d) Separate assessment by Office of interagency implementation requirements

The Office shall provide a separate assessment of the interagency requirements to implement a comprehensive program of the type described in the third sentence of subsection (b).

(Pub. L. 96–294, title VII, §711, June 30, 1980, 94 Stat. 774.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 96–294, June 30, 1980, 94 Stat. 611, known as the Energy Security Act. For complete classification of this Act to the Code, see Short Title note set out under section 8801 of this title and Tables.

§8912. Authorization of appropriations

For the expenses of carrying out the carbon dioxide study authorized by section 8911 of this title (as determined by the Office of Science and Technology Policy) there are authorized to be appropriated such sums, not exceeding $3,000,000 in the aggregate, as may be necessary. At least 80 percent of any amounts appropriated pursuant to the preceding sentence shall be provided to the National Academy of Sciences.

(Pub. L. 96–294, title VII, §712, June 30, 1980, 94 Stat. 775.)

CHAPTER 98—OCEAN THERMAL ENERGY CONVERSION RESEARCH AND DEVELOPMENT

Sec.

9001. Congressional findings and declaration of purpose.
9002. Comprehensive program management plan.
9003. Research and development.
9004. Pilot and demonstration plants.
9005. Technology application.
9006. Program selection criteria.
9007. Technical Panel of Energy Research Advisory Board.
9008. Definitions.
9009. Authorization of appropriations.

§9001. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the supply of nonrenewable fuels in the United States is slowly being depleted;

(2) alternative sources of energy must be developed;

(3) ocean thermal energy is a renewable energy resource that can make a significant contribution to the energy needs of the United States;

(4) the technology base for ocean thermal energy conversion has improved over the past two years, and has consequently lowered the technical risk involved in constructing moderate-sized pilot plants with an electrical generating capacity of about ten to forty megawatts;

(5) while the Federal ocean thermal energy conversion program has grown in size and scope over the past several years, it is in the national interest to accelerate efforts to commercialize ocean thermal energy conversion by building pilot and demonstration facilities and to begin planning for the commercial demonstration of ocean thermal energy conversion technology;

(6) a strong and innovative domestic industry committed to the commercialization of ocean thermal energy conversion must be established, and many competent domestic industrial groups are already involved in ocean thermal energy conversion research and development activity; and

(7) consistent with the findings of the Domestic Policy Review on Solar Energy, ocean thermal energy conversion energy can potentially contribute at least one-tenth of quad of energy per year by the year 2000.

(b) Therefore, the purpose of this chapter is to accelerate ocean thermal energy conversion technology development to provide a technical base for meeting the following goals:

(1) demonstration by 1986 of at least one hundred megawatts of electrical capacity or energy product equivalent from ocean thermal energy conversion systems;

(2) demonstration by 1989 of at least five hundred megawatts of electrical capacity or energy product equivalent from ocean thermal energy conversion systems;

(3) achievement in the mid-1990's, for the gulf coast region of the continental United States and for islands in the United States, its possessions and its territories, an average cost of electricity or energy product equivalent produced by installed ocean thermal energy conversion systems that is competitive with conventional energy sources; and

(4) establish as a national goal ten thousand megawatts of electrical capacity or energy product equivalent from ocean thermal energy conversion systems by the year 1999.

(Pub. L. 96–310, §2, July 17, 1980, 94 Stat. 941.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–310, §1, July 17, 1980, 94 Stat. 941, provided: "That this Act [enacting this chapter] may be cited as the 'Ocean Thermal Energy Conversion Research, Development, and Demonstration Act'."

§9002. Comprehensive program management plan

(a) Preparation of plan

(1) The Secretary is authorized and directed to prepare a comprehensive program management plan for the conduct under this chapter of research, development, and demonstration activities consistent with the provisions of sections 9003, 9004, and 9005 of this title.

(2) In the preparation of such plan, the Secretary shall consult with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Maritime Administration, the Administrator of the National Aeronautics and Space Administration, and the heads of such other Federal agencies and such public and private organizations as he deems appropriate.

(b) Transmittal of plan to Congress

The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within nine months after July 17, 1980.

(c) Requisite provisions of plan

The detailed description of the comprehensive plan under this section shall include, but need not be limited to—

(1) the anticipated research, development, and demonstration objectives to be achieved by the program;

(2) the program strategies and technology application and market development plans, including detailed milestone goals to be achieved during the next fiscal year for all major activities and projects;

(3) a five-year implementation schedule for program elements with associated budget and program management resources requirements;

(4) a detailed description of the functional organization of the program management including identification of permanent test facilities and of a lead center responsible for technology support and project management;

(5) the estimated relative financial contributions of the Federal Government and non-Federal participants in the pilot and demonstration projects;

(6) supporting research needed to solve problems which may inhibit or limit development of ocean thermal energy conversion systems; and

(7) an analysis of the environmental, economic, and societal impacts of ocean thermal energy conversion facilities.

(Pub. L. 96–310, §3, July 17, 1980, 94 Stat. 942; Pub. L. 104–66, title I, §1051(c), Dec. 21, 1995, 109 Stat. 716.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–66 struck out subsec. (d) which read as follows:

"(d)(1) Concurrently with the submission of the President's annual budget for each subsequent year, the Secretary shall transmit to the Congress a detailed description of modifications which may be necessary to revise appropriately the comprehensive plan as then in effect, setting forth any changes in circumstances which may have occurred since the plan or the last previous modification thereof was transmitted in accordance with this section.

"(2) Such description shall also include a detailed justification of any such changes, a detailed description of the progress made toward achieving the goals of this chapter, a statement on the status of interagency cooperation in meeting such goals, any comments on and recommendations for improvements in the comprehensive program management plan made by the Technical Panel established under section 9007 of this title, and any legislative or other recommendations which the Secretary may have to help attain such goals."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§9003. Research and development

(a) Initiation of research

The Secretary shall initiate research or accelerate existing research in areas in which the lack of knowledge limits development of ocean thermal energy conversion systems in order to achieve the purposes of this chapter.

(b) Evaluations, tests, and dissemination of information, data, and materials

The Secretary shall conduct evaluations, arrange for tests, and disseminate to developers information, data, and materials necessary to support the design efforts undertaken pursuant to section 9004 of this title. Specific technical areas to be addressed shall include, but not be limited to—

(1) interface requirements between the platform and cold water pipe;
(2) cold water pipe deployment techniques;
(3) heat exchangers;
(4) control system simulation;
(5) stationkeeping requirements; and
(6) energy delivery systems, such as electric cable or energy product transport.

(c) Consideration of new or improved technologies

The Secretary shall, for the purpose of performing his responsibilities pursuant to this chapter, solicit proposals and evaluate any reasonable new or improved technology, a description of which is submitted to the Secretary in writing, which could lead or contribute to the development of ocean thermal energy conversion system technology.

(Pub. L. 96–310, §4, July 17, 1980, 94 Stat. 943.)

§9004. Pilot and demonstration plants

(a) Initiation of program

The Secretary is authorized to initiate a program to design, construct, and operate well instrumented ocean thermal energy conversion facilities of sufficient size to demonstrate the technical feasibility and potential economic feasibility of utilizing the various forms of ocean thermal energy conversion to displace nonrenewable fuels. To achieve the goals of this section and to facilitate development of a strong industrial basis for the application of ocean thermal energy conversion system technology, at least two independent parallel demonstration projects shall be competitively selected.

(b) Demonstration program goals

The specific goals of the demonstration program shall include at a minimum—

(1) the demonstration of ocean thermal energy conversion technical feasibility through multiple

pilot and demonstration plants with a combined capacity of at least one hundred megawatts of electrical capacity or energy product equivalent by the year 1986;

(2) the delivery of baseload electricity to utilities located on land or the production of commercially attractive quantities of energy product; and

(3) the continuous operation of each pilot and demonstration facility for a sufficient period of time to collect and analyze system performance and reliability data.

(c) Financial assistance

In providing any financial assistance under this section, the Secretary shall (1) give full consideration to those projects which will provide energy to United States offshore States, its territories, and its possessions and (2) seek satisfactory cost-sharing arrangements when he deems such arrangements to be appropriate.

(Pub. L. 96–310, §5, July 17, 1980, 94 Stat. 943.)

§9005. Technology application

(a) Technology application and market development plan

The Secretary shall, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Maritime Administration, the Administrator of the National Aeronautics and Space Administration, and the Technical Panel established under section 9007 of this title, prepare a comprehensive technology application and market development plan that will permit realization of the ten-thousand-megawatt national goal by the year 1999. Such plans shall include at a minimum—

(1) an assessment of those Government actions required to achieve a two-hundred- to four-hundred-megawatt electrical-commercial demonstration of ocean thermal energy conversion systems in time to have industry meet the goal contained in section 9001(b)(2) of this title including a listing of those financial, property, and patent right packages most likely to lead to early commercial demonstration at minimum cost to the Federal Government;

(2) an assessment of further Government actions required to permit expansion of the domestic ocean thermal energy conversion industry to meet the goal contained in section 9001(b)(3) of this title;

(3) an analysis of further Government actions necessary to aid the industry in minimizing and removing any legal and institutional barriers such as the designation of a lead agency; and

(4) an assessment of the necessary Government actions to assist in eliminating economic uncertainties through financial incentives, such as loan guarantees, price supports, or other inducements.

(b) Transmittal of plan to Congress

The Secretary shall transmit such comprehensive technology application and market development plan to the Congress within three years after July 17, 1980, and update the plan on an annual basis thereafter.

(c) Respondent proposals

As part of the competitive procurement initiative for design and construction of the pilot and demonstration projects authorized in section 9009(c) of this title, each respondent shall include in its proposal (1) a plan leading to a full-scale, first-of-a-kind facility based on a proposed demonstration system; and (2) the financial and other contributions the respondent will make toward meeting the national goals.

(Pub. L. 96–310, §6, July 17, 1980, 94 Stat. 944.)

§9006. Program selection criteria

The Secretary shall, in fulfilling his responsibilities under this chapter, select program activities and set priorities which are consistent with the following criteria:

(1) realization of energy production costs for ocean thermal energy conversion systems that are competitive with costs from conventional energy production systems;

(2) encouragement of projects for which contributions to project costs are forthcoming from private, industrial, utility, or governmental entities for the purpose of sharing with the Federal Government the costs of purchasing and installing ocean thermal energy conversion systems;

(3) promotion of ocean thermal energy conversion facilities for coastal areas, islands, and isolated military institutions which are vulnerable to interruption in the fossil fuel supply;

(4) preference for and priority to persons and domestic firms whose base of operations is in the United States as will assure that the program under this chapter promotes the development of a United States domestic technology for ocean thermal energy conversion; and

(5) preference for proposals for pilot and demonstration projects in which the respondents certify their intent to become an integral part of the industrial infrastructure necessary to meet the goals of this chapter.

(Pub. L. 96–310, §7, July 17, 1980, 94 Stat. 944.)

§9007. Technical Panel of Energy Research Advisory Board

(a) Establishment

A Technical Panel of the Energy Research Advisory Board shall be established to advise the Board on the conduct of the ocean thermal energy conversion program.

(b) Membership

(1) The Technical Panel shall be comprised of such representatives from domestic industry, universities, Government laboratories, financial, environmental and other organizations as the Chairman of the Energy Research Advisory Board deems appropriate based on his assessment of the technical and other qualifications of such representative.

(2) Members of the Technical Panel need not be members of the full Energy Research Advisory Board.

(c) Compliance with laws and regulations

The activities of the Technical Panel shall be in compliance with any laws and regulations guiding the activities of technical and fact-finding groups reporting to the Energy Research Advisory Board.

(d) Review and recommendations

The Technical Panel shall review and may make recommendations on the following items, among others:

(1) implementation and conduct of the programs established by this chapter;

(2) definition of ocean thermal energy conversion system performance requirements for various user applications; and

(3) economic, technological, and environmental consequences of the deployment of ocean thermal energy conversion systems.

(e) Report

The Technical Panel shall submit to the Energy Research Advisory Board on at least an annual basis a written report of its findings and recommendations with regard to the program. Such report, shall include at a minimum—

(1) a summary of the Panel's activities for the preceding year;

(2) an assessment and evaluation of the status of the programs mandated by this chapter; and

(3) comments on and recommendations for improvements in the comprehensive program management plan required under section 9002 of this title.

(f) Submittal of report to Secretary of Energy

After consideration of the Technical Panel report, the Energy Research Advisory Board shall submit such report, together with any comments such Board deems appropriate, to the Secretary.

(g) Cooperation by agency heads

The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Technical Panel in carrying out the requirements of this section and shall furnish to the Technical Panel such information as the Technical Panel deems necessary to carry out this section.

(h) Staff, funds, and other support from Secretary of Energy

The Secretary shall provide sufficient staff, funds, and other support as necessary to enable the Technical Panel to carry out the functions described in this section.

(Pub. L. 96–310, §8, July 17, 1980, 94 Stat. 945.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by the Congress, its duration is otherwise provided for by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

§9008. Definitions

As used in this chapter, the term—

(1) "ocean thermal energy conversion" means a method of converting part of the heat from the Sun which is stored in the surface layers of a body of water into electrical energy or energy product equivalent;

(2) "energy product equivalent" means an energy carrier including, but not limited to, ammonia, hydrogen, or molten salts or an energy-intensive commodity, including, but not limited to, electrometals, fresh water, or nutrients for aquaculture; and

(3) "Secretary" means the Secretary of Energy.

(Pub. L. 96–310, §9, July 17, 1980, 94 Stat. 946.)

§9009. Authorization of appropriations

(a) There is hereby authorized to be appropriated to carry out the purposes of this chapter the sum of $20,000,000 for operating expenses for the fiscal year ending September 30, 1981, in addition to any amounts authorized to be appropriated in the fiscal year 1981 Authorization Act pursuant to section 7270 of this title.

(b) There is hereby authorized to be appropriated to carry out the purposes of this chapter the sum of $60,000,000 for operating expenses for the fiscal year ending September 30, 1982.

(c) Funds are hereby authorized to be appropriated for fiscal year 1981 to carry out the purposes of section 9004 of this title for plant and capital equipment as follows:

Project 81–ES–1, ocean thermal energy conversion demonstration plants with a combined capacity of at least one hundred megawatts electrical or the energy product equivalent, sites to be determined, conceptual and preliminary design activities only $5,000,000.

(d) Funds are hereby authorized to be appropriated for fiscal year 1982 to carry out the purposes of section 9004 of this title for plant and capital equipment as follows:

Project 81–ES–1, ocean thermal energy conversion demonstration plants with a combined capacity of at least one hundred megawatts electrical or the energy product equivalent, sites to be determined, conceptual and preliminary design activities only $25,000,000.

(Pub. L. 96–310, §10, July 17, 1980, 94 Stat. 946.)

CHAPTER 99—OCEAN THERMAL ENERGY CONVERSION

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§9101. Congressional declaration of policy

(a) It is declared to be the purposes of the Congress in this chapter to—

(1) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion facilities connected to the United States by pipeline or cable, or located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the

United States consistent with the Convention on the High Seas, and general principles of international law;

(2) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships documented under the laws of the United States, consistent with the Convention on the High Seas and general principles of international law;

(3) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships by United States citizens, consistent with the Convention on the High Seas and general principles of international law;

(4) establish a legal regime which will permit and encourage the development of ocean thermal energy conversion as a commercial energy technology;

(5) provide for the protection of the marine and coastal environment, and consideration of the interests of ocean users, to prevent or minimize any adverse impact which might occur as a consequence of the development of such ocean thermal energy conversion facilities or plantships;

(6) make applicable certain provisions of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.) [1] to assist in financing of ocean thermal energy conversion facilities and plantships;

(7) protect the interests of the United States in the location, construction, and operation of ocean thermal energy conversion facilities and plantships; and

(8) protect the rights and responsibilities of adjacent coastal States in ensuring that Federal actions are consistent with approved State coastal zone management programs and other applicable State and local laws.

(b) The Congress declares that nothing in this chapter shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

(Pub. L. 96–320, §2, Aug. 3, 1980, 94 Stat. 974; Pub. L. 98–623, title VI, §602(a)(1), Nov. 8, 1984, 98 Stat. 3410.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Merchant Marine Act, 1936, referred to in subsec. (a)(6), is act June 29, 1936, ch. 858, 49 Stat. 1985, which was classified principally to chapter 27 (§1101 et seq.) of the former Appendix to Title 46, Shipping. The Act, with the exception of title V, most of title VI, and sections 301, 801, 802, 809(a), and 909 thereof, was repealed and restated, mainly in subtitle V of Title 46, by Pub. L. 109–304, §§8, 19, Oct. 6, 2006, 120 Stat. 1555, 1710. Title V and sections 301 and 909 of the Act are set out as notes under section 53101 of Title 46. Those portions of title VI not repealed by Pub. L. 109–304 and sections 802 and 809(a) of the Act were repealed by Pub. L. 114–120, title III, §313(a), Feb. 8, 2016, 130 Stat. 58. Section 801 of the Act was transferred to section 57522 of Title 46 by Pub. L. 114–120, title III, §313(c)(1)(A), Feb. 8, 2016, 130 Stat. 58. For complete classification of the Act to the Code, see Tables. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–623 substituted "located in whole or in part between the highwater mark and the seaward boundary of the territorial sea" for "located in the territorial sea".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–320, §1, Aug. 3, 1980, 94 Stat. 974, provided: "That this Act [enacting this chapter and section 1279c of Title 46, Appendix, Shipping, amending sections 1271, 1273, and 1274 of Title 46, Appendix, and enacting provisions set out as a note under section 1273 of Title 46, Appendix] may be cited as the 'Ocean Thermal Energy Conversion Act of 1980'."

EXECUTIVE DOCUMENTS

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

[1] *See References in Text note below.*

§9102. Definitions

As used in this chapter, unless the context otherwise requires, the term—

(1) "adjacent coastal State" means any coastal State which is required to be designated as such by section 9115(a)(1) of this title or is designated as such by the Administrator in accordance with section 9115(a)(2) of this title;

(2) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration;

(3) "antitrust laws" includes the Act of July 2, 1890, as amended [15 U.S.C. 1 et seq.], the Act of October 15, 1914, as amended [15 U.S.C. 12 et seq.], and sections 73 and 74 of the Act of August 27, 1894, as amended [15 U.S.C. 8 and 9];

(4) "application" means any application submitted under this chapter (A) for issuance of a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship; (B) for transfer or renewal of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

(5) "coastal State" means a State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes;

(6) "construction" means any activities conducted at sea to supervise, inspect, actually build, or perform other functions incidental to the building, repairing, or expanding of an ocean thermal energy conversion facility or plantship or any of its components, including but not limited to, piledriving, emplacement of mooring devices, emplacement of cables and pipelines, and deployment of the cold water pipe, and alterations, modifications, or additions to an ocean thermal energy conversion facility or plantship;

(7) "facility" means an ocean thermal energy conversion facility;

(8) "Governor" means the Governor of a State or the person designated by law to exercise the powers granted to the Governor pursuant to this chapter;

(9) "high seas" means that part of the oceans lying seaward of the territorial sea of the United States and outside the territorial sea, as recognized by the United States, of any other nation;

(10) "licensee" means the holder of a valid license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship that was issued, transferred, or renewed pursuant to this chapter;

(11) "ocean thermal energy conversion facility" means any facility which is standing, fixed or moored in whole or in part seaward of the highwater mark and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, fresh water, or product to shore, and all other associated equipment and appurtenances of such facility, to the extent they are located seaward of the highwater mark;

(12) "ocean thermal energy conversion plantship" means any vessel which is designed to use temperature differences in ocean water while floating unmoored or moving through such water, to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such vessel to use such electricity or other form of energy to

produce, process, refine, or manufacture a product, and any equipment used to transfer such product to other vessels for transportation to users, and all other associated equipment and appurtenances of such vessel;

(13) "plantship" means an ocean thermal energy conversion plantship;

(14) "person" means any individual (whether or not a citizen of the United States), any corporation, partnership, association, or other entity organized or existing under the laws of any nation, and any Federal, State, local or foreign government or any entity of any such government;

(15) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and any other Commonwealth, territory, or possession over which the United States has jurisdiction;

(16) "test platform" means any floating or moored platform, barge, ship, or other vessel which is designed for limited-scale, at sea operation in order to test or evaluate the operation of components or all of an ocean thermal energy conversion system and which will not operate as an ocean thermal energy conversion facility or plantship after the conclusion of such tests or evaluation;

(17) "thermal plume" means the area of the ocean in which a significant difference in temperature, as defined in regulations by the Administrator, occurs as a result of the operation of an ocean thermal energy conversion facility or plantship; and

(18) "United States citizen" means (A) any individual who is a citizen of the United States by law, birth, or naturalization; (B) any Federal, State, or local government in the United States, or any entity of any such government; or (C) any corporation, partnership, association, or other entity, organized or existing under the laws of the United States, or of any State, which has as its president or other executive officer and as its chairman of the board of directors, or holder of similar office, an individual who is a United States citizen and which has no more of its directors who are not United States citizens than constitute a minority of the number required for a quorum necessary to conduct the business of the board.

(Pub. L. 96–320, §3, Aug. 3, 1980, 94 Stat. 975; Pub. L. 98–623, title VI, §602(a)(2), (e)(7), Nov. 8, 1984, 98 Stat. 3410, 3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in introductory provisions and pars. (4), (8), and (10), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

Act of July 2, 1890, as amended, referred to in par. (3), is act July 2, 1890, ch. 647, 26 Stat. 209, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914, as amended, referred to in par. (3), is act Oct. 15, 1914, ch. 323, 78 Stat. 730, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, as amended, referred to in par. (3), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570. Sections 73 to 77 of such Act are known as the Wilson Tariff Act. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 is not classified to the Code. For complete classification of this Act to the Code, see Short Title note under section 8 of Title 15 and Tables.

AMENDMENTS

1984—Par. (11). Pub. L. 98–623, §602(a)(2), substituted "standing, fixed or moored in whole or in part seaward of the highwater mark" for "standing or moored in or beyond the territorial sea of the United States".

Pub. L. 98–623, §602(e)(7), substituted "fresh water" for "freshwater".

EXECUTIVE DOCUMENTS

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SUBCHAPTER I—REGULATION OF OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS

§9111. License for ownership, construction, and operation of ocean thermal energy conversion facilities or plantships

(a) License requirement

No person may engage in the ownership, construction, or operation of an ocean thermal energy conversion facility which is documented under the laws of the United States, which is located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or which is connected to the United States by pipeline or cable, except in accordance with a license issued pursuant to this chapter. No citizen of the United States may engage in the ownership, construction or operation of an ocean thermal energy conversion plantship except in accordance with a license issued pursuant to this chapter, or in accordance with a license issued by a foreign nation whose licenses are found by the Administrator, after consultation with the Secretary of State, to be compatible with licenses issued pursuant to this chapter.

(b) Documented plantships; documented facilities; facilities located in territorial sea; facilities connected to United States by pipeline or cable

The Administrator shall, upon application and in accordance with the provisions of this chapter, issue, transfer, amend, or renew licenses for the ownership, construction, and operation of—

(1) ocean thermal energy conversion plantships documented under the laws of the United States, and

(2) ocean thermal energy conversion facilities documented under the laws of the United States, located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or connected to the United States by pipeline or cable.

(c) License issuance prerequisites

The Administrator may issue a license to a citizen of the United States in accordance with the provisions of this chapter unless—

(1) he determines that the applicant cannot or will not comply with applicable laws, regulations, and license conditions;

(2) he determines that the construction and operation of the ocean thermal energy conversion facility or plantship will not be in the national interest and consistent with national security and other national policy goals and objectives, including energy self-sufficiency and environmental quality;

(3) he determines, after consultation with the Secretary of the department in which the Coast Guard is operating, that the ocean thermal energy conversion facility or plantship will not be operated with reasonable regard to the freedom of navigation or other reasonable uses of the high seas and authorized uses of the Continental Shelf, as defined by United States law, treaty, convention, or customary international law;

(4) he has been informed, within 45 days after the conclusion of public hearings on that application, or on proposed licenses for the designated application area, by the Administrator of the Environmental Protection Agency that the ocean thermal energy conversion facility or plantship will not conform with all applicable provisions of any law for which he has regulatory authority;

(5) he has received the opinion of the Attorney General, pursuant to section 9114 of this title,

stating that issuance of the license would create a situation in violation of the antitrust laws, or the 90-day period provided in section 9114 of this title has not expired;

(6) he has consulted with the Secretary of Energy, the Secretary of Transportation, the Secretary of State, the Secretary of the Interior, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions and determines on the basis thereof, that the application for a license is inadequate;

(7) the proposed ocean thermal energy conversion facility or plantship will be documented under the laws of a foreign nation;

(8) the applicant has not agreed to the condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the ocean thermal energy conversion facility or plantship unless such vessel is documented under the laws of the United States;

(9) when the license is for an ocean thermal energy conversion facility, he determines that the facility, including any submarine electric transmission cables and equipment or pipelines which are components of the facility, will not be located and designed so as to minimize interference with other uses of the high seas or the Continental Shelf, including cables or pipelines already in position on or in the seabed and the possibility of their repair;

(10) the Governor of any adjacent coastal State with an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) determines that, in his or her view, the application is inadequate or inconsistent with respect to programs within his or her jurisdiction;

(11) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility already licensed or operating, without the consent of its owner;

(12) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation, unless the Secretary of State approves such impingement after consultation with such nation;

(13) when the license is for an ocean thermal energy conversion plantship, he determines that the applicant has not provided adequate assurance that the plantship will be operated in such a way as to prevent its thermal plume from impinging on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility or plantship without the consent of its owner, and from impinging on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State approves such impingement after consultation with such nation; or

(14) if a regulation has been adopted which places an upper limit on the number or total capacity of ocean thermal energy conversion facilities or plantships to be licensed under this chapter for simultaneous operation, either overall or within specific geographic areas, pursuant to a determination under the provisions of section 9117(b)(4) of this title, issuance of the license will cause such upper limit to be exceeded.

(d) Issuance conditions; written agreement of compliance; disposal or removal requirements

(1) In issuing a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship, the Administrator shall prescribe conditions which he deems necessary to carry out the provisions of this chapter, or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter.

(2) No license shall be issued, transferred, or renewed under this chapter unless the applicant, licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Administrator, and (B) he will comply with conditions the Administrator may prescribe in accordance with the provisions of this chapter.

(3) The Administrator shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation, termination, relinquishment, or surrender of a license,

the licensee will dispose of or remove all components of the ocean thermal energy conversion facility or plantship as directed by the Administrator. In the case of components which another applicant or licensee desires to use, the Administrator may waive the disposal or removal requirements until he has reached a decision on the application. In the case of components lying on or below the seabed, the Administrator may waive the disposal or removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to the environment, navigation, fishing, or other uses of the seabed.

(e) License transfer

Upon application, a license issued under this chapter may be transferred if the Administrator determines that such transfer is in the public interest and that the transferee meets the requirements of this chapter and the prerequisites to issuance under subsection (c) of this section.

(f) License eligibility

Any United States citizen who otherwise qualifies under the terms of this chapter shall be eligible to be issued a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship.

(g) License term and renewal

Licenses issued under this chapter shall be for a term of not to exceed 25 years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such term, not to exceed an additional 10 years upon each renewal, as the Administrator determines to be reasonable and appropriate.

(Pub. L. 96–320, title I, §101, Aug. 3, 1980, 94 Stat. 976; Pub. L. 98–623, title VI, §602(a)(3)–(5), (b), (e)(8)–(11), Nov. 8, 1984, 98 Stat. 3410–3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (c)(10), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

1984—Subsecs. (a), (b)(2). Pub. L. 98–623, §602(a)(3), (4), substituted "located in whole or in part between the highwater mark and the seaward boundary of the territorial sea" for "located in the territorial sea".

Subsec. (c)(1). Pub. L. 98–623, §602(b)(1), substituted "cannot or will not" for "cannot and will not".

Subsec. (c)(4). Pub. L. 98–623, §602(e)(8), substituted "regulatory authority" for "enforcement authority".

Subsec. (c)(5). Pub. L. 98–623, §602(b)(2), substituted "has not expired" for "has expired".

Subsec. (c)(6). Pub. L. 98–623, §602(e)(9), substituted "application for a license" for "application for license".

Subsec. (c)(7). Pub. L. 98–623, §602(a)(5), substituted "will be documented under the laws of a foreign nation" for "will not be documented under the laws of the United States".

Subsec. (c)(10). Pub. L. 98–623, §602(b)(3), (5), substituted "any adjacent" for "each adjacent" and "(16 U.S.C. 1451 et seq.)" for "(33 U.S.C. 1451 et seq.)".

Subsec. (c)(13). Pub. L. 98–623, §602(b)(4), substituted "or" for "and" after the semicolon at the end.

Subsec. (c)(14). Pub. L. 98–623, §602(e)(10), substituted "if a regulation" for "when a regulation".

Subsec. (d)(2). Pub. L. 98–623, §602(e)(11), substituted "applicant, licensee" for "licensee".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EXECUTIVE DOCUMENTS

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§9112. Procedure

(a) Rules and regulations

The Administrator shall, after consultation with the Secretary of Energy and the heads of other Federal agencies, issue regulations to carry out the purposes and provisions of this chapter, in accordance with the provisions of section 553 of title 5, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application for issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Administrator is further authorized, consistent with the purposes and provisions of this chapter, to amend or rescind any such regulation. The Administrator shall complete issuance of final regulations to implement this chapter within 1 year of August 3, 1980.

(b) Site evaluation and preconstruction testing

The Administrator, in consultation with the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating may, if he determines it to be necessary, prescribe regulations consistent with the purposes of this chapter, relating to those activities in site evaluation and preconstruction testing at potential ocean thermal energy conversion facility or plantship locations that may (1) adversely affect the environment; (2) interfere with other reasonable uses of the high seas or with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and safety. If the Administrator prescribes regulations relating to such activities, such activities may not be undertaken after the effective date of such regulations except in accordance therewith.

(c) Expertise or statutory responsibility descriptions

Not later than 60 days after August 3, 1980, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, the Secretary of the Interior, the Chief of Engineers of the United States Army Corps of Engineers, and the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of ocean thermal energy conversion facilities or plantships, shall transmit to the Administrator written description of their expertise or statutory responsibilities pursuant to this chapter or any other Federal law.

(d) Application

(1) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by paragraph (2) of this subsection. If the Administrator determines that such information appears to be contained in the application, the Administrator shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Administrator determines that all of the required information does not appear to be contained in the application, the Administrator

shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

(2) Each application shall include such financial, technical, and other information as the Administrator determines by regulation to be necessary or appropriate to process the license pursuant to section 9111 of this title.

(e) Area description; additional license applications

(1) At the time notice of an application for an ocean thermal energy conversion facility is published pursuant to subsection (d) of this section, the Administrator shall publish a description in the Federal Register of an application area encompassing the site proposed in the application for such facility and within which the thermal plume of one ocean thermal energy conversion facility might be expected to impinge on so as to degrade the thermal gradient used by another ocean thermal energy conversion facility, unless the application is for a license for an ocean thermal energy conversion facility to be located within an application area which has already been designated.

(2) The Administrator shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area. Any person intending to file such an application shall submit a notice of intent to file an application to the Administrator not later than 60 days after the publication of notice pursuant to subsection (d) of this section, and shall submit the completed application no later than 90 days after publication of such notice. The Administrator shall publish notice of any such application received in accordance with subsection (d) of this section. No application for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until action has been completed on all timely filed applications pending with respect to such application area.

(f) Copies of application to other agencies

An application filed with the Administrator shall constitute an application for all Federal authorizations required for ownership, construction, and operation of an ocean thermal energy conversion facility or plantship, except for authorizations required by documentation, inspection, certification, construction, and manning laws and regulations administered by the Secretary of the department in which the Coast Guard is operating. At the time notice of any application is published pursuant to subsection (d) of this section, the Administrator shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Administrator the approval or disapproval of the application not later than 45 days after public hearings are concluded pursuant to subsection (g) of this section. In any case in which an agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Administrator of the manner in which the application may be amended or the license conditioned so as to bring it into compliance with the law or regulation involved.

(g) Notice, comments, and hearing

A license may be issued, transferred, or renewed only after public notice, opportunity for comment, and public hearings in accordance with this subsection. At least one such public hearing shall be held in the District of Columbia and in any adjacent coastal State to which a facility is proposed to be directly connected by pipeline or electric transmission cable. Any interested person may present relevant material at any such hearing. After the hearings required by this subsection are concluded, if the Administrator determines that there exist one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in the District of Columbia in accordance with the provisions of section 554 of title 5. The

record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications with respect to facilities for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to subsection (d) of this section. All public hearings on applications with respect to ocean thermal energy conversion plantships shall be concluded not later than 240 days after notice of the application has been published pursuant to subsection (d) of this section.

(h) Administrative fee

The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee, which shall be deposited into miscellaneous receipts of the Treasury. The amount of the fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration in reviewing and processing the application.

(i) Approval or denial of application; applications for same area; factors determinative of facility selection

(1) The Administrator shall approve or deny any timely filed application with respect to a facility for a designated application area submitted in accordance with the provision of this chapter not later than 90 days after public hearings on proposed licenses for that area are concluded pursuant to subsection (g) of this section. The Administrator shall approve or deny an application for a license for ownership, construction, and operation of an ocean thermal energy conversion plantship submitted pursuant to this chapter no later than 90 days after the public hearings on that application are concluded pursuant to subsection (g) of this section.

(2) In the event more than one application for a license for ownership, construction, and operation of an ocean thermal energy conversion facility is submitted pursuant to this chapter for the same designated application area, the Administrator, unless one or a specific combination of the proposed facilities clearly best serves the national interest, shall make decisions on license applications in the order in which they were submitted to him.

(3) In determining whether any one or a specific combination of the proposed ocean thermal energy conversion facilities clearly best serves the national interest, the Administrator, in consultation with the Secretary of Energy, shall consider the following factors:

(A) the goal of making the greatest possible use of ocean thermal energy conversion by installing the largest capacity practicable in each application area;

(B) the amount of net energy impact of each of the proposed ocean thermal energy conversion facilities;

(C) the degree to which the proposed ocean thermal energy conversion facilities will affect the environment;

(D) any significant differences between anticipated dates and commencement of operation of the proposed ocean thermal energy conversion facilities; and

(E) any differences in costs of construction and operation of the proposed ocean thermal energy conversion facilities, to the extent that such differentials may significantly affect the ultimate cost of energy or products to the consumer.

(Pub. L. 96–320, title I, §102, Aug. 3, 1980, 94 Stat. 979; Pub. L. 98–623, title VI, §602(f), Nov. 8, 1984, 98 Stat. 3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (i)(1), (2), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Subsec. (h). Pub. L. 98–623 substituted "The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee" for "Each person applying for a license pursuant to this chapter shall remit to the Administrator at the time the application is filed a nonrefundable application fee" and "imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration" for "shall be established by regulation by the Administrator, and shall reflect the reasonable administrative costs incurred".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§9113. Protection of submarine electric transmission cables and equipment

(a) Prohibited acts; misdemeanor; penalty and fine

Any person who shall willfully and wrongfully break or injure, or attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment for a term not exceeding 2 years, or to a fine not exceeding $5,000, or to both fine and imprisonment, at the discretion of the court.

(b) Culpable negligence; misdemeanor; penalty and fine

Any person who by culpable negligence shall break or injure any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment for a term not exceeding 3 months, or to a fine not exceeding $500, or to both fine and imprisonment, at the discretion of the court.

(c) Exceptions

The provisions of subsections (a) and (b) of this section shall not apply to any person who, after having taken all necessary precautions to avoid such breaking or injury, breaks or injures any submarine electric transmission cable or equipment in an effort to save the life or limb of himself or of any other person, or to save his own or any other vessel.

(d) Suits for damages

The penalties provided in subsections (a) and (b) of this section for the breaking or injury of any submarine electric transmission cable or equipment shall not be a bar to a suit for damages on account of such breaking or injury.

(e) Indemnity

Whenever any vessel sacrifices any anchor, fishing net, or other fishing gear to avoid injuring any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this chapter, the licensee shall indemnify the owner of such vessel for the items sacrificed: *Provided*, That the owner of the vessel had taken all reasonable precautionary measures beforehand.

(f) Repair costs

Any licensee who causes any break in or injury to any submarine cable or pipeline of any type

shall bear the cost of the repairs.

(Pub. L. 96–320, title I, §103, Aug. 3, 1980, 94 Stat. 982.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (e), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§9114. Antitrust review

(a) Review of applications by Attorney General

Whenever any application for issuance, transfer, or renewal of any license is received, the Administrator shall transmit promptly to the Attorney General a complete copy of such application. Within 90 days of the receipt of the application, the Attorney General shall conduct such antitrust review of the application as he deems appropriate, and submit to the Administrator any advice or recommendations he deems advisable to avoid any action upon such application by the Administrator which would create a situation inconsistent with the antitrust laws. If the Attorney General fails to file such views within the 90-day period, the Administrator shall proceed as if such views had been received. The Administrator shall not issue, transfer, or renew the license during the 90-day period, except upon written confirmation by the Attorney General that he does not intend to submit any further advice or recommendation on the application during such period.

(b) Issuance of license as constituting no defense for antitrust violations

The issuance of a license under this chapter shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws. Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the ownership, construction, or operation of an ocean thermal energy conversion facility or plantship.

(Pub. L. 96–320, title I, §104, Aug. 3, 1980, 94 Stat. 983.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§9115. Adjacent coastal States

(a) Designation of adjacent coastal State

(1) The Administrator, in issuing notice of application pursuant to section 9112(d) of this title, shall designate as an "adjacent coastal State" any coastal State which (A) would be directly connected by electric transmission cable or pipeline to an ocean thermal energy conversion facility as proposed in an application, or (B) in whose waters any part of such proposed ocean thermal energy conversion facility would be located, or (C) in whose waters an ocean thermal energy conversion plantship would be operated as proposed in an application.

(2) The Administrator shall, upon request of a State, designate such State as an "adjacent coastal

State" if he determines (A) that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State required to be designated as an "adjacent coastal State" by paragraph (1) of this subsection or (B) that the thermal plume of the proposed ocean thermal energy conversion facility or plantship is likely to impinge on so as to degrade the thermal gradient at possible locations for ocean thermal energy conversion facilities which could reasonably be expected to be directly connected by electric transmission cable or pipeline to such State. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of application for a proposed ocean thermal energy conversion facility in the Federal Register in accordance with section 9112(d) of this title. The Administrator shall make any designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

(b) State coastal zone management program

(1) Not later than 5 days after the designation of an adjacent coastal State pursuant to this section, the Administrator shall transmit a complete copy of the application to the Governor of such State. The Administrator shall not issue a license without consultation with the Governor of each adjacent coastal State which has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.). If the Governor of such a State has not transmitted his approval or disapproval to the Administrator by the 45th day after public hearings on the application are concluded pursuant to section 9112(g) of this title, such approval shall be conclusively presumed. If the Governor of such a State notifies the Administrator that an application which the Governor would otherwise approve pursuant to this paragraph is inconsistent in some respect with the State's coastal zone management program, the Administrator shall condition the license granted so as to make it consistent with such State program.

(2) Any adjacent coastal State which does not have an approved coastal zone management program in good standing, and any other interested State, shall have the opportunity to make its views known to, and to have them given full consideration by, the Administrator regarding the location, construction, and operation of an ocean thermal energy conversion facility or plantship.

(c) Agreements and compacts between States

The consent of Congress is given to 2 or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship or for the transfer of such a license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or other party thereto without further approval by the Congress.

(Pub. L. 96–320, title I, §105, Aug. 3, 1980, 94 Stat. 983; Pub. L. 98–623, title VI, §602(e)(12)–(14), Nov. 8, 1984, 98 Stat. 3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), referred to in subsec. (b)(1), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98–623, §602(e)(12), substituted "(A) that" for "that (A)".

Subsec. (b)(1). Pub. L. 98–623, §602(e)(13), (14), substituted "of an adjacent coastal State" for "of adjacent coastal State" and "application are concluded" for "application is concluded".

§9116. Diligence requirements

(a) Rules and regulations

The Administrator shall promulgate regulations requiring each licensee to pursue diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies.

(b) Termination of license

If the Administrator determines that a licensee is not pursuing diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies, or that the project has apparently been abandoned, the Administrator shall cause proceedings to be instituted under section 9121 of this title to terminate the license.

(Pub. L. 96–320, title I, §106, Aug. 3, 1980, 94 Stat. 984.)

§9117. Protection of the environment

(a) Environmental assessment program

The Administrator shall initiate a program to assess the effects on the environment of ocean thermal energy conversion facilities and plantships. The program shall include baseline studies of locations where ocean thermal energy conversion facilities or plantships are likely to be sited or operated; and research; and monitoring of the effects of ocean thermal energy conversion facilities and plantships in actual operation. The purpose of the program shall be to assess the environmental effects of individual ocean thermal energy facilities and plantships, and to assess the magnitude of any cumulative environmental effects of large numbers of ocean thermal energy facilities and plantships.

(b) Program purposes

The program shall be designed to determine, among other things—

(1) any short-term and long-term effects on the environment which may occur as a result of the operation of ocean thermal energy conversion facilities and plantships;

(2) the nature and magnitude of any oceanographic, atmospheric, weather, climatic, or biological changes in the environment which may occur as a result of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships;

(3) the nature and magnitude of any oceanographic, biological or other changes in the environment which may occur as a result of the operation of electric transmission cables and equipment located in the water column or on or in the seabed, including the hazards of accidentally severed transmission cables; and

(4) whether the magnitude of one or more of the cumulative environmental effects of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships requires that an upper limit be placed on the number or total capacity of such facilities or plantships to be licensed under this chapter for simultaneous operation, either overall or within specific geographic areas.

(c) Plan submittal to Congress

Within 180 days after August 3, 1980, the Administrator shall prepare a plan to carry out the program described in subsections (a) and (b) of this section, including necessary funding levels for the next 5 fiscal years, and submit the plan to the Congress.

(d) Reduction of program to minimum necessary level

The program established by subsections (a) and (b) of this section shall be reduced to the minimum necessary to perform baseline studies and to analyze monitoring data, when the Administrator determines that the program has resulted in sufficient knowledge to make the determinations enumerated in subsection (b) of this section with an acceptable level of confidence.

(e) Environmental impact statement

The issuance of any license for ownership, construction, and operation of an ocean thermal energy conversion facility or plantship shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 4332(2)(C) of this title. For all timely applications covering proposed facilities in a single application area, and for each application relating to a proposed plantship, the Administrator shall, pursuant to such section 4332(2)(C) of this title and in cooperation with other involved Federal agencies and departments, prepare a single environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this chapter to prepare an environmental impact statement. Each such draft environmental impact statement relating to proposed facilities shall be prepared and published within 180 days after notice of the initial application has been published pursuant to section 9112(d) of this title. Each such draft environmental impact statement relating to a proposed plantship shall be prepared and published within 180 days after notice of the application has been published pursuant to section 9112(d) of this title. Each final environmental impact statement shall be published not later than 90 days following the date on which public hearings are concluded pursuant to section 9112(g) of this title. The Administrator may extend the deadline for publication of a specific draft or final environmental impact statement to a later specified time for good cause shown in writing.

(f) Discharge of pollutants

An ocean thermal energy conversion facility or plantship licensed under this subchapter shall be deemed not to be a "vessel or other floating craft" for the purposes of section 1362(12)(B) of title 33.

(Pub. L. 96–320, title I, §107, Aug. 3, 1980, 94 Stat. 984.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(4) and (e), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§9118. Marine environmental protection and safety of life and property at sea

(a) Coast Guard operations

The Secretary of the department in which the Coast Guard is operating shall, subject to recognized principles of international law, prescribe by regulation and enforce procedures with respect to any ocean thermal energy conversion facility or plantship licensed under this chapter, including, but not limited to, rules governing vessel movement, procedures for transfer of materials between such a facility or plantship and transport vessels, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (1) to promote the safety of life and property at sea, (2) to prevent pollution of the marine environment, (3) to clean up any pollutants which may be discharged, and (4) to otherwise prevent or minimize any adverse impact from the construction and operation of such ocean thermal energy conversion facility or plantship.

(b) Promotion of safety of life and property

The Secretary of the department in which the Coast Guard is operating shall issue and enforce regulations, subject to recognized principles of international law, with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on any ocean thermal energy conversion facility or plantship licensed under this chapter.

(c) Marking components for protection of navigation

Whenever a licensee fails to mark any component of such an ocean thermal energy conversion

facility or plantship in accordance with applicable regulations, the Secretary of the department in which the Coast Guard is operating shall mark such components for the protection of navigation, and the licensee shall pay the cost of such marking.

(d) Safety zones

(1) Subject to recognized principles of international law and after consultation with the Secretary of Commerce, the Secretary of the Interior, the Secretary of State, and the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating shall designate a zone of appropriate size around and including any ocean thermal energy conversion facility licensed under this chapter and may designate such a zone around and including any ocean thermal energy conversion plantship licensed under this chapter for the purposes of navigational safety and protection of the facility or plantship. The Secretary of the department in which the Coast Guard is operating shall by regulation define permitted activities within such zone consistent with the purpose for which it was designated. The Secretary of the department in which the Coast Guard is operating shall, not later than 30 days after publication of notice pursuant to section 9112(d) of this title, designate such safety zone with respect to any proposed ocean thermal energy conversion facility or plantship.

(2) In addition to any other regulations, the Secretary of the department in which the Coast Guard is operating is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of an ocean thermal energy conversion facility or plantship licensed under this chapter, and to issue rules and regulations relating thereto.

(3) Except in a situation involving force majeure, a licensee of an ocean thermal energy conversion facility or plantship shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, load or unload cargo at, or otherwise utilize such a facility or plantship licensed under this chapter unless (A) the foreign state involved has agreed, by specific agreement with the United States, to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this chapter, while the vessel is located within the safety zone, and (B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(e) Rules and regulations; vessels; "ocean thermal energy conversion facility" defined

(1) The Secretary of the department in which the Coast Guard is operating shall promulgate and enforce regulations specified in paragraph (2) of this subsection and such other regulations as he deems necessary concerning the documentation, design, construction, alteration, equipment, maintenance, repair, inspection, certification, and manning of ocean thermal energy conversion facilities and plantships. In addition to other requirements prescribed under those regulations, the Secretary of the department in which the Coast Guard is operating may require compliance with those vessel documentation, inspection, and manning laws which he determines to be appropriate.

(2) Within 1 year after August 3, 1980, the Secretary of the department in which the Coast Guard is operating shall promulgate regulations under paragraph (1) of this subsection which require that any ocean thermal energy conversion facility or plantship—

(A) be documented;

(B) comply with minimum standards of design, construction, alteration, and repair; and

(C) be manned or crewed by United States citizens or aliens lawfully admitted to the United States for permanent residence, unless—

(i) there is not a sufficient number of United States citizens, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work, or

(ii) the President makes a specific finding, with respect to the particular vessel, platform, or moored, fixed or standing structure, that application of this requirement would not be consistent with the national interest.

(3) For the purposes of the documentation laws, for which compliance is required under paragraph (1) of this subsection, ocean thermal energy conversion facilities and plantships shall be deemed to

be vessels and, if documented, vessels of the United States for the purposes of the Ship Mortgage Act, 1920 (46 U.S.C. 911–984).

(4) For the purposes of this subsection the term "ocean thermal energy conversion facility" refers only to an ocean thermal energy conversion facility which has major components other than water intake or discharge pipes located seaward of the highwater mark [1]

(f) Protection of navigation

Subject to recognized principles of international law, the Secretary of the department in which the Coast Guard is operating shall promulgate and enforce such regulations as he deems necessary to protect navigation in the vicinity of a vessel engaged in the installation, repair, or maintenance of any submarine electric transmission cable or equipment, and to govern the markings and signals used by such a vessel.

(Pub. L. 96–320, title I, §108, Aug. 3, 1980, 94 Stat. 986; Pub. L. 98–623, title VI, §602(a)(6), (7), (e)(1), (15), Nov. 8, 1984, 98 Stat. 3410–3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (d), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

The Ship Mortgage Act, 1920, referred to in subsec. (e)(3), is section 30 of act June 5, 1920, ch. 250, 41 Stat. 1000, which was classified generally to chapter 25 (§911 et seq.) of former Title 46, Shipping, and was repealed by Pub. L. 100–710, title I, §106(b)(2), Nov. 23, 1988, 102 Stat. 4752, and reenacted by section 102(c) thereof as chapters 301 and 313 of Title 46, Shipping. Chapter 301 of Title 46, consisting solely of section 30101 which defined, among other terms, "vessel of the United States", was subsequently repealed by Pub. L. 109–304, §6(b), Oct. 6, 2006, 120 Stat. 1509. For a definition of "vessel of the United States" as that term applies to Title 46, see section 116 of Title 46.

AMENDMENTS

1984—Subsec. (d)(1). Pub. L. 98–623, §602(e)(1), substituted "navigational safety" for "reorganizational safety".

Subsec. (d)(3). Pub. L. 98–623, §602(e)(15), added par. (3) by inserting text of former subsec. (b)(3) of section 9119 of this title.

Subsec. (e)(2)(C)(ii). Pub. L. 98–623, §602(a)(6), substituted "moored, fixed or standing" for "moored or standing".

Subsec. (e)(4). Pub. L. 98–623, §602(a)(7), added par. (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[1] *So in original. Probably should be followed by a period.*

§9119. Prevention of interference with other uses of high seas

(a) License conditions

Each license shall include such conditions as may be necessary and appropriate to ensure that

construction and operation of the ocean thermal energy conversion facility or plantship are conducted with reasonable regard for navigation, fishing, energy production, scientific research, or other uses of the high seas, either by citizens of the United States or by other nations in their exercise of the freedoms of the high seas as recognized under the Convention of the High Seas and the general principles of international law.

(b) Rules and regulations

The Administrator shall promulgate regulations specifying under what conditions and in what circumstances the thermal plume of an ocean thermal energy conversion facility or plantship licensed under this chapter will be deemed—

(1) to impinge on so as to degrade the thermal gradient used by another ocean thermal energy conversion facility or plantship, or

(2) to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation.

Such regulations shall also provide for the Administrator to mediate or arbitrate any disputes among licensees regarding the extent to which the thermal plume of one licensee's facility or plantship impinges on the operation of another licensee's facility or plantship.

(c) Coast Guard operations

The Secretary of the department in which the Coast Guard is operating shall promulgate, after consultation with the Administrator, and shall enforce, regulations governing the movement and navigation of ocean thermal energy conversion plantships licensed under this chapter to ensure that the thermal plume of such an ocean thermal energy conversion plantship does not unreasonably impinge on so as to degrade the thermal gradient used by the operation of any other ocean thermal energy conversion plantship or facility except in case of force majeure or with the consent of owner of the other such plantship or facility, and to ensure that the thermal plume of such an ocean thermal energy conversion plantship does not impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State has approved such impingement after consultation with such nation.

(Pub. L. 96–320, title I, §109, Aug. 3, 1980, 94 Stat. 987; Pub. L. 98–623, title VI, §602(e)(2), (15), (16), Nov. 8, 1984, 98 Stat. 3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98–623, §602(e)(2), substituted "national resource jurisdiction" for "natural resource jurisdiction".

Subsec. (b)(3). Pub. L. 98–623, §602(e)(15), struck out par. (3) which prohibited a licensee of an ocean thermal energy conversion facility or plantship under this chapter, except in the case of force majeure, from permitting foreign vessels to call at, or load or unload cargo at, or otherwise use such facility or plantship unless the foreign state involved had specifically agreed to recognize the jurisdiction of the United States over the vessel and its personnel while such vessel was located in the safety zone and the vessel owner or operator had designated an agent in the United States for receipt of service of process for legal claims or proceedings arising from activities of the vessel or its personnel while located in such zone. See section 9118(d)(3) of this title.

Subsec. (c). Pub. L. 98–623, §602(e)(16), substituted "the thermal plume of such" for "the thermal plume such of" in second place appearing, and substituted "impingement" for "impingment".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§9120. Monitoring of licensees' activities

Each license shall require the licensee—

(1) to allow the Administrator to place appropriate Federal officers or employees in or aboard the ocean thermal energy conversion facility or plantship to which the license applies, at such times and to such extent as the Administrator deems reasonable and necessary to assess compliance with any condition or regulation applicable to the license, and to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply;

(2) to cooperate with such officers and employees in the performance of monitoring functions; and

(3) to monitor the environmental effects, if any, of the operation of the ocean thermal energy conversion facility or plantship in accordance with regulations issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate mitigation methods and possibilities.

(Pub. L. 96–320, title I, §110, Aug. 3, 1980, 94 Stat. 988; Pub. L. 98–623, title VI, §602(a)(8), Nov. 8, 1984, 98 Stat. 3411.)

EDITORIAL NOTES

AMENDMENTS

1984—Par. (1). Pub. L. 98–623 substituted "in or aboard" for "aboard".

§9121. Suspension, revocation, and termination of licenses

(a) Filing of action by Attorney General; automatic suspension

Whenever a licensee fails to comply with any applicable provision of this chapter or any applicable rule, regulation, restriction, or condition issued or imposed by the Administrator under the authority of this chapter, the Attorney General, at the request of the Administrator, shall file an action in the appropriate United States district court to—

(1) suspend the license; or

(2) if such failure is knowing and continues for a period of 30 days after the Administrator mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this section is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

(b) Immediate suspension of construction or operation pending completion of proceedings

If the Administrator determines that immediate suspension of the construction or operation of an ocean thermal energy conversion facility or plantship or any component thereof is necessary to protect public health and safety or to eliminate imminent and substantial danger to the environment the Administrator may order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

(Pub. L. 96–320, title I, §111, Aug. 3, 1980, 94 Stat. 988; Pub. L. 98–623, title VI, §602(e)(17), Nov. 8, 1984, 98 Stat. 3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–623 substituted "environment" for "environment established by any treaty or convention,".

§9122. Recordkeeping and public access to information

(a) Records and reports

Each licensee shall establish and maintain such records, make such reports, and provide such information as the Administrator, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provisions of this chapter. Each licensee shall submit such reports and shall make available such records and information as the Administrator may request.

(b) Confidential information

Any information reported to or collected by the Administrator under this chapter which is exempt from disclosure pursuant to section 552(b)(4) of title 5 (relating to trade secrets and commercial or financial information which is privileged or confidential) shall not—

(1) be publicly disclosed by the Administrator or by any other officer or employee of the United States, unless the Administrator has—

(A) determined that the disclosure is necessary to protect the public health or safety or the environment against an unreasonable risk of injury, and

(B) notified the person who submitted the information 10 days before the disclosure is to be made, unless the delay resulting from such notice would be detrimental to the public health or safety or the environment, or

(2) be otherwise disclosed except—

(A)(i) to other Federal and adjacent coastal State government departments and agencies for official use,

(ii) to any committee of the Congress of appropriate jurisdiction, or

(iii) pursuant to court order, and

(B) when the Administrator has taken appropriate steps to inform the recipient of the confidential nature of the information.

(Pub. L. 96–320, title I, §112, Aug. 3, 1980, 94 Stat. 989; Pub. L. 98–623, title VI, §602(e)(3), (18), Nov. 8, 1984, 98 Stat. 3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–623, §602(e)(3), substituted "(relating to trade secrets and commercial or financial information which is privileged or confidential)" for "(relating to trade secrets and confidential commercial and financial information)".

Subsec. (b)(2)(B). Pub. L. 98–623, §602(e)(18), substituted "Administrator" for "administrator".

§9123. Relinquishment or surrender of license

(a) Relinquishment or surrender authority; continuation of liability

Any licensee may at any time, without penalty, surrender to the Administrator a license issued to him, or relinquish to the Administrator, in whole or in part, any right to conduct construction or operation of an ocean thermal energy conversion facility or plantship, including part or all of any right of way which may have been granted in conjunction with such license: *Provided*, That such surrender or relinquishment shall not relieve the licensee of any obligation or liability established by this chapter, or any other Act, or of any obligation or liability for actions taken by him prior to such surrender or relinquishment, or during disposal or removal of any components required to be disposed of or removed pursuant to this chapter.

(b) Transfer of right of way

If part or all of a right of way which is relinquished, or for which the license is surrendered, to the Administrator pursuant to subsection (a) of this section contains an electric transmission cable or pipeline which is used in conjunction with another license for an ocean thermal energy conversion facility, the Administrator shall allow the other licensee an opportunity to add such right of way to his license before informing the Secretary of the Interior that the right of way has been vacated.

(Pub. L. 96–320, title I, §113, Aug. 3, 1980, 94 Stat. 989.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§9124. Civil actions

(a) Jurisdiction

Except as provided in subsection (b) of this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action for equitable relief on his own behalf in the United States District Court for the District of Columbia whenever such action constitutes a case or controversy—

(1) against any person who is alleged to be in violation of any provision of this chapter or any regulation or condition of a license issued pursuant to this chapter; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary.

In suits brought under this chapter, the district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this chapter or any regulation or term or condition of a license issued pursuant to this chapter or to order the Administrator to perform such act or duty, as the case may be.

(b) Notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

(c) Right of Administrator or Attorney General to intervene

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Award of costs

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Other remedies not restricted

Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement or to seek any other relief.

(Pub. L. 96–320, title I, §114, Aug. 3, 1980, 94 Stat. 990.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§9125. Judicial review

Any person suffering legal wrong, or who is adversely affected or aggrieved by the Administrator's decision to issue, transfer, modify, renew, suspend, or terminate a license may, not later than 60 days after such decision is made, seek judicial review of such decision in the United States Court of Appeals for the District of Columbia. A person shall be deemed to be aggrieved by the Administrator's decision within the meaning of this chapter if he—

(1) has participated in the administrative proceedings before the Administrator (or if he did not so participate, he can show that his failure to do so was caused by the Administrator's failure to provide the required notice); and

(2) is adversely affected by the Administrator's action.

(Pub. L. 96–320, title I, §115, Aug. 3, 1980, 94 Stat. 990.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in introductory provisions, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified

principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§9126. Exempt operations

(a) Test platforms

The provisions of this subchapter shall not apply to any test platform which will not operate as an ocean thermal energy conversion facility or plantship after conclusion of the testing period.

(b) Commercial demonstration ocean thermal energy conversion facilities or plantships

The provisions of this subchapter shall not apply to ownership, construction, or operation of any ocean thermal energy conversion facility or plantship which the Secretary of Energy has designated in writing as a demonstration project for the development of alternative energy sources for the United States which is conducted by, participated in, or approved by the Department of Energy. The Secretary of Energy, after consultation with the Administrator, shall require such demonstration projects to abide by as many of the substantive requirements of this subchapter as he deems to be practicable without damaging the nature of or unduly delaying such projects.

(Pub. L. 96–320, title I, §116, Aug. 3, 1980, 94 Stat. 991; Pub. L. 98–623, title VI, §602(e)(4), Nov. 8, 1984, 98 Stat. 3412.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–623 substituted "facility or plantship" for "facility or platform".

§9127. Periodic review and revision of regulations

The Administrator and the Secretary of the department in which the Coast Guard is operating shall periodically, at intervals of not more than every 3 years, and in consultation with the Secretary of Energy, review any regulations promulgated pursuant to the provisions of this subchapter to determine the status and impact of such regulations on the continued development, evolution, and commercialization of ocean thermal energy conversion technology. The results of each such review shall be included in the next annual report required by section 9165 [1] of this title. The Administrator and such Secretary are authorized and directed to promulgate any revisions to the then effective regulations as are deemed necessary and appropriate based on such review, to ensure that any regulations promulgated pursuant to the provisions of this subchapter do not impede such development, evolution, and commercialization of such technology. Additionally, the Secretary of Energy is authorized to propose, based on such review, such revisions for the same purpose. The Administrator or such Secretary, as appropriate, shall have exclusive jurisdiction with respect to any such proposal by the Secretary of Energy and, pursuant to applicable procedures, shall consider and take final action on any such proposal in an expeditious manner. Such consideration shall include at least one informal hearing pursuant to the procedures in section 553 of title 5.

(Pub. L. 96–320, title I, §117, Aug. 3, 1980, 94 Stat. 991.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 9165 of this title, referred to in text, was omitted from the Code.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[1] *See References in Text note below.*

SUBCHAPTER II—MARITIME FINANCING FOR OCEAN THERMAL ENERGY CONVERSION

§9141. Determinations under Merchant Marine Act, 1936

(a)(1) For the purposes of chapter 535 of title 46, any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter, and any vessel providing shipping service to or from such an ocean thermal energy conversion facility or plantship, shall be deemed to be a vessel operated in the foreign commerce of the United States.

(2) The provisions of paragraph (1) of this subsection shall apply for taxable years beginning after December 31, 1981.

(b) For the purposes of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.),[1] any vessel documented under the laws of the United States and used in providing shipping service to or from any ocean thermal energy conversion facility or plantship licensed pursuant to the provisions of this chapter shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 109 of title 46.

(Pub. L. 96–320, title II, §201, Aug. 3, 1980, 94 Stat. 991.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

The Merchant Marine Act, 1936, referred to in subsec. (b), is act June 29, 1936, ch. 858, 49 Stat. 1985, which was classified principally to chapter 27 (§1101 et seq.) of the former Appendix to Title 46, Shipping. The Act, with the exception of title V, most of title VI, and sections 301, 801, 802, 809(a), and 909 thereof, was repealed and restated, mainly in subtitle V of Title 46, by Pub. L. 109–304, §§8, 19, Oct. 6, 2006, 120 Stat. 1555, 1710. Title V and sections 301 and 909 of the Act are set out as notes under section 53101 of Title 46. Those portions of title VI not repealed by Pub. L. 109–304 and sections 802 and 809(a) of the Act were repealed by Pub. L. 114–120, title III, §313(a), Feb. 8, 2016, 130 Stat. 58. Section 801 of the Act was transferred to section 57522 of Title 46 by Pub. L. 114–120, title III, §313(c)(1)(A), Feb. 8, 2016, 130 Stat. 58. For complete classification of the Act to the Code, see Tables. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

CODIFICATION

In subsec. (a)(1), "chapter 535 of title 46" substituted for "section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177)" and in subsec. (b), "section 109 of title 46" substituted for "section 905(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1244(a))" on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted chapter 535 and section 109 of Title 46, Shipping.

[1] *See References in Text note below.*

SUBCHAPTER III—ENFORCEMENT

§9151. Prohibited acts

It is unlawful for any person who is a United States citizen or national, or a foreign national in or on board an ocean thermal energy conversion facility or plantship or on board any vessel documented or numbered under the laws of the United States, or who is subject to the jurisdiction of the United States by an international agreement to which the United States is a party—

(1) to violate any provision of this chapter; or any rule, regulation, or order issued pursuant to this chapter; or any term or condition of any license issued to such person pursuant to this chapter;

(2) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of sections 9120 and 9153 of this title to enter or board an ocean thermal energy conversion facility or plantship or any vessel documented or numbered under the laws of the United States, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this chapter or any rule, regulation, order, term, or condition referred to in paragraph (1) of this section;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (2) of this section;

(4) to resist a lawful arrest for any act prohibited by this section; or

(5) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person subject to this section knowing that the other person has committed any act prohibited by this section.

(Pub. L. 96–320, title III, §301, Aug. 3, 1980, 94 Stat. 994; Pub. L. 98–623, title VI, §602(a)(9), Nov. 8, 1984, 98 Stat. 3411.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in pars. (1) and (2), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Pub. L. 98–623 substituted "in or on board an ocean thermal energy conversion facility or plantship or on board any vessel" for "on board an ocean thermal energy conversion facility or plantship or other vessel" in provisions preceding par. (1).

Par. (2). Pub. L. 98–623 substituted "to enter or board" for "to board".

§9152. Remedies and penalties

(a) Issuance and enforcement of orders

(1) The Administrator or his delegate shall have the authority to issue and enforce orders during proceedings brought under this chapter. Such authority shall include the authority to issue subpenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses.

(2) Whenever on the basis of any information available to him the Administrator finds that any person subject to section 9151 of this title is in violation of any provision of this chapter or any rule,

regulation, order, license, or term or condition thereof, or other requirements under this chapter, he may issue an order requiring such person to comply with such provision or requirement, or bring a civil action in accordance with subsection (b) of this section.

(3) Any compliance order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed 30 days, which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Civil actions by Attorney General; equitable relief

(1) Upon a request by the Administrator, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction, to halt any violation for which the Administrator is authorized to issue a compliance order under subsection (a)(2) of this section.

(2) Upon a request by the Administrator, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation, by any person subject to section 9151 of this title, of any provision of this chapter, any regulation issued pursuant to this chapter, or any license condition.

(c) Civil penalties

(1) Any person who is found by the Administrator, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 9151 of this title shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Administrator, or his designee, by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) of this subsection may obtain a review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. The findings and order of the Administrator shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

(3) If any person subject to section 9151 of this title fails to pay an assessment of a civil penalty against him after it has become final, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection.

(d) Criminal penalties

(1) Any person subject to section 9151 of this title is guilty of an offense if he willfully commits any act prohibited by such section.

(2) Any offense, other than an offense for which the punishment is prescribed by section 9113 of this title, is punishable by a fine of not more than $75,000 for each day during which the violation continues. Any offense described in paragraphs (2), (3), (4), and (5) of section 9151 of this title is punishable by the fine or imprisonment for not more than 6 months, or both. If, in the commission of any offense, the person subject to section 9151 of this title uses a dangerous weapon, engages in

conduct that causes bodily injury to any Federal officer or employee, or places any Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than 10 years, or both.

(e) In rem liability of vessels

Any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter and any other vessel documented or numbered under the laws of the United States, except a public vessel engaged in noncommercial activities, used in any violation of this chapter or of any rule, regulation, order, license, or term or condition thereof, or other requirements of this chapter, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof, whenever it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(Pub. L. 96–320, title III, §302, Aug. 3, 1980, 94 Stat. 995; Pub. L. 98–623, title VI, §602(e)(5), Nov. 8, 1984, 98 Stat. 3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (2), (b)(2), and (e), was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–623 substituted "to halt any violation" for "any violation".

§9153. Enforcement

(a) Enforcement responsibility of Administrator of National Oceanic and Atmospheric Administration; Coast Guard

Except where a specific section of this chapter designates enforcement responsibility, the provisions of this chapter shall be enforced by the Administrator. The Secretary of the department in which the Coast Guard is operating shall have exclusive responsibility for enforcement measures which affect the safety of life and property at sea, shall exercise such other enforcement responsibilities with respect to vessels subject to the provisions of this chapter as are authorized under other provisions of law, and may, upon the specific request of the Administrator, assist the Administrator in the enforcement of any provision of this chapter. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b) of this section. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

(b) Enforcement activities of authorized officers

To enforce the provisions of this chapter in or on board any ocean thermal energy conversion facility or plantship or any vessel subject to the provisions of this chapter, any officer who is authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating may—

(1) enter or board, and inspect, any ocean thermal energy conversion facility or plantship or any vessel which is subject to the provisions of this chapter;

(2) search the vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this chapter;

(3) arrest any person subject to section 9151 of this title if the officer has reasonable cause to believe that the person has committed a criminal act prohibited by sections 9151 and 9152(d) of this title;

(4) seize the vessel together with its gear, furniture, appurtenances, stores, and cargo, used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this chapter if such seizure is necessary to prevent evasion of the enforcement of this chapter;

(5) seize any evidence related to any violation of any provision of this chapter;

(6) execute any warrant or other process issued by any court of competent jurisdiction; and

(7) exercise any other lawful authority.

(c) Jurisdiction; venue

Except as otherwise specified in section 9125 of this title, the district courts of the United States shall have exclusive original jurisdiction over any case or controversy arising under the provisions of this chapter. Except as otherwise specified in this chapter, venue shall lie in any district wherein, or nearest to which, the cause of action arose, or wherein any defendant resides, may be found, or has his principal office. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(d) Definitions

For the purposes of this section, the term "vessel" includes an ocean thermal energy conversion facility or plantship, and the term "provisions of this chapter" or "provision of this chapter" includes any rule, regulation, or order issued pursuant to this chapter and any term or condition of any license issued pursuant to this chapter.

(Pub. L. 96–320, title III, §303, Aug. 3, 1980, 94 Stat. 996; Pub. L. 98–623, title VI, §602(a)(10), Nov. 8, 1984, 98 Stat. 3411.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–623 substituted "in or on board any ocean thermal energy conversion facility or plantship or any vessel" for "on board any ocean thermal energy conversion facility or plantship or other vessel" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98–623 substituted "enter or board, and inspect, any ocean thermal energy conversion facility or plantship or" for "board and inspect".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for

treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§9161. Law of the Sea Treaty

If the United States ratifies a treaty, which includes provisions with respect to jurisdiction over ocean thermal energy conversion activities, resulting from any United Nations Conference on the Law of the Sea, the Administrator, after consultation with the Secretary of State, shall promulgate any amendment to the regulations promulgated under this chapter which is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

(Pub. L. 96–320, title IV, §401, Aug. 3, 1980, 94 Stat. 998.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§9162. International negotiations

The Secretary of State, in cooperation with the Administrator and the Secretary of the department in which the Coast Guard is operating, shall seek effective international action and cooperation in support of the policy and purposes of this chapter and may initiate and conduct negotiations for the purpose of entering into international agreements designed to guarantee noninterference of ocean thermal energy conversion facilities and plantships with the thermal gradients used by other such facilities and plantships, to assure protection of such facilities and plantships and of navigational safety in the vicinity thereof, and to resolve such other matters relating to ocean thermal energy conversion facilities and plantships as need to be resolved in international agreements.

(Pub. L. 96–320, title IV, §402, Aug. 3, 1980, 94 Stat. 998.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and

the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§9163. Relationship to other laws

(a) Facilities and plantships as comparable to areas of exclusive Federal jurisdiction located within a State

(1) The Constitution, laws, and treaties of the United States shall apply to an ocean thermal energy conversion facility or plantship licensed under this chapter and all of which is located seaward of the highwater mark, and to activities connected, associated, or potentially interfering with the use or operation of any such facility or plantship, in the same manner as if such facility or plantship were an area of exclusive Federal jurisdiction located within a State. Nothing in this chapter shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty.

(2) Ocean thermal energy conversion facilities and plantships licensed under this chapter do not possess the status of islands and have no territorial seas of their own.

(b) Responsibilities and authorities of States or United States within territorial seas; applicability of State law to facilities located beyond territorial seas

(1) Except as may otherwise be provided by this chapter, nothing in this chapter shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(2) The law of the nearest adjacent coastal State to which an ocean thermal energy conversion facility located beyond the territorial sea and licensed under this chapter is connected by electric transmission cable or pipeline, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to such facility, to the extent applicable and not inconsistent with any provision or regulation under this chapter or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed: *Provided, however*, That the application of State taxation laws is not extended hereby outside the seaward boundary of any State. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States outside the seaward boundary of any State.

(c) Customs laws

(1) For the purposes of the customs laws administered by the Secretary of the Treasury, ocean thermal energy conversion facilities and plantships documented under the laws of the United States and licensed under this chapter shall be deemed to be vessels.

(2) Except insofar as they apply to vessels documented under the laws of the United States, the customs laws administered by the Secretary of the Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19, shall not apply to any ocean thermal energy conversion facility or plantship documented under the laws of the United States and licensed under the provisions of this chapter, but all foreign articles to be used in the construction of any such facility or plantship, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(Pub. L. 96–320, title IV, §403, Aug. 3, 1980, 94 Stat. 998; Pub. L. 98–623, title VI, §602(a)(11), (12), (e)(6), Nov. 8, 1984, 98 Stat. 3411, 3412.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94

Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

The Tariff Act of 1930, as amended, referred to in subsec. (c)(2), is act June 17, 1930, ch. 497, 46 Stat. 590, which is classified generally to chapter 4 (§1202 et seq.) of Title 19. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–623, §602(a)(11), inserted "and all of which is located seaward of the highwater mark,".

Subsec. (c)(2). Pub. L. 98–623, §602(a)(12), substituted "ocean thermal energy conversion facility or plantship documented under the laws of the United States and licensed" for "ocean thermal energy conversion facility or plantship licensed".

Pub. L. 98–623, §602(e)(6), substituted "Secretary of the Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19," for "Secretary of the Treasury".

EXECUTIVE DOCUMENTS

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§9164. Submarine electric transmission cable and equipment safety

(a) Standards and regulations

The Secretary of Energy, in cooperation with other interested Federal agencies and departments, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of submarine electric transmission cables and equipment subject to the jurisdiction of the United States. Such standards and regulations shall include, but not be limited to, requirements for the use of the safest and best available technology for submarine electric transmission cable shielding, and for the use of automatic switches to shut off electric current in the event of a break in such a cable.

(b) Report to Congress on appropriation and staffing needs

The Secretary of Energy, in cooperation with other interested Federal agencies and departments, is authorized and directed to report to the Congress within 60 days after August 3, 1980, on appropriations and staffing needed to monitor submarine electric transmission cables and equipment subject to the jurisdiction of the United States so as to assure that they meet all applicable standards for construction, operation, and maintenance.

(Pub. L. 96–320, title IV, §404, Aug. 3, 1980, 94 Stat. 999.)

§9165. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 96–320, title IV, §405, Aug. 3, 1980, 94 Stat. 999; Pub. L. 98–623, title VI, §602(c), Nov. 8, 1984, 98 Stat. 3411, which required the Administrator of the National Oceanic and Atmospheric Administration to submit an annual report on the administration of this chapter to the President of the Senate and the Speaker of the House of Representatives, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 8th item on page 54 of House Document No. 103–7.

§9166. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce, for the use of the Administrator in carrying out the provisions of this chapter, not to exceed $3,000,000 for the fiscal year ending September 30, 1981, not to exceed $3,500,000 for the fiscal year ending September 30, 1982, not to exceed $3,500,000 for the fiscal year ending September 30, 1983, not to exceed $480,000 for each of the fiscal years ending September 30, 1984 and September 30, 1985, and not to exceed $630,000 for each of the fiscal years ending September 30, 1986 and September 30, 1987.

(Pub. L. 96–320, title IV, §406, Aug. 3, 1980, 94 Stat. 1000; Pub. L. 98–623, title VI, §601, Nov. 8, 1984, 98 Stat. 3410.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Pub. L. 98–623 inserted provisions authorizing appropriations not to exceed $480,000 for each of the fiscal years ending September 30, 1984 and September 30, 1985, and not to exceed $630,000 for each of the fiscal years ending September 30, 1986 and September 30, 1987.

§9167. Severability

If any provision of this chapter or any application thereof is held invalid, the validity of the remainder of the chapter, or any other application, shall not be affected thereby.

(Pub. L. 96–320, title IV, §407, Aug. 3, 1980, 94 Stat. 1000.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§9168. Report to Congress on promotion and enhancement of export potential of ocean thermal energy conversion components, facilities, and plantships

Within 18 months after November 8, 1984, the Administrator shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing what steps the United States Government is taking and plans to take to promote and enhance the export potential of ocean thermal energy conversion components, facilities, and plantships manufactured by United States industry. Such report shall include—

(1) the relevant views of the National Oceanic and Atmospheric Administration, International Trade Administration, Maritime Administration, Department of Energy, Small Business Administration, United States International Development Cooperative Agency, the Office of the Special Trade Representative, and other relevant United States Government agencies;

(2) the findings of studies conducted by the Administrator to fulfill the intent of this section;

(3) a summary of activities, including consultations held with representatives of both the ocean thermal energy conversion and financial industries conducted by the Administrator to fulfill the intent of this section; and

(4) such recommendations as the Administrator deems appropriate for amending this chapter or other relevant Acts to better promote and enhance the export potential of ocean thermal energy conversion components, facilities and plantships manufactured by United States industry.

(Pub. L. 96–320, title IV, §408, as added Pub. L. 98–623, title VI, §602(d), Nov. 8, 1984, 98 Stat. 3411.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in par. (4), was in the original "the Ocean Thermal Energy Conversion Act of 1980 (Public Law 96–320)", meaning Pub. L. 96–320, Aug. 3, 1980, 94 Stat. 974, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

CHAPTER 100—WIND ENERGY SYSTEMS

Sec.

9201. Congressional findings and declaration of purpose.
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§9201. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the United States is faced with a finite and diminishing resource base of native fossil fuels and, as a consequence, must develop as quickly as possible a diversified, pluralistic national energy capability and posture;

(2) the current imbalance between supply and demand for fuels and energy in the United States is likely to grow for many years;

(3) it is in the Nation's interest to provide opportunities for the increased production of electricity from renewable energy sources;

(4) the early wide-spread utilization of wind energy for the generation of electricity and for mechanical power could lead to relief on the demand for existing non-renewable fuel and energy supplies;

(5) the use of large wind energy systems for certain limited applications is already economically feasible;

(6) the use of small wind energy systems for certain applications is already economically feasible, and therefore, the Federal Government should not undertake any financial incentive or financial initiative which may detrimentally affect commercial markets for small wind energy

systems;

(7) an aggressive research, development and demonstration program to accelerate widespread utilization of wind energy should solve existing technical problems of converting wind energy into electricity and mechanical energy and, supported by an assured and growing market for wind energy systems during the next decade, should maximize the future contribution of wind energy to the Nation's future energy production;

(8) it is the proper and appropriate role of the Federal Government to undertake research and development, to participate in demonstration programs for wind energy systems, and to assist private industry, other entities, and the general public in hastening the widespread utilization of such systems;

(9) the widespread use of wind energy systems to supplement and replace conventional methods for the generation of electricity and mechanical power would have a beneficial effect upon the environment;

(10) the evaluation of the performance and reliability of wind energy technologies can be expedited by the testing of prototypes under carefully controlled conditions;

(11) innovation and creativity in the development of components and systems for converting wind energy into electricity and mechanical energy can be fostered through encouraging direct contact between the manufacturers of such components and systems and utilities and other persons interested in utilizing such components and systems; and

(12) consistent with the findings of the Domestic Policy Review on Solar Energy, wind energy can potentially contribute 1.7 quads of energy per year by the year 2000.

(b) It is declared to be the policy of the United States and the purpose of this chapter to establish during the next eight years an aggressive research, development, demonstration, and technology applications program for converting wind energy into electricity and mechanical energy. It is declared to be the further policy of the United States and the purpose of this chapter that the objectives of such program are—

(1) to reduce the average cost of electricity produced by installed wind energy systems, by the end of fiscal year 1988, to a level competitive with conventional energy sources;

(2) to reach a total megawatt capacity in the United States from wind energy systems, by the end of fiscal year 1988, of at least eight hundred megawatts, of which at least one hundred megawatts are provided by small wind energy systems; and

(3) to accelerate the growth of a commercially viable and competitive industry to make wind energy systems available to the general public as an option in order to reduce national consumption of fossil fuel.

(Pub. L. 96–345, §2, Sept. 8, 1980, 94 Stat. 1139.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–345, §1, Sept. 8, 1980, 94 Stat. 1139, provided: "That this Act [enacting this chapter] may be cited as the 'Wind Energy Systems Act of 1980'."

§9202. Definitions

For purposes of this chapter—

(1) the term "wind energy system" means a system of components which converts the kinetic energy of the wind into electricity or mechanical power, and which comprises all necessary components, including energy storage, power conditioning, control systems, and transmission systems, where appropriate, to provide electricity or mechanical power for individual, residential, agricultural, commercial, industrial, utility, or governmental use;

(2) the term "small wind energy system" means a wind energy system having a maximum rated

capacity of one hundred kilowatts or less;

(3) the term "large wind energy system" means a wind energy system which is not a small wind energy system;

(4) the term "public and private entity" means any individual, corporation, partnership, firm, association, agricultural cooperative, public- or investor-owned utility, public or private institution or group, any State or local government agency, or any other domestic entity;

(5) the term "known wind resource" means a site with an estimated average annual wind velocity of at least twelve miles per hour;

(6) the term "conventional energy source" means energy produced from oil, gas, coal, and nuclear fuels; and

(7) the term "Secretary" means the Secretary of Energy.

(Pub. L. 96–345, §3, Sept. 8, 1980, 94 Stat. 1140.)

§9203. Comprehensive program management plan

(a) Program activities and periods; consultations with heads of Federal agencies and non-Federal organizations

The Secretary shall prepare a comprehensive program management plan for the research, development, demonstration, and technology application activities to carry out the purposes of this chapter. The program activities shall be conducted in accordance with such comprehensive plan which shall include—

(1) a five-year program for small wind energy systems,

(2) an eight-year program for large wind energy systems, and

(3) a three-year program for wind resource assessment [1]

which shall be consistent with the provisions of sections 9204, 9205, and 9206 of this title. In the preparation of such plan, the Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Interior, and the heads of such other Federal agencies and such public and private organizations as he deems appropriate.

(b) Initial transmittal to Congressional committees

The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within nine months after September 8, 1980.

(c) Subsequent transmittals to Congress; descriptive statement: current plan, changes, justification for changes, progress, interagency cooperation, and recommendations for achievement of goals

Concurrently with the submission of the President's annual budget to the Congress for each year after the year in which the comprehensive plan is initially transmitted under subsection (b), the Secretary shall transmit to the Congress a detailed description of the comprehensive plan as then in effect, setting forth the modifications which may be necessary to appropriately revise such plan and any changes in circumstances which may have occurred since the plan or the last previous modification thereof was transmitted in accordance with this section. The detailed description of the comprehensive plan under this subsection shall include but need not be limited to a statement setting forth with respect to each of the programs under this chapter any changes in—

(1) the anticipated research, development, demonstration, and technology application objectives to be achieved by the program;

(2) the program elements, management structure, and activities, including any regional aspects and field responsibilities thereof;

(3) the program strategies and technology applications plans, including detailed mile- stone goals to be achieved during the next fiscal year for all major activities and projects;

(4) any significant economic, environmental, and societal effects which the program may have;

(5) the total estimated cost of individual program items; and

(6) the estimated relative financial contributions of the Federal Government and non-Federal participants in the program.

Such description shall also include a detailed justification of any such changes, a detailed description of the progress made toward achieving the goals of this chapter, a statement on the status of interagency cooperation in meeting such goals, and any legislative or other recommendations which the Secretary may have to help attain such goals.

(Pub. L. 96–345, §4, Sept. 8, 1980, 94 Stat. 1141.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (c) of this section is listed as the 6th item on page 87), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

[1] *So in original. Probably should be followed by a comma.*

§9204. Research, development, and demonstration

(a) Areas of knowledge limiting system utilization

The Secretary shall initiate research and development or accelerate existing research and development in areas in which the lack of knowledge limits the widespread utilization of wind energy systems in order to achieve the purposes of this chapter.

(b) Development of system prototypes and improvements

(1) The Secretary shall continue an aggressive program for the development of prototypes of advanced wind energy systems.

(2) As often as he deems appropriate, the Secretary shall solicit and evaluate proposals for the research and development of any new or improved technologies, which, in the Secretary's opinion, will contribute to the development of improvements in current wind energy systems.

(c) Acquisition of economic, scientific, and technological information of system operations under various circumstances and conditions

The Secretary is authorized to enter into contracts, grants, and cooperative agreements with public and private entities for the purchase, fabrication, installation, and testing to obtain scientific, technological, and economic information from the demonstration of a variety of prototypes of advanced wind energy systems under a variety of circumstances and conditions.

(d) Other provisions inapplicable

In carrying out the responsibilities under this section, the Secretary is not subject to the requirements of section 553 of title 5 or section 7191 of this title.

(Pub. L. 96–345, §5, Sept. 8, 1980, 94 Stat. 1141.)

§9205. Technology application programs

(a) Unit, operating, and maintenance costs

The Secretary shall establish a technology application program for wind energy systems to achieve the purposes of this chapter by reduction in unit costs of wind energy systems through mass production and by determination of operating and maintenance costs through broad operational systems experience.

(b) Proposals for Federal assistance

In achieving the objectives of this section, the Secretary shall solicit and evaluate proposals for Federal assistance pursuant to paragraphs (1), (2), and (3) of subsection (c) for investigating, purchasing, and installing such wind energy systems from public or private entities wishing to utilize wind energy systems.

(c) Forms of Federal assistance

In achieving the objectives of this section, the Secretary is authorized to use various forms of Federal assistance including, but not limited to—

(1) contracts and cooperative agreements;
(2) grants;
(3) loans; and
(4) direct Federal procurement.

(d) Quantity production and utilization

In carrying out his duties under this chapter, the Secretary is authorized to enter into such contracts and cooperative agreements with any public or private entity as may be necessary or appropriate for the production and utilization of large and small wind energy systems in quantities sufficient to achieve the objectives of this section.

(e) Procedure for direct grants for large systems; limitation of amount

In carrying out his duties under this chapter, the Secretary shall, within six months of September 8, 1980, establish procedures to allow any public or private entity wishing to install a large wind energy system to apply for and, upon meeting such terms and conditions as the Secretary may prescribe, to receive a direct grant for a portion of the total purchase and installation cost of such wind energy system: *Provided*, That grants for the portion of such cost in the case of large wind energy systems shall not exceed (A) 50 per centum of such cost during the first six years of the program under this subsection, and (B) 25 per centum of such cost during the seventh or eighth year of the program.

(f) Procedure for loans for small or large systems; limitation of amount; term; interest; prepayment; other terms and conditions

(1) In carrying out his duties under this chapter, the Secretary shall, within six months of September 8, 1980, establish procedures to allow public or private entities wishing to install a small or large wind energy system to apply for and, upon meeting such terms and conditions as the Secretary may prescribe, to receive loans for up to 75 per centum of the total purchase and installation costs of wind energy systems providing in the aggregate up to three hundred and twenty megawatts peak generating capacity involving at a minimum four projects: *Provided*, That no such loan in any fiscal year shall be for more than 50 per centum of the amount appropriated under this chapter for such fiscal year.

(2) Each loan shall be for a term which the Secretary deems appropriate, but no loan shall exceed twenty years beyond the date the wind energy system becomes operational.

(3) Each loan made pursuant to this section shall bear interest at the discount or interest rate used at the time the loan is made for water resource planning projects under section 1962d–17 of this title. Such loan can be prepaid at any time without prepayment penalty and shall be contingent upon such other terms and conditions prescribed by the Secretary.

(g) Funds for Federal agency systems; projects and activities for technology applications of systems

(1) In carrying out his duties under this chapter, the Secretary is authorized to provide funds for the accelerated procurement and installation of small and large wind energy systems by Federal agencies.

(2) The Secretary is authorized to enter into arrangements with appropriate Federal agencies, including the Water and Power Resources Services and the Federal power marketing agencies for large wind energy systems, to carry out such projects and activities as may be appropriate for the broad technology applications of small and large wind energy systems which are suitable and effective for use by such Federal agencies.

(h) Observation, monitoring, and reporting requirements; public inspection

The terms and conditions prescribed by the Secretary under this subsection shall require such observation, monitoring, and reporting requirements as the Secretary deems necessary for a period of five years and shall provide for members of the public to view and inspect the system under reasonable conditions.

(i) Termination of new Federal assistance and Federal assistance programs

New Federal assistance for technology applications systems shall terminate upon the appropriate determination by the Secretary, in the annual update of the comprehensive program management plan pursuant to section 9203 of this title. Termination of the small wind energy systems program shall occur when the Secretary finds that such systems have become economically competitive with conventional energy sources, or on September 30, 1985, whichever occurs first. Termination of the large wind energy systems program shall occur when the Secretary finds that such systems have become economically competitive with conventional energy sources, or on September 30, 1988, whichever occurs first.

(Pub. L. 96–345, §6, Sept. 8, 1980, 94 Stat. 1142.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1962d–17 of this title, referred to in subsec. (f)(3), was in the original "section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962(d)–17(a))". Section 80 of the Water Resources Development Act of 1974 is classified to section 1962d–17 of this title.

EXECUTIVE DOCUMENTS

CHANGE OF NAME

The Water and Power Resources Service changed to the Bureau of Reclamation on May 18, 1981. See 155 Dep't of the Interior, Departmental Manual 1.1 (2008 repl.); Sec'y James G. Watt, Dep't of the Interior, Secretarial Order 3064, §§3, 5 (May 18, 1981).

§9206. Wind resource assessment

The Secretary shall initiate a three-year national wind resource assessment program. As part of such program, the Secretary shall—

(1) conduct activities to validate existing assessments of known wind resources;

(2) perform wind resource assessments in regions of the United States where the use of wind energy may prove feasible;

(3) initiate a general site prospecting program;

(4) establish standard wind data collection and siting techniques; and

(5) establish, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and the

Administrator of the Environmental Protection Agency, a national wind data center which shall make public information available on the known wind energy resources of various regions throughout the United States.

(Pub. L. 96–345, §7, Sept. 8, 1980, 94 Stat. 1143.)

§9207. Criteria for program selection

The Secretary shall set priorities which are, as far as possible, consistent with the intent and purposes of this chapter and which are set in accordance with the following criteria:

(1) the construction, operation, and maintenance costs of wind energy systems shall be minimized;

(2) programs established under this chapter shall be conducted with the express intent of bringing wind energy system costs down to a level competitive with energy costs from conventional energy systems;

(3) priority shall be given in the conduct of programs established under this chapter to those projects in which cost-sharing funds are provided by private, industrial, agricultural, or governmental entities or utilities; and

(4) to the extent that the Secretary is limited by the availability of funds to carry out the objectives of this chapter, priority, but not exclusive emphasis, should be given in the early years of the programs to activities under sections 9204 and 9206 of this title and in the later years of the programs to activities under section 9205 of this title.

(Pub. L. 96–345, §8, Sept. 8, 1980, 94 Stat. 1144.)

§9208. Administrative provisions

(a) Monitoring of performance; collection and evaluation of data

The Secretary, in coordination with such Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of wind energy systems installed under this chapter; and

(2) collect and evaluate data and information on the performance and operation of wind energy systems installed under this chapter.

(b) Liaison

The Secretary shall also maintain continuing liaison with related industries and interests and with the scientific and technical community in order to assure that the benefits of programs under this chapter are and will continue to be realized to the maximum extent feasible.

(c) Availability of information

The Secretary shall assure, subject to section 552 of title 5 and section 1905 of title 18, that full and complete information with respect to any program, project, or other activity conducted under this chapter is made available to Federal, State, and local authorities, relevant segments of the economy, the scientific community, and the public so that the early, widespread, and practical use of wind energy throughout the United States is promoted to the maximum extent feasible.

(Pub. L. 96–345, §9, Sept. 8, 1980, 94 Stat. 1144; Pub. L. 104–66, title I, §1051(b), Dec. 21, 1995, 109 Stat. 716.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsec. (a)(3). Pub. L. 104–66 struck out par. (3) which read as follows: "from time to time carry out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is

responsible under this chapter effectively carry out the purposes of this chapter."

§9209. Utilization of capabilities and facilities

The Secretary shall utilize the technological and management capabilities, equipment, and facilities of the National Aeronautics and Space Administration to the maximum extent practicable in carrying out his duties under this chapter, and shall enter into such additional agreements with the Administrator of such Administration as may be necessary for this purpose.

(Pub. L. 96–345, §10, Sept. 8, 1980, 94 Stat. 1145.)

§9210. Analysis of applications of wind energy systems

The Secretary shall—

(1) initiate and conduct a federal applications study for wind energy systems, cooperatively with appropriate Federal agencies to determine the potential for the use of wind systems at specific Federal facilities; and this study shall—

(A) include an analysis which determines those sites at which wind energy systems are economically competitive with the marginal costs of new conventional energy sources in the areas;

(B) identify potential sites and uses of wind energy systems at the following agencies as well as any others which the Secretary deems necessary:

(i) the Department of Defense;

(ii) the Department of Transportation (including the United States Coast Guard, the Federal Aviation Administration, and the Federal Highway Administration);

(iii) the Department of Commerce;

(iv) the Department of Agriculture; and

(v) the Department of the Interior;

(C) provide a preliminary report to the Congress within nine months after September 8, 1980; and

(D) include the presentation of a detailed plan for the use of wind energy systems for power generation at specific sites in Federal Government agencies to the Congress within twelve months after September 8, 1980;

(2) study the effects, at varying levels of market penetration, of the widespread utilization of wind energy systems on the existing electrical utility system;

(3) determine the necessity for, and make recommendations to the Committee on Energy and Natural Resources of the Senate and the Committee on Science and Technology of the House of Representatives within eighteen months after September 8, 1980, on, the need for any additional incentives for either users or manufacturers, in each of the potential markets for wind energy systems, to accelerate the widespread utilization of wind energy technologies;

(4) evaluate the actual performance of wind energy systems in various applications, including but not limited to residential, agricultural, large and small scale irrigation pumping, industrial, commercial, remote nonnetwork utility, and other applications, and report thereon to the Congress within two years after September 8, 1980; and

(5) in carrying out his functions under this section, consult with the appropriate government agencies, industry representatives, and members of the scientific and technical community having expertise and interest in this subject.

The Secretary, as appropriate, may merge any continuing or on-going studies within the Department of Energy or any other Federal agency with those required under this section to avoid any unnecessary duplication of effort or funding.

(Pub. L. 96–345, §11, Sept. 8, 1980, 94 Stat. 1145; Pub. L. 99–386, title I, §104(b), Aug. 22, 1986, 100 Stat. 821.)

EDITORIAL NOTES

AMENDMENTS

1986—Pars. (5), (6). Pub. L. 99–386 redesignated par. (6) as (5) and struck out former par. (5) which read as follows: "initiate and conduct a study involving the prospects for applications of wind energy systems for power generation in foreign countries, particularly lesser developed countries and the potential for the exploration of these energy systems. This study shall involve the cooperation of the Department of State and the Department of Commerce, as well as other Federal agencies which the Secretary deems appropriate. A final report shall be submitted to the Congress, as well as a preliminary report within twelve months of September 8, 1980; and".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§9211. Encouragement and protection of small business

(a) Opportunities for participation in programs

In carrying out his functions under this chapter, the Secretary shall take steps to assure that small business concerns will have realistic and adequate opportunities to participate in the programs under this chapter to the maximum extent practicable.

(b) Protection of trade secrets and other proprietary information

The Secretary shall, to the maximum extent practicable, use all authority provided by law to protect trade secrets and other proprietary information submitted by small business under this chapter and to avoid the unnecessary disclosure of such information.

(c) Manufacture or sale of wind energy systems in compliance with antitrust laws; restriction against creation of noncompetitive market situations

The Secretary shall take such steps as may be necessary to assure compliance with the antitrust laws in the conduct of activities related to the manufacture or sale of wind energy systems directly or indirectly assisted under this chapter and shall implement this chapter in a manner which will protect against the creation of noncompetitive market situations in the conduct of such activities.

(Pub. L. 96–345, §12, Sept. 8, 1980, 94 Stat. 1146.)

§9212. General provisions

(a) Additional projects or activities

Nothing in this chapter shall be construed as preventing the Secretary from undertaking projects or activities in addition to those specified in this chapter if such projects or activities appropriately

further the purposes set forth in this subsection.[1]

(b) Application to States, territories and possessions

This chapter applies to each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and the territories and possessions of the United States including the Trust Territory of the Pacific Islands.

(Pub. L. 96–345, §13, Sept. 8, 1980, 94 Stat. 1146.)

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] *So in original. Probably should be "chapter."*

§9213. Authorization of appropriations

(a) There is authorized to be appropriated to the Secretary to carry out this chapter (1) for the fiscal year ending September 30, 1981, the sum of $100,000,000 (of which $10,000,000 shall be available exclusively for purposes of section 9206 of this title), and (2) for each fiscal year beginning after that date, such sum as may be authorized by legislation hereafter enacted.

(b) In each of the five years of the small wind energy systems program, at least 25 per centum of the total authorization for appropriations under subsection (a) shall be for small wind energy systems activities, including supporting activities.

(Pub. L. 96–345, §14, Sept. 8, 1980, 94 Stat. 1146.)

CHAPTER 101—MAGNETIC FUSION ENERGY ENGINEERING

Sec.

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§9301. Congressional findings and declaration of policy

(a) The Congress hereby finds that—

(1) the United States must formulate an energy policy designed to meet an impending worldwide shortage of many exhaustible, conventional energy resources in the next few decades;

(2) the energy policy of the United States must be designed to ensure that energy technologies using essentially inexhaustible resources are commercially available at a time prior to serious depletion of conventional resources;

(3) fusion energy is one of the few known energy sources which are essentially inexhaustible, and thus constitutes a long-term energy option;

(4) major progress in all aspects of magnetic fusion energy technology during the past decade instills confidence that power production from fusion energy systems is achievable;

(5) the United States must aggressively pursue research and development programs in magnetic fusion designed to foster advanced concepts and advanced technology and to develop efficient, reliable components and subsystems;

(6) to ensure the timely commercialization of magnetic fusion energy systems, the United States must demonstrate at an early date the engineering feasibility of magnetic fusion energy systems;

(7) progress in magnetic fusion energy systems is currently limited by the funds made available rather than technical barriers;

(8) it is a proper role for the Federal Government to accelerate research, development, and demonstration programs in magnetic fusion energy technologies; and

(9) acceleration of the current magnetic fusion program will require a doubling within seven years of the present funding level without consideration of inflation and a 25 per centum increase in funding each of fiscal years 1982 and 1983.

(b) It is therefore declared to be the policy of the United States and the purpose of this chapter to accelerate the national effort in research, development, and demonstration activities related to magnetic fusion energy systems. Further, it is declared to be the policy of the United States and the purpose of this chapter that the objectives of such program shall be—

(1) to promote an orderly transition from the current research and development program through commercial development;

(2) to establish a national goal of demonstrating the engineering feasibility of magnetic fusion by the early 1990's;

(3) to achieve at the earliest practicable time, but not later than the year 1990, operation of a magnetic fusion engineering device based on the best available confinement concept;

(4) to establish as a national goal the operation of a magnetic fusion demonstration plant at the turn of the twenty-first century;

(5) to foster cooperation in magnetic fusion research and development among government, universities, industry, and national laboratories;

(6) to promote the broad participation of domestic industry in the national magnetic fusion program;

(7) to continue international cooperation in magnetic fusion research for the benefit of all nations;

(8) to promote greater public understanding of magnetic fusion; and

(9) to maintain the United States as the world leader in magnetic fusion.

(Pub. L. 96–386, §2, Oct. 7, 1980, 94 Stat. 1539.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–386, §1, Oct. 7, 1980, 94 Stat. 1539, provided: "That this Act [enacting this chapter] may be cited as the 'Magnetic Fusion Energy Engineering Act of 1980'."

§9302. Definitions

For the purposes of this chapter—

(1) "fusion" means a process whereby two light nuclei, such as deuterium and tritium, collide at

high velocity, forming a compound nucleus, which subsequently separates into constituents which are different from the original colliding nuclei, and which carry away the accompanying energy release;

(2) "magnetic fusion" means the use of magnetic fields to confine a very hot, fully ionized gas of light nuclei, so that the fusion process can occur;

(3) "energy system" means a facility designed to utilize energy released in the magnetic fusion process for the generation of electricity and the production of hydrogen or other fuels;

(4) "fusion engineering device" means a magnetic fusion facility which achieves at least a burning plasma and serves to test components for engineering purposes;

(5) "demonstration plant" means a prototype energy system which is of sufficient size to provide safety, environmental reliability, availability, and ready engineering extrapolation of all components to commercial size but which system need not be economically competitive with then alternative energy sources; and

(6) "Secretary" means Secretary of Energy.

(Pub. L. 96–386, §3, Oct. 7, 1980, 94 Stat. 1540.)

§9303. Program activities

(a) Development in areas where lack of knowledge limits magnetic fusion energy systems

The Secretary shall initiate activities or accelerate existing activities in research areas in which the lack of knowledge limits magnetic fusion energy systems in order to ensure the achievement of the purposes of this chapter.

(b) Research programs on plasma confinement, alternate confinement concepts, advanced fuels, and properties of materials likely to be used in construction of fusion engineering devices

(1) The Secretary shall maintain an aggressive plasma confinement research program on the current lead concept to provide a full measure of support for the design, construction, and operation of the fusion engineering devices.

(2) The Secretary shall maintain a broadly based research program on alternate confinement concepts and on advanced fuels at a sufficient level of funding to achieve optimal design of each successive magnetic fusion facility using the then best available confinement and fuel concept.

(3) The Secretary shall ensure that research on properties of materials likely to be required for the construction of fusion engineering devices is adequate to provide timely information for the design of such devices.

(c) Fusion engineering device designs

(1) The Secretary shall initiate design activities on a fusion engineering device using the best available confinement concept to ensure operation of such a device at the earliest practicable time, but not later than the year 1990.

(2) The Secretary shall develop and test the adequacy of the engineering design of components to be utilized in the fusion engineering device.

(d) Operation of demonstration plant at turn of twenty-first century

The Secretary shall initiate at the earliest practical time each activity which he deems necessary to achieve the national goal for operation of a demonstration plant at the turn of the twenty-first century.

(e) Assessment of factors in determining commercial introduction of magnetic fusion energy systems

The Secretary shall continue efforts to assess factors which will determine the commercial introduction of magnetic fusion energy systems including, but not limited to—

(1) projected costs relative to other alternative energy sources;

(2) projected growth rates in energy demand;

(3) safety-related design limitations;
(4) environmental impacts; and
(5) limitations on the availability of strategic elements, such as helium, lithium, and special metals.

(Pub. L. 96–386, §4, Oct. 7, 1980, 94 Stat. 1540.)

§9304. Comprehensive program management plan; submittal to Congressional committees

(a) The Secretary shall prepare a comprehensive program management plan for the conduct of the research, development, and demonstration activities under this chapter. Such plan shall include at a minimum—

(1) a presentation of the program strategy which will be used to achieve the purposes of this chapter;
(2) a five-year program implementation schedule, including identification of detailed milestone goals, with associated budget and program resources requirements;
(3) risk assessments;
(4) supporting research and development needed to solve problems which may inhibit or limit development of magnetic fusion energy systems; and
(5) an analysis of institutional, environmental, and economic considerations which are limiting the national magnetic fusion program.

(b) The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than January 1, 1982.

(Pub. L. 96–386, §5, Oct. 7, 1980, 94 Stat. 1541.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§9305. Magnetic fusion engineering center

(a) Development plan

The Secretary shall develop a plan for the creation of a national magnetic fusion engineering center for the purpose of accelerating fusion technology development via the concentration and coordination of major magnetic fusion engineering devices and associated activities at such a national center.

(b) Factors considered in formulation of development plan

In developing the plan, the Secretary shall include relevant factors including, but not limited to—

(1) means of saving cost and time through the establishment of the national center relative to the cost and schedule currently projected for the program;
(2) means of providing common facilities to be shared by many magnetic fusion concepts;
(3) assessment of the environmental and safety-related aspects of the national center;
(4) provisions for international cooperation in magnetic fusion activities at the national center;
(5) provision of access to facilities for the broader technical involvement of domestic industry and universities in the magnetic fusion energy program;
(6) siting criteria for the national center including a list of potential sites;

(7) the advisability of establishing such a center considering all factors, including the alternative means and associated costs of pursuing such technology; and

(8) changes in the management structure of the magnetic fusion program to allow more effective direction of activities related to the national center.

(c) Report to Congressional committees

The Secretary shall submit not later than July 1, 1981, a report to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources characterizing the plan and setting forth the steps necessary for implementation of the plan, including any steps already implemented.

(Pub. L. 96–386, §6, Oct. 7, 1980, 94 Stat. 1541.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§9306. Repealed. Pub. L. 104–46, title V, §509, Nov. 13, 1995, 109 Stat. 421

Section, Pub. L. 96–386, §7, Oct. 7, 1980, 94 Stat. 1542, related to establishment, membership, duties, etc., of technical panel on magnetic fusion and required panel to submit to Energy Research Advisory Board on at least a triennial basis a written report of its findings and recommendations with regard to magnetic fusion program.

§9307. Program advisory committees

The Secretary may direct the director of each laboratory or installation at which a major magnetic fusion facility is operated for, or funded primarily by, the Federal Government to establish, for the sole purpose of providing advice to such director, a program advisory committee composed of persons with expertise in magnetic fusion from such domestic industry, universities, government laboratories, and other scientific and technical organizations as such director deems appropriate.

(Pub. L. 96–386, §8, Oct. 7, 1980, 94 Stat. 1543.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

§9308. International cooperation; examination of impact on national magnetic fusion program; exploration of prospects for joint funding in construction of fusion engineering device; report to Congressional committees on results of examination and exploration

(a)(1) The Secretary in consultation with the Secretary of State shall actively seek to enter into or to strengthen existing international cooperative agreements in magnetic fusion research and development activities of mutual benefit to all parties.

(2) The Secretary shall seek to achieve equitable exchange of information, data, scientific personnel, and other considerations in the conduct of cooperative efforts with technologically advanced nations.

(b)(1) The Secretary shall examine the potential impacts on the national magnetic fusion program of United States participation in an international effort to construct fusion engineering devices.

(2) The Secretary shall explore, to the extent feasible, the prospects for joint financial participation by other nations with the United States in the construction of a fusion engineering device.

(3) Within two years of October 7, 1980, the Secretary shall transmit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources the results of such examinations and explorations with his recommendations for construction of a national or international fusion engineering device: *Provided, however*, That such examinations and explorations shall not have the effect of delaying design activities related to a national fusion engineering device.

(Pub. L. 96–386, §9, Oct. 7, 1980, 94 Stat. 1543.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§9309. Technical manpower requirements; report to President and Congress

(a) The Secretary shall assess the adequacy of the projected United States supply of manpower in the engineering and scientific disciplines required to achieve the purposes of this chapter taking cognizance of the other demands likely to be placed on such manpower supply.

(b) The Secretary shall within one year of October 7, 1980, submit a report to the President and to the Congress setting forth his assessment along with his recommendations regarding the need for increased support for education in such engineering and scientific disciplines.

(Pub. L. 96–386, §10, Oct. 7, 1980, 94 Stat. 1543.)

§9310. Dissemination of information

(a) The Secretary shall take all necessary steps to assure that technical information relevant to the status and progress of the national magnetic fusion program is made readily available to interested persons in domestic industry and universities in the United States: *Provided, however*, That upon a showing to the Secretary by any person that any information or portion thereof provided to the Secretary directly or indirectly from such person would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18.

(b) The Secretary shall maintain an aggressive program in the United States for the provision of public information and educational materials to promote widespread knowledge of magnetic fusion among educational, community, business, environmental, labor, and governmental entities and the public at large.

(Pub. L. 96–386, §11, Oct. 7, 1980, 94 Stat. 1544.)

§9311. Repealed. Pub. L. 104–66, title I, §1051(n), Dec. 21, 1995, 109 Stat. 717

Section, Pub. L. 96–386, §12, Oct. 7, 1980, 94 Stat. 1544, directed Secretary of Energy to submit annual report of activities pursuant to this chapter as a separate part of the annual report submitted pursuant to section 7321 of this title.

§9312. Authorization of appropriations; contract authority

(a) There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1981, such sums as are provided in the annual authorization Act pursuant to section 7270 of this title.

(b) In carrying out the provisions of this chapter, the Secretary is authorized to enter into contracts only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Pub. L. 96–386, §13, Oct. 7, 1980, 94 Stat. 1544.)

CHAPTER 102—MENTAL HEALTH SYSTEMS

Sec.

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§9401. Congressional statement of findings

The Congress finds—

(1) despite the significant progress that has been made in making community mental health services available and in improving residential mental health facilities since the original

community mental health centers legislation was enacted in 1963, unserved and underserved populations remain and there are certain groups in the population, such as chronically mentally ill individuals, children and youth, elderly individuals, racial and ethnic minorities, women, poor persons, and persons in rural areas, which often lack access to adequate private and public mental health services and support services;

(2) the process of transferring or diverting chronically mentally ill individuals from unwarranted or inappropriate institutionalized settings to their home communities has frequently not been accompanied by a process of providing those individuals with the mental health and support services they need in community-based settings;

(3) the shift in emphasis from institutional care to community-based care has not always been accompanied by a process of affording training, retraining, and job placement for employees affected by institutional closure and conversion;

(4) the delivery of mental health and support services is typically uncoordinated within and among local, State, and Federal entities;

(5) mentally ill persons are often inadequately served by (A) programs of the Department of Health and Human Services such as medicare, medicaid, supplemental security income, and social services, and (B) programs of the Department of Housing and Urban Development, the Department of Labor, and other Federal agencies;

(6) health care systems often lack general health care personnel with adequate mental health care training and often lack mental health care personnel and consequently many individuals with some level of mental disorder do not receive appropriate mental health care;

(7) present knowledge of methods to prevent mental illness through discovery and elimination of its causes and through early detection and treatment is too limited;

(8) a comprehensive and coordinated array of appropriate private and public mental health and support services for all people in need within specific geographic areas, based upon a cooperative local-State-Federal partnership, remains the most effective and humane way to provide a majority of mentally ill individuals with mental health care and needed support; and

(9) because of the rising demand for mental health services and the wide disparity in the distribution of psychiatrists, clinical psychologists, social workers, and psychiatric nurses, there is a shortage in the medical specialty of psychiatry and there are also shortages among the other health personnel who provide mental health services.

(Pub. L. 96–398, §2, Oct. 7, 1980, 94 Stat. 1565.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–398, §1, Oct. 7, 1980, 94 Stat. 1564, provided that: "This Act [enacting this chapter, amending sections 210, 225a, 229b, 242a, 246, 289k–1, 300l–2, 300m–2, 1396b, 2689a to 2689c, 2689e, 2689g, and 2689h of this title, repealing section 2689q of this title, and enacting provisions set out as notes under section 242a, 246, 289k–1, and 2689b of this title] may be cited as the 'Mental Health Systems Act'."

SUBCHAPTER I—GENERAL PROVISIONS

EDITORIAL NOTES

CODIFICATION

Pub. L. 97–35, title IX, §902(e)(1), (f)(1)(A), Aug. 13, 1981, 95 Stat. 560, struck out heading "Part A—Definitions" before section 9411 and heading "Part B—State Administrative Responsibilities" before section 9421.

§9411. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title I, §101, Oct. 7, 1980, 94 Stat. 1566, set forth general provisions respecting community mental health centers.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

§9412. Definitions

For purposes of this chapter:

(1) The term "Secretary" means the Secretary of Health and Human Services.

(2) The term "State" includes (in addition to the fifty States) the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(3) The term "nonprofit", as applied to any entity, means an entity which is owned and operated by one or more corporations or associations no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or person.

(Pub. L. 96–398, title I, §102, Oct. 7, 1980, 94 Stat. 1569; Pub. L. 97–35, title IX, §902(f)(1)(B), (C), Aug. 13, 1981, 95 Stat. 560.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–398, Oct. 7, 1980, 94 Stat. 1564, known as the Mental Health Systems Act, which enacted this chapter, amended sections 210, 225a, 229b, 242a, 246, 289k–1, 300l–2, 300m–2, 1396b, 2689a to 2689c, 2689e, 2689g, and 2689h of this title, repealed section 2689q of this title, and enacted provisions set out as notes under sections 242a, 246, 289k–1, and 2689b of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97–35 redesignated former par. (5) as (3). Former pars. (3), (4), (6), and (7), which defined "State mental health authority", "mental health service area", "priority population group", and "Governor", respectively, were struck out.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238l of this title.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§§9421 to 9423. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9421, Pub. L. 96–398, title I, §105, Oct. 7, 1980, 94 Stat. 1570, related to designation of State agency for mental health programs.

Section 9422, Pub. L. 96–398, title I, §106, Oct. 7, 1980, 94 Stat. 1570, related to establishment, etc., of State mental health service areas.

Section 9423, Pub. L. 96–398, title I, §107(a)–(c), Oct. 7, 1980, 94 Stat. 1570, related to allotments to improve State administration of mental health programs.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

SUBCHAPTER II—GRANT PROGRAMS

§§9431 to 9438. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9431, Pub. L. 96–398, title II, §201, Oct. 7, 1980, 94 Stat. 1571, set forth authority, etc., for grants for community mental health centers.

Section 9432, Pub. L. 96–398, title II, §202, Oct. 7, 1980, 94 Stat. 1573, set forth authority, etc., for grants for services for chronically, mentally ill individuals.

Section 9433, Pub. L. 96–398, title II, §203, Oct. 7, 1980, 94 Stat. 1575, set forth authority, etc., for grants for services for severely, mentally disturbed children and adults.

Section 9434, Pub. L. 96–398, title II, §204, Oct. 7, 1980, 94 Stat. 1577, set forth authority, etc., for grants for mental health services for elderly individuals and other priority populations.

Section 9435, Pub. L. 96–398, title II, §205, Oct. 7, 1980, 94 Stat. 1581, set forth authority, etc., for grants for non-revenue producing services.

Section 9436, Pub. L. 96–398, title II, §206, Oct. 7, 1980, 94 Stat. 1582, set forth authority, etc., for grants for mental health services in health care centers.

Section 9437, Pub. L. 96–398, title II, §207, Oct. 7, 1980, 94 Stat. 1583, set forth authority, etc., for grants and contracts for innovative projects.

Section 9438, Pub. L. 96–398, title II, §208, Oct. 7, 1980, 94 Stat. 1584, set forth authority, etc., for grants for prevention of mental illness and promotion of mental health.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

SUBCHAPTER III—GENERAL PROVISIONS RESPECTING GRANT PROGRAMS

PART A—STATE MENTAL HEALTH SERVICE PROGRAMS

§§9451, 9452. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat.

560

Section 9451, Pub. L. 96–398, title III, §301, Oct. 7, 1980, 94 Stat. 1585, set forth requirements for State mental health services programs.

Section 9452, Pub. L. 96–398, title III, §302, Oct. 7, 1980, 94 Stat. 1585, related to contents of programs with respect to administrative and service parts.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

PART B—APPLICATIONS AND RELATED PROVISIONS

§§9461 to 9465. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9461, Pub. L. 96–398, title III, §305, Oct. 7, 1980, 94 Stat. 1588, set forth provisions respecting State administration of programs, and authorized agreements, etc., for implementation.

Section 9462, Pub. L. 96–398, title III, §306, Oct. 7, 1980, 94 Stat. 1590, related to processing of applications by State mental health authorities.

Section 9463, Pub. L. 96–398, title III, §307, Oct. 7, 1980, 94 Stat. 1592, set forth provisions relating to requirements for applications.

Section 9464, Pub. L. 96–398, title III, §308, Oct. 7, 1980, 94 Stat. 1594, related to Indian tribes and organizations.

Section 9465, Pub. L. 96–398, title III, §309, Oct. 7, 1980, 94 Stat. 1595, related to procedures for consideration of grant or contract application.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

PART C—PERFORMANCE

§§9471 to 9473. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9471, Pub. L. 96–398, title III, §315, Oct. 7, 1980, 94 Stat. 1595, related to performance contracts.

Section 9472, Pub. L. 96–398, title III, §316, Oct. 7, 1980, 94 Stat. 1595, related to performance standards.

Section 9473, Pub. L. 96–398, title III, §317, Oct. 7, 1980, 94 Stat. 1595, related to evaluation and monitoring of projects and activities.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

PART D—ENFORCEMENT

§9481. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title III, §321, Oct. 7, 1980, 94 Stat. 1596, set forth enforcement procedures.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

PART E—MISCELLANEOUS

§§9491 to 9493. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9491, Pub. L. 96–398, title III, §326, Oct. 7, 1980, 94 Stat. 1597, related to provision of technical assistance.

Section 9492, Pub. L. 96–398, title III, §327, Oct. 7, 1980, 94 Stat. 1597, related to indirect provision of services.

Section 9493, Pub. L. 96–398, title III, §328, Oct. 7, 1980, 94 Stat. 1597, related to cooperative agreements.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

SUBCHAPTER IV—MENTAL HEALTH RIGHTS AND ADVOCACY

§9501. Bill of Rights

It is the sense of the Congress that each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require; and in making such review and revision should take into account the recommendations of the President's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed, voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

(i) rights protection service within the program or facility;

(ii) rights protection service within the State mental health system designed to be available to such person; and

(iii) qualified advocate;

for the purpose of receiving assistance to understand, exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to—

(i) such person;

(ii) the areas of the program or facility where such person has received treatment, resided, or

had access; and

(iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

(Pub. L. 96–398, title V, §501, Oct. 7, 1980, 94 Stat. 1598.)

§9502. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title V, §502, Oct. 7, 1980, 94 Stat. 1601, related to grants for protection and advocacy programs.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

SUBCHAPTER V—SEX OFFENSE PREVENTION AND CONTROL

§9511. Grants for sex offense prevention and control

(a) Authority of National Center for the Prevention and Control of Sex Offenses; functions

The Secretary, acting through the National Center for the Prevention and Control of Sex Offenses (hereafter in this section referred to as the "Center"), may, directly or by grant, carry out the following:

(1) A continuing study of sex offenses, including a study and investigation of—

(A) the effectiveness of existing Federal, State, and local laws dealing with sex offenses;

(B) the relationship, if any, between traditional legal and social attitudes toward sexual roles, sex offenses, and the formulation of laws dealing with rape;

(C) the treatment of the victims of sex offenses by law enforcement agencies, hospitals or other medical institutions, prosecutors, and the courts;

(D) the causes of sex offenses, identifying to the degree possible—

(i) social conditions which encourage sexual attacks, and

(ii) the motives of offenders, and

(E) the impact of a sex offense on the victim and family of the victim;

(F) sexual assaults in correctional institutions;

(G) the estimated actual incidence of forcible sex offenses as compared to the reported incidence of forcible sex offenses and the reasons for any difference between the two; and

(H) the effectiveness of existing private and local and State government educational, counseling, and other programs designed to prevent and control sex offenses.

(2) The compilation, analysis, and publication of summaries of the continuing study conducted under paragraph (1) and the research and demonstration projects conducted under paragraph (5). The Secretary shall submit not later than March 30, 1983, to the Congress a summary of such study and projects together with a review of their effectiveness and recommendations where appropriate.

(3) The development and maintenance of an information clearinghouse with regard to—

(A) the prevention and control of sex offenses;

(B) the treatment and counseling of the victims of sex offenses and their families; and

(C) the rehabilitation of offenders.

(4) The compilation and publication of training materials for personnel who are engaged or intend to engage in programs designed to prevent and control sex offense.

(5) Assistance to qualified public and nonprofit private entities in conducting research and demonstration projects concerning the prevention and control of sex offense, including projects (A) for the planning, development, implementation, and evaluation of alternative methods used in the prevention and control of sex offense, the treatment and counseling of the victims of sex offense and their families, and the rehabilitation of offenders; (B) for the application of such alternative methods; and (C) for the promotion of community awareness of the specific locations in which, and the specific social and other conditions under which sexual attacks are most likely to occur.

(b) Advisory committee; functions, membership, etc.

The Secretary shall appoint an advisory committee to advise, consult with, and make recommendations to the Secretary on the implementation of subsection (a). The recommendations of the committee shall be submitted directly to the Secretary without review or revision by any person without the consent of the committee. The Secretary shall appoint to such committee persons who are particularly qualified to assist in carrying out the functions of the committee. A majority of the members of the committee shall be women. Members of the advisory committee shall receive compensation at rates, not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule, for each day (including traveltime) they are engaged in the performance of their duties as members of the advisory committee and, while so serving away from their homes or regular places of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(c) Submission and approval of application; form, manner and contents

No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Secretary. The application shall be submitted in such form and manner and contain

such information as the Secretary may prescribe.

(d) Authorization of appropriations

For the purpose of carrying out subsection (a), there are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1981, $1,500,000 for the fiscal year ending September 30, 1982, $1,500,000 for the fiscal year ending September 30, 1983.

(e) "Sex offense" defined

For purposes of subsection (a), the term "sex offense" includes statutory and attempted rape and any other criminal sexual assault (whether homosexual or heterosexual) which involves force or the threat of force.

(Pub. L. 96–398, title VI, §601(a)–(e), Oct. 7, 1980, 94 Stat. 1602, 1603; Pub. L. 97–35, title IX, §902(f)(20), Aug. 13, 1981, 95 Stat. 560; Pub. L. 99–646, §87(d)(3)–(7), Nov. 10, 1986, 100 Stat. 3624; Pub. L. 99–654, §3(b)(3)–(7), Nov. 14, 1986, 100 Stat. 3663, 3664.)

EDITORIAL NOTES

AMENDMENTS

1986—Pub. L. 99–646, §87(d)(3), and Pub. L. 99–654, §3(b)(3), amended section catchline identically, substituting "sex offense" for "rape".

Subsec. (a). Pub. L. 99–646, §87(d)(4)–(6), and Pub. L. 99–654, §3(b)(4)–(6), in amending subsec. (a) identically, in introductory provision substituted "Sex Offenses" for "Rape", in par. (1) and in subpars. (A), (C), (D), (G), and (H) of par. (1) substituted "sex offenses" for "rape" wherever appearing, in par. (1)(B) substituted "sex offenses" for "the act of rape", in par. (1)(E) substituted "a sex offense" for "rape", and in par. (3)(A) and (B) substituted "sex offenses" for "rape".

Subsec. (e). Pub. L. 99–646, §87(d)(7), and Pub. L. 99–654, §3(b)(7), amended subsec. (e) identically, substituting "the term 'sex offense' " for "the term 'rape' ".

1981—Subsec. (a). Pub. L. 97–35 in par. (5) struck out "community mental health centers and other" after "Assistance to", and struck out par. (6) which related to provision of consultation and education services.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective respectively 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238l of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

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

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

§9512. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title VI, §602, Oct. 7, 1980, 94 Stat. 1604, related to grants for services for rape victims.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

SUBCHAPTER VI—MISCELLANEOUS

§9521. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title VIII, §801, Oct. 7, 1980, 94 Stat. 1605, related to employee protection arrangements.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

§9522. Report on shelter and basic living needs of chronically mentally ill individuals

(a) Submission to Congressional committees by Secretaries of Health and Human Services and Housing and Urban Development

The Secretary of Health and Human Services and the Secretary of Housing and Urban Development shall jointly submit a report to the Committees on Labor and Human Resources and Banking, Housing, and Urban Affairs of the Senate, and the Committees on Energy and Commerce and Banking, Finance, and Urban Affairs of the House of Representatives, relating to Federal efforts to respond to the shelter and basic living needs of chronically mentally ill individuals.

(b) Contents

The report required by subsection (a) shall include—

(1) an analysis of the extent to which chronically mentally ill individuals remain inappropriately housed in institutional facilities or have otherwise inadequate or inappropriate housing arrangements;

(2) an analysis of available permanent noninstitutional housing arrangements for the chronically mentally ill;

(3) an evaluation of ongoing permanent and demonstration programs, funded in whole or in part by Federal funds, which are designed to provide noninstitutional shelter and basic living services for the chronically mentally ill, including—

(A) a description of each program;

(B) the total number of individuals estimated to be eligible to participate in each program, the number of individuals served by each program, and an estimate of the total population each program expects to serve; and

(C) an assessment of the effectiveness of each program in the provision of shelter and basic living services;

(4) recommendations of measures to encourage States to coordinate and link the provisions in State health plans which relate to mental health and, in particular, the shelter and basic living needs of chronically mentally ill individuals, with local and State housing plans;

(5) recommendations for Federal legislation relating to the provision of permanent residential noninstitutional housing arrangements and basic living services for chronically mentally ill individuals, including an estimate of the cost of such recommendations; and

(6) any other recommendations for Federal initiatives which, in the judgment of the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, will lead to improved shelter and basic living services for chronically mentally ill individuals.

(c) Submission date

The report required by subsection (a) shall be submitted to the committees referred to in subsection (a) no later than January 1, 1981.

(Pub. L. 96–398, title VIII, §802, Oct. 7, 1980, 94 Stat. 1606; H. Res. 549, Mar. 25, 1980.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§9523. Repealed. Pub. L. 97–35, title IX, §902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96–398, title VIII, §806, Oct. 7, 1980, 94 Stat. 1609, related to contracting authority.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

CHAPTER 103—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY

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SUBCHAPTER I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

§9601. Definitions

For purpose of this subchapter—

(1) The term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(2) The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(3) The term "barrel" means forty-two United States gallons at sixty degrees Fahrenheit.

(4) The term "claim" means a demand in writing for a sum certain.

(5) The term "claimant" means any person who presents a claim for compensation under this chapter.

(6) The term "damages" means damages for injury or loss of natural resources as set forth in section 9607(a) or 9611(b) of this title.

(7) The term "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act [42 U.S.C. 300f et seq.]) or as drinking water by one or more individuals.

(8) The term "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.], and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

(9) The term "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(10) The term "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act [33 U.S.C. 1342], (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act [33 U.S.C. 1344], (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act [42 U.S.C. 6925(a)–(d)] from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 1412 of title 33 of [1] section 1413 of title 33, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.], (H) any emission into the air subject to a permit or control regulation under section 111 [42 U.S.C. 7411], section 112 [42 U.S.C. 7412], title I part C [42 U.S.C. 7470 et seq.], title I part D [42 U.S.C. 7501 et seq.], or State implementation plans submitted in accordance with section 110 of the Clean Air Act [42 U.S.C. 7410] (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or

treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act [33 U.S.C. 1317(b), (c)] and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act [33 U.S.C. 1342], and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of title 26.

(12) The term "ground water" means water in a saturated zone or stratum beneath the surface of land or water.

(13) The term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this chapter.

(14) The term "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(15) The term "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas.

(16) The term "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

(17) The term "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

(18) The term "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States.

(19) The term "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party.

(20)(A) The term "owner or operator" means (i) in the case of a vessel, any person owning,

operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

(B) In the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 9607(a)(3) or (4) of this title, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.

(C) In the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 9607(a)(3) or (4) of this title, (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control.

(D) The term "owner or operator" does not include a unit of State or local government which acquired ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title.

(E) EXCLUSION OF CERTAIN ALASKA NATIVE VILLAGES AND NATIVE CORPORATIONS.—

(i) IN GENERAL.—The term "owner or operator" does not include, with respect to a facility conveyed to a Native village or Native Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602]) under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]—

(I) the Native village or Native Corporation that received the facility from the United States Government; or

(II) a successor in interest to which the facility was conveyed under section 14(c) of such Act [43 U.S.C. 1613(c)].

(ii) LIMITATION.—The exclusion provided under this subparagraph shall not apply to any entity described in clause (i) that causes or contributes to a release or threatened release of a hazardous substance from the facility conveyed as described in such clause.

(F) EXCLUSION OF LENDERS NOT PARTICIPANTS IN MANAGEMENT.—

(i) INDICIA OF OWNERSHIP TO PROTECT SECURITY.—The term "owner or operator" does not include a person that is a lender that, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility.

(ii) FORECLOSURE.—The term "owner or operator" does not include a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person—

(I) forecloses on the vessel or facility; and

(II) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or

liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a response action under section 9607(d)(1) of this title or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(G) PARTICIPATION IN MANAGEMENT.—For purposes of subparagraph (F)—

(i) the term "participate in management"—

(I) means actually participating in the management or operational affairs of a vessel or facility; and

(II) does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations;

(ii) a person that is a lender and that holds indicia of ownership primarily to protect a security interest in a vessel or facility shall be considered to participate in management only if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person—

(I) exercises decisionmaking control over the environmental compliance related to the vessel or facility, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the vessel or facility; or

(II) exercises control at a level comparable to that of a manager of the vessel or facility, such that the person has assumed or manifested responsibility—

(aa) for the overall management of the vessel or facility encompassing day-to-day decisionmaking with respect to environmental compliance; or

(bb) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance;

(iii) the term "participate in management" does not include performing an act or failing to act prior to the time at which a security interest is created in a vessel or facility; and

(iv) the term "participate in management" does not include—

(I) holding a security interest or abandoning or releasing a security interest;

(II) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(III) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(IV) monitoring or undertaking 1 or more inspections of the vessel or facility;

(V) requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the vessel or facility prior to, during, or on the expiration of the term of the extension of credit;

(VI) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

(VII) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(VIII) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(IX) conducting a response action under section 9607(d) of this title or under the direction

of an on-scene coordinator appointed under the National Contingency Plan,

if the actions do not rise to the level of participating in management (within the meaning of clauses (i) and (ii)).

(H) OTHER TERMS.—As used in this chapter:

(i) EXTENSION OF CREDIT.—The term "extension of credit" includes a lease finance transaction—

(I) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

(II) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisor (as those terms are defined in section 1813 of title 12) or with regulations issued by the National Credit Union Administration Board, as appropriate.

(ii) FINANCIAL OR ADMINISTRATIVE FUNCTION.—The term "financial or administrative function" includes a function such as that of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

(iii) FORECLOSURE; FORECLOSE.—The terms "foreclosure" and "foreclose" mean, respectively, acquiring, and to acquire, a vessel or facility through—

(I)(aa) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

(bb) a deed in lieu of foreclosure, or similar conveyance from a trustee; or

(cc) repossession,

if the vessel or facility was security for an extension of credit previously contracted;

(II) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

(III) any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a vessel or facility in order to protect the security interest of the person.

(iv) LENDER.—The term "lender" means—

(I) an insured depository institution (as defined in section 1813 of title 12);

(II) an insured credit union (as defined in section 1752 of title 12);

(III) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);

(IV) a leasing or trust company that is an affiliate of an insured depository institution;

(V) any person (including a successor or assignee of any such person) that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

(VI) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(VII) a person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

(VIII) a person that provides title insurance and that acquires a vessel or facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(v) OPERATIONAL FUNCTION.—The term "operational function" includes a function such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(vi) SECURITY INTEREST.—The term "security interest" includes a right under a

mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

(21) The term "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

(22) The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act [42 U.S.C. 2210], or, for the purposes of section 9604 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 7912(a)(1) or 7942(a) of this title, and (D) the normal application of fertilizer.

(23) The terms "remove" or "removal" means [2] the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 9604(b) of this title, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

(24) The terms "remedy" or "remedial action" means [2] those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(25) The terms "respond" or "response" means [2] remove, removal, remedy, and remedial action;,[3] all such terms (including the terms "removal" and "remedial action") include enforcement

activities related thereto.

(26) The terms "transport" or "transportation" means [2] the movement of a hazardous substance by any mode, including a hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(27) The terms "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

(28) The term "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(29) The terms "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act [42 U.S.C. 6903].

(30) The terms "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act [33 U.S.C. 1362].

(31) The term "national contingency plan" means the national contingency plan published under section 311(c) [4] of the Federal Water Pollution Control Act or revised pursuant to section 9605 of this title.

(32) The terms "liable" or "liability" under this subchapter shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act [33 U.S.C. 1321].

(33) The term "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term "pollutant or contaminant" shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(34) The term "alternative water supplies" includes, but is not limited to, drinking water and household water supplies.

(35)(A) The term "contractual relationship", for the purpose of section 9607(b)(3) of this title, includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that the defendant has satisfied the requirements of section 9607(b)(3)(a) and (b) of this title, provides full cooperation,

assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.

(B) REASON TO KNOW.—

(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that—

(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

(II) the defendant took reasonable steps to—

(aa) stop any continuing release;

(bb) prevent any threatened future release; and

(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

(ii) STANDARDS AND PRACTICES.—Not later than 2 years after January 11, 2002, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

(iii) CRITERIA.—In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

(I) The results of an inquiry by an environmental professional.

(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

(VI) Visual inspections of the facility and of adjoining properties.

(VII) Specialized knowledge or experience on the part of the defendant.

(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

(IX) Commonly known or reasonably ascertainable information about the property.

(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

(iv) INTERIM STANDARDS AND PRACTICES.—

(I) PROPERTY PURCHASED BEFORE MAY 31, 1997.—With respect to property purchased before May 31, 1997, in making a determination with respect to a defendant described in clause (i), a court shall take into account—

(aa) any specialized knowledge or experience on the part of the defendant;

(bb) the relationship of the purchase price to the value of the property, if the property was not contaminated;

(cc) commonly known or reasonably ascertainable information about the property;

(dd) the obviousness of the presence or likely presence of contamination at the property;

and

(ee) the ability of the defendant to detect the contamination by appropriate inspection.

(II) PROPERTY PURCHASED ON OR AFTER MAY 31, 1997.—With respect to property purchased on or after May 31, 1997, and until the Administrator promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as "Standard E1527–97", entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process", shall satisfy the requirements in clause (i).

(v) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

(C) Nothing in this paragraph or in section 9607(b)(3) of this title shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this chapter. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 9607(a)(1) of this title and no defense under section 9607(b)(3) of this title shall be available to such defendant.

(D) Nothing in this paragraph shall affect the liability under this chapter of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

(36) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(37)(A) The term "service station dealer" means any person—

(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

(B) For purposes of section 9614(c) of this title, the term "service station dealer" shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.

(38) The term "incineration vessel" means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.

(39) BROWNFIELD SITE.—

(A) IN GENERAL.—The term "brownfield site" means real property, the expansion,

redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(B) EXCLUSIONS.—The term "brownfield site" does not include—

(i) a facility that is the subject of a planned or ongoing removal action under this subchapter;

(ii) a facility that is listed on the National Priorities List or is proposed for listing;

(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this chapter;

(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321) [33 U.S.C. §1251 et seq.], the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(v) a facility that—

(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and

(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(vi) a land disposal unit with respect to which—

(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

(II) closure requirements have been specified in a closure plan or permit;

(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

(viii) a portion of a facility—

(I) at which there has been a release of polychlorinated biphenyls; and

(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26.

(C) SITE-BY-SITE DETERMINATIONS.—Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 9604(k) of this title to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

(D) ADDITIONAL AREAS.—For the purposes of section 9604(k) of this title, the term "brownfield site" includes a site that—

(i) meets the definition of "brownfield site" under subparagraphs (A) through (C); and

(ii)(I) is contaminated by a controlled substance (as defined in section 802 of title 21);

(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of "hazardous substance" under this section; and

(bb) is a site for which there is no viable responsible party and that is determined by the

Administrator or the State, as appropriate, to be a site that will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site under this chapter or any other law pertaining to the cleanup of petroleum products; and

(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

(III) is mine-scarred land.

(40) BONA FIDE PROSPECTIVE PURCHASER.—

(A) IN GENERAL.—The term "bona fide prospective purchaser" means, with respect to a facility—

(i) a person who—

(I) acquires ownership of the facility after January 11, 2002; and

(II) establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B); and

(ii) a person—

(I) who acquires a leasehold interest in the facility after January 11, 2002;

(II) who establishes by a preponderance of the evidence that the leasehold interest is not designed to avoid liability under this chapter by any person; and

(III) with respect to whom any of the following conditions apply:

(aa) The owner of the facility that is subject to the leasehold interest is a person described in clause (i).

(bb)(AA) The owner of the facility that is subject to the leasehold interest was a person described in clause (i) at the time the leasehold interest was acquired, but can no longer establish by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B) due to circumstances unrelated to any action of the person who holds the leasehold interest; and

(BB) the person who holds the leasehold interest establishes by a preponderance of the evidence each of the criteria described in clauses (i), (iii), (iv), (v), (vi), (vii), and (viii) of subparagraph (B).

(cc) The person who holds the leasehold interest establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B).

(B) CRITERIA.—The criteria described in this subparagraph are as follows:

(i) DISPOSAL PRIOR TO ACQUISITION.—All disposal of hazardous substances at the facility occurred before the person acquired the facility.

(ii) INQUIRIES.—

(I) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with subclauses (II) and (III).

(II) STANDARDS AND PRACTICES.—The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this clause.

(III) RESIDENTIAL USE.—In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this clause.

(iii) NOTICES.—The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

(iv) CARE.—The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

(I) stop any continuing release;

(II) prevent any threatened future release; and

(III) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

(v) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

(vi) INSTITUTIONAL CONTROL.—The person—

(I) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and

(II) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

(vii) REQUESTS; SUBPOENAS.—The person complies with any request for information or administrative subpoena issued by the President under this chapter.

(viii) NO AFFILIATION.—The person is not—

(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through—

(aa) any direct or indirect familial relationship; or

(bb) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed, by a tenancy, by the instruments by which a leasehold interest in the facility is created, or by a contract for the sale of goods or services); or

(II) the result of a reorganization of a business entity that was potentially liable.

(41) ELIGIBLE RESPONSE SITE.—

(A) IN GENERAL.—The term "eligible response site" means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

(B) INCLUSIONS.—The term "eligible response site" includes—

(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26; or

(ii) a site for which, notwithstanding the exclusions provided in subparagraph (C) or paragraph (39)(B), the President determines, on a site-by-site basis and after consultation with the State, that limitations on enforcement under section 9628 of this title at sites specified in clause (iv), (v), (vi) or (viii) of paragraph (39)(B) would be appropriate and will—

(I) protect human health and the environment; and

(II) promote economic development or facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

(C) EXCLUSIONS.—The term "eligible response site" does not include—

(i) a facility for which the President—

(I) conducts or has conducted a preliminary assessment or site inspection; and

(II) after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List, or that the site otherwise qualifies for listing on the National Priorities List; unless the President has

made a determination that no further Federal action will be taken; or

(ii) facilities that the President determines warrant particular consideration as identified by regulation, such as sites posing a threat to a sole-source drinking water aquifer or a sensitive ecosystem.

(Pub. L. 96–510, title I, §101, Dec. 11, 1980, 94 Stat. 2767; Pub. L. 96–561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99–499, title I, §§101, 114(b), 127(a), title V, §517(c)(2), Oct. 17, 1986, 100 Stat. 1615, 1652, 1692, 1774; Pub. L. 100–707, title I, §109(v), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 103–429, §7(e)(1), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], title II, §2502(b), Sept. 30, 1996, 110 Stat. 3009, 3009–41, 3009–464; Pub. L. 104–287, §6(j)(1), Oct. 11, 1996, 110 Stat. 3399; Pub. L. 106–74, title IV, §427, Oct. 20, 1999, 113 Stat. 1095; Pub. L. 107–118, title II, §§211(a), 222(a), 223, 231(a), Jan. 11, 2002, 115 Stat. 2360, 2370, 2372, 2375; Pub. L. 115–141, div. N, §§2–5(a), Mar. 23, 2018, 132 Stat. 1052, 1053.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in pars. (5), (13), (20)(D), (G), (35)(C), (D), (39)(B)(iii), (D)(ii)(II)(bb), and (40)(A)(ii)(II), (B)(vii), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Safe Drinking Water Act, referred to in pars. (7), (10), and (39)(B)(iv), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. Part C of the Safe Drinking Water Act is classified generally to part C (§300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in pars. (8) and (16), is Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. The fishery conservation zone established by this Act, referred to in par. (16), was established by section 101 of this Act (16 U.S.C. 1811), which as amended generally by Pub. L. 99–659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority over fish within the exclusive economic zone as defined in section 1802 of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The Clean Air Act, referred to in par. (10), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88–206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§1857 et seq.) of this title. On enactment of Pub. L. 95–95, the Act was reclassified to chapter 85 (§7401 et seq.) of this title. Parts C and D of title I of the Clean Air Act are classified generally to parts C (§7470 et seq.) and D (§7501 et seq.), respectively, of subchapter I of chapter 85 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Atomic Energy Act of 1954, referred to in pars. (10) and (22), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Solid Waste Disposal Act, referred to in pars. (14), (39)(B)(iv), (vi)(I), (ix), and (41)(B)(i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitles C and I of the Act are classified generally to subchapters III (§6921 et seq.) and IX (§6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (20)(E), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Farm Credit Act of 1971, referred to in par. (20)(H)(iv)(III), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete

classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Disaster Relief and Emergency Assistance Act, referred to in par. (23), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

The Federal Water Pollution Control Act, referred to in pars. (31) and (39)(B)(iv), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, also known as the Clean Water Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. Section 311(c) of the Act was amended generally by Pub. L. 101–380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions directing the publishing of a National Contingency Plan. However, such provisions are contained in section 1321(d) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in par. (39)(B)(iv), (viii)(II), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

AMENDMENTS

2018—Par. (20)(D). Pub. L. 115–141, §2, substituted "ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue" for "ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue".

Par. (20)(E), (F). Pub. L. 115–141, §3(1), (2), added subpar. (E) and redesignated former subpar. (E) as (F). Former subpar. (F) redesignated (G).

Par. (20)(G). Pub. L. 115–141, §3(1), (3), redesignated subpar. (F) as (G) and substituted "subparagraph (F)" for "subparagraph (E)" in introductory provisions. Former subpar. (G) redesignated (H).

Par. (20)(H). Pub. L. 115–141, §3(1), (4), redesignated subpar. (G) as (H) and substituted "of title 12) or" for "of title 12 or" in cl. (i)(II).

Par. (39)(D)(ii)(II)(bb). Pub. L. 115–141, §4, amended item (bb) generally. Prior to amendment, item (bb) read as follows: "is a site determined by the Administrator or the State, as appropriate, to be—

"(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

"(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and".

Par. (40). Pub. L. 115–141, §5(a), made numerous amendments to structure of par. (40), resulting in substitution of subpar. (A) for former introductory provisions, insertion of subpar. (B) designation, heading, and introductory provisions, redesignation of former subpars. (A) to (H) as cls. (i) to (viii), respectively, of subpar. (B), redesignation of cls. and subcls. within former subpars. (A) to (H) as subcls. and items, respectively, within cls. (i) to (viii), and realignment of margins.

Par. (40)(B). Pub. L. 115–141, §5(a)(1)(B)–(D), just prior to redesignation of subpar. (B) as cl. (ii) of subpar. (B), substituted "subclauses (II) and (III)" for "clauses (ii) and (iii)" in subcl. (I) and "clause" for "subparagraph" in subcls. (II) and (III).

Par. (40)(H)(i)(II). Pub. L. 115–141, §5(a)(4)(A)(i), just prior to redesignation of subpar. (H)(i)(II) as cl. (viii)(I)(bb) of subpar. (B), inserted ", by a tenancy, by the instruments by which a leasehold interest in the facility is created," after "financed".

2002—Par. (35)(A). Pub. L. 107–118, §223(1), in introductory provisions substituted "deeds, easements, leases, or" for "deeds or" and in concluding provisions substituted "the defendant has satisfied" for "he has satisfied" and inserted before period at end ", provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action".

Par. (35)(B). Pub. L. 107–118, §223(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any

specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection."

Par. (39). Pub. L. 107–118, §211(a), added par. (39).

Par. (40). Pub. L. 107–118, §222(a), added par. (40).

Par. (41). Pub. L. 107–118, §231(a), added par. (41).

1999—Par. (20)(D). Pub. L. 106–74, which directed the amendment of subpar. (D) by inserting "through seizure or otherwise in connection with law enforcement activity" before "involuntary" the first place it appears, could not be executed because the word "involuntary" does not appear in subpar. (D).

1996—Pars. (8), (16). Pub. L. 104–208, §101(a) [title II, §211(b)], substituted "Magnuson-Stevens Fishery" for "Magnuson Fishery".

Par. (20)(E) to (G). Pub. L. 104–208, §2502(b), added subpars. (E) to (G).

Par. (26). Pub. L. 104–287 substituted "section 60101(a) of title 49" for "the Pipeline Safety Act".

1994—Par. (26). Pub. L. 103–429 substituted "a hazardous liquid pipeline facility" for "pipeline".

1988—Par. (23). Pub. L. 100–707 substituted "Disaster Relief and Emergency Assistance Act" for "Disaster Relief Act of 1974".

1986—Pub. L. 99–499, §101(f), struck out ", the term" after "subchapter" in introductory text.

Pars. (1) to (10). Pub. L. 99–499, §101(f), inserted "The term" and substituted a period for the semicolon at end.

Par. (11). Pub. L. 99–499, §517(c)(2), amended par. (11) generally. Prior to amendment, par. (11) read as follows: "The term 'Fund' or 'Trust Fund' means the Hazardous Substance Response Fund established by section 9631 of this title or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 9607(k) of this title, the Post-closure Liability Fund established by section 9641 of this title."

Pub. L. 99–499, §101(f), inserted "The term" and substituted a period for the semicolon at end.

Pars. (12) to (15). Pub. L. 99–499, §101(f), inserted "The term" and substituted a period for the semicolon at end.

Par. (16). Pub. L. 99–499, §101(a), (f), inserted "The term", struck out "or" after "local government," inserted ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe", and substituted a period for the semicolon at end.

Pars. (17) to (19). Pub. L. 99–499, §101(f), inserted "The term" and substituted a period for the semicolon at end.

Par. (20)(A). Pub. L. 99–499, §101(f), inserted "The term".

Pub. L. 99–499, §101(b)(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment."

Pub. L. 99–499, §101(b)(3), in provisions following subcl. (iii), substituted a period for the semicolon at end.

Par. (20)(B), (C). Pub. L. 99–499, §101(b)(3), substituted "In the case" for "in the case" and a period for the semicolon at end.

Par. (20)(D). Pub. L. 99–499, §101(b)(1), (f), added subpar. (D). The part of §101(f) of Pub. L. 99–499 which directed the amendment of par. (20) by changing the semicolon at end to a period could not be executed in view of the prior amendment of par. (20) by §101(b)(1) of Pub. L. 99–499 which added subpar. (D) ending in a period.

Par. (21). Pub. L. 99–499, §101(f), inserted "The term" and substituted a period for the semicolon at end.

Par. (22). Pub. L. 99–499, §101(c), (f), inserted "The term" and "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)", substituted a period for the semicolon at end.

Par. (23). Pub. L. 99–499, §101(f), inserted "The terms" and substituted a period for the semicolon at end.

Par. (24). Pub. L. 99–499, §101(d), (f), inserted "The terms" and substituted "and associated contaminated materials" for "or contaminated materials" and "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials." for "welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect

public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;". The part of §101(f) of Pub. L. 99–499 which directed amendment of par. (24) by changing the semicolon at end to a period could not be executed in view of prior amendment of par. (24) by §101(d) of Pub. L. 99–499 which substituted language at end of par. (24) ending in a period for former language ending in a semicolon.

Par. (25). Pub. L. 99–499, §101(e), (f), inserted "The terms" and ", all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto." The part of §101(f) of Pub. L. 99–499 which directed amendment of par. (25) by changing the semicolon at end to a period could not be executed in view of prior amendment of par. (25) by §101(e) of Pub. L. 99–499 inserting language and a period at end of par. (25).

Pars. (26), (27). Pub. L. 99–499, §101(f), inserted "The terms" and substituted a period for the semicolon at end.

Par. (28). Pub. L. 99–499, §101(f), inserted "The term" and substituted a period for the semicolon at end.

Par. (29). Pub. L. 99–499, §101(f), inserted "The terms" and substituted a period for the semicolon at end.

Par. (30). Pub. L. 99–499, §101(f), inserted "The terms".

Par. (31). Pub. L. 99–499, §101(f), inserted "The term" and substituted a period for "; and".

Par. (32). Pub. L. 99–499, §101(f), inserted "The terms".

Pars. (33) to (36). Pub. L. 99–499, §101(f), added pars. (33) to (36).

Par. (37). Pub. L. 99–499, §114(b), added par. (37).

Par. (38). Pub. L. 99–499, §127(a), added par. (38).

1980—Pars. (8), (16). Pub. L. 96–561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

Amendment by section 2502(b) of Pub. L. 104–208 applicable with respect to any claim that has not been finally adjudicated as of Sept. 30, 1996, see section 2505 of Pub. L. 104–208, set out as a note under section 6991b of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–499, §4, Oct. 17, 1986, 100 Stat. 1614, provided that: "Except as otherwise specified in section 121(b) of this Act [set out as an Effective Date note under section 9621 of this title] or in any other provision of titles I, II, III, and IV of this Act [see Tables for classification], the amendments made by titles I through IV of this Act [enacting subchapter IV of this chapter and sections 9616 to 9626, 9658 to 9660, and 9661 of this title and sections 2701 to 2707 and 2810 of Title 10, Armed Forces, amending sections 6926, 6928, 6991 to 6991d, 6991g, 9601 to 9609, 9611 to 9614, 9631, 9651, 9656, and 9657 of this title and section 1416 of Title 33, Navigation and Navigable Waters, and renumbering former section 2701 of Title 10 as section 2721 of Title 10] shall take effect on the enactment of this Act [Oct. 17, 1986]."

Amendment by section 517(c)(2) of Pub. L. 99–499 effective Jan. 1, 1987, see section 517(e) of Pub. L. 99–499, set out as an Effective Date note under section 9507 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300, provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–141, div. N, §1, Mar. 23, 2018, 132 Stat. 1052, provided that: "This division [amending this section and sections 9604, 9607, and 9628 of this title] may be cited as the 'Brownfields Utilization, Investment, and Local Development Act of 2018' or the 'BUILD Act'."

Pub. L. 115–141, div. S, title XI, §1101, Mar. 23, 2018, 132 Stat. 1147, provided that: "This title [amending section 9603 of this title and enacting provisions set out as a note under section 9603 of this title] may be cited as the 'Fair Agricultural Reporting Method Act' or the 'FARM Act'."

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–118, §1, Jan. 11, 2002, 115 Stat. 2356, provided that: "This Act [enacting section 9628 of this

title, amending this section and sections 9604, 9605, 9607, and 9622 of this title, and enacting provisions set out as notes under this section and section 9607 of this title] may be cited as the 'Small Business Liability Relief and Brownfields Revitalization Act'."

Pub. L. 107–118, title I, §101, Jan. 11, 2002, 115 Stat. 2356, provided that: "This title [amending sections 9607 and 9622 of this title and enacting provisions set out as a note under section 9607 of this title] may be cited as the 'Small Business Liability Protection Act'."

Pub. L. 107–118, title II, §201, Jan. 11, 2002, 115 Stat. 2360, provided that: "This title [enacting section 9628 of this title and amending this section and sections 9604, 9605, and 9607 of this title] may be cited as the 'Brownfields Revitalization and Environmental Restoration Act of 2001'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, §2501, Sept. 30, 1996, 110 Stat. 3009–462, provided that: "This subtitle [subtitle E (§§2501–2505) of title II of div. A of Pub. L. 104–208, amending this section and sections 6991b and 9607 of this title and enacting provisions set out as a note under section 6991b of this title] may be cited as the 'Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–426, §1, Oct. 19, 1992, 106 Stat. 2174, provided that: "This Act [amending section 9620 of this title and enacting provisions set out as a note under section 9620 of this title] may be cited as the 'Community Environmental Response Facilitation Act'."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–499, §1, Oct. 17, 1986, 100 Stat. 1613, provided that: "This Act [enacting subchapter IV of this chapter and sections 9616 to 9626, 9658 to 9662, 11001 to 11005, 11021 to 11023, and 11041 to 11050 of this title, sections 2701 to 2707 and 2810 of Title 10, Armed Forces, and sections 59A, 4671, 4672, 9507, and 9508 of Title 26, Internal Revenue Code, amending this section, sections 6926, 6928, 6991 to 6991d, 6991g, 9602 to 9609, 9611 to 9614, 9631, 9651, 9656, and 9657 of this title, sections 26, 164, 275, 936, 1561, 4041, 4042, 4081, 4221, 4611, 4612, 4661, 4662, 6154, 6416, 6420, 6421, 6425, 6427, 6655, 9502, 9503, and 9506 of Title 26, and section 1416 of Title 33, Navigation and Navigable Waters, renumbering former section 2701 of Title 10 as section 2721 of Title 10, repealing sections 9631 to 9633, 9641, and 9653 of this title and sections 4681 and 4682 of Title 26, and enacting provisions set out as notes under this section, sections 6921, 6991b, 7401, 9620, 9621, 9658, 9660, 9661, and 11001 of this title, section 2703 of Title 10, sections 1, 26, 4041, 4611, 4661, 4671, 4681, 9507, and 9508 of Title 26, and section 655 of Title 29, Labor] may be cited as the 'Superfund Amendments and Reauthorization Act of 1986'."

SHORT TITLE

Pub. L. 96–510, §1, Dec. 11, 1980, 94 Stat. 2767, provided: "That this Act [enacting this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amending section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacting provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26] may be cited as the 'Comprehensive Environmental Response, Compensation, and Liability Act of 1980'."

DEFINITIONS

Pub. L. 99–499, §2, Oct. 17, 1986, 100 Stat. 1614, provided that: "As used in this Act [see Short Title of 1986 Amendment note above]—

"(1) CERCLA.—The term 'CERCLA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(2) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No.

7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

[1] *So in original. Probably should be "or".*

[2] *So in original. Probably should be "mean".*

[3] *So in original.*

[4] *See References in Text note below.*

§9602. Designation of additional hazardous substances and establishment of reportable released quantities; regulations

(a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 9601(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 9603 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988."

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 9601(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 1321(b)(4) of title 33, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 9603(a) or (b) of this title.

(Pub. L. 96–510, title I, §102, Dec. 11, 1980, 94 Stat. 2772; Pub. L. 99–499, title I, §102, Oct. 17, 1986, 100 Stat. 1617.)

EDITORIAL NOTES

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–499 inserted provisions setting deadlines for promulgation of proposed and final regulations.

§9603. Notification requirements respecting released substances

(a) Notice to National Response Center upon release from vessel or offshore or onshore facility by person in charge; conveyance of notice by Center

Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 9602 of this title, immediately notify the National Response Center established under the Clean Water Act

[33 U.S.C. 1251 et seq.] of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release,

in a quantity equal to or greater than that determined pursuant to section 9602 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release or who submits in such a notification any information which he knows to be false or misleading shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Notice to Administrator of EPA of existence of storage, etc., facility by owner or operator; exception; time, manner, and form of notice; penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Within one hundred and eighty days after December 11, 1980, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 9601(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 9607 of this title: *Provided, however*, That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d) Recordkeeping requirements; promulgation of rules and regulations by Administrator of EPA; penalties for violations; waiver of retention requirements

(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with December 11, 1980, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(3) At any time prior to the date which occurs fifty years after December 11, 1980, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this chapter. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) Applicability to registered pesticide products and air emissions from animal waste at farms

(1) In general

This section shall not apply to—

(A) the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) or the handling and storage of such a pesticide product by an agricultural producer; or

(B) air emissions from animal waste (including decomposing animal waste) at a farm.

(2) Definitions

In this subsection:

(A) Animal waste

(i) In general

The term "animal waste" means feces, urine, or other excrement, digestive emission, urea, or similar substances emitted by animals (including any form of livestock, poultry, or fish).

(ii) Inclusions

The term "animal waste" includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with such waste.

(B) Farm

The term "farm" means a site or area (including associated structures) that—

(i) is used for—

(I) the production of a crop; or

(II) the raising or selling of animals (including any form of livestock, poultry, or fish); and

(ii) under normal conditions, produces during a farm year any agricultural products with a total value equal to not less than $1,000.

(f) Exemptions from notice and penalty provisions for substances reported under other Federal law or is in continuous release, etc.

No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

(Pub. L. 96–510, title I, §103, Dec. 11, 1980, 94 Stat. 2772; Pub. L. 96–561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99–499, title I, §§103, 109(a)(1), (2), Oct. 17, 1986, 100 Stat. 1617, 1632, 1633; Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 115–141, div. S, title XI, §1102, Mar. 23, 2018, 132 Stat. 1147.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Water Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(2), is Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The Solid Waste Disposal Act, referred to in subsecs. (c) and (f)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

This chapter, referred to in subsec. (d)(3), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (e)(1)(A), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

AMENDMENTS

2018—Subsec. (e). Pub. L. 115–141 added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: "This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer."

1996—Subsec. (b)(2). Pub. L. 104–208 substituted "Magnuson-Stevens Fishery" for "Magnuson Fishery".

1986—Subsec. (b). Pub. L. 99–499, §§103, 109(a), adjusted left hand margin of text following "federally permitted release," third place appearing so that there is no indentation of that text, inserted "or who submits in such a notification any information which he knows to be false or misleading", and substituted "in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both" for "not more than $10,000 or imprisoned for not more than one year, or both" and "subsection" for "paragraph".

Subsec. (d)(2). Pub. L. 99–499, §109(a)(2), substituted "in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both" for "not more than $20,000, or imprisoned for not more than one year, or both" as the probable intent of Congress, notwithstanding directory language that the substitution be made for "not more than $20,000, or imprisoned for not more than one year or both".

1980—Subsec. (b)(2). Pub. L. 96–561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300, provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

APPLICATION

Pub. L. 115–141, div. S, title XI, §1103, Mar. 23, 2018, 132 Stat. 1148, provided that: "Nothing in this title [see Short Title of 2018 Amendment note set out under section 9601 of this title] or an amendment made by this title affects, or supersedes or modifies the responsibility or authority of any Federal official or employee to comply with or enforce, any requirement under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), other than the hazardous substance notification requirements under section 103 of that Act (42 U.S.C. 9603) with respect to air emissions from animal waste at farms."

ONLINE INCIDENT REPORTING SYSTEM

Pub. L. 119–60, div. G, title LXXIV, §7404, Dec. 18, 2025, 139 Stat. 1784, provided that:

"(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [Dec. 18, 2025], the National Response Center shall submit to Congress a plan to design, fund, and staff the National Response Center to develop and maintain a web-based application by which the National Response Center may receive notifications of oil discharges or releases of hazardous substances.

"(b) DEVELOPMENT OF APPLICATION.—Not later than 2 years after the date on which the plan is submitted under subsection (a), the National Response Center shall—

"(1) complete development of the application described in such subsection; and

"(2) allow notifications described in such subsection that are required under Federal law or regulation to be made online using such application.

"(c) USE OF APPLICATION.—In carrying out subsection (b), the National Response Center may not require the notification of an oil discharge or release of a hazardous substance to be made using the application developed under such subsection."

EXECUTIVE DOCUMENTS

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331

of Title 43, Public Lands.

§9604. Response authorities

(a) Removal and other remedial action by President; applicability of national contingency plan; response by potentially responsible parties; public health threats; limitations on response; exception

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 9622 of this title. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.

(2) REMOVAL ACTION.—Any removal action undertaken by the President under this subsection (or by any other person referred to in section 9622 of this title) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.

(3) LIMITATIONS ON RESPONSE.—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) EXCEPTION TO LIMITATIONS.—Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.

(b) Investigations, monitoring, coordination, etc., by President

(1) Information; studies and investigations

Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous

substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this chapter.

(2) Coordination of investigations

The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.

(c) Criteria for continuance of obligations from Fund over specified amount for response actions; consultation by President with affected States; contracts or cooperative agreements by States with President prior to remedial actions; cost-sharing agreements; selection by President of remedial actions; State credits: granting of credit, expenses before listing or agreement, response actions between 1978 and 1980, State expenses after December 11, 1980, in excess of 10 percent of costs, item-by-item approval, use of credits; operation and maintenance; limitation on source of funds for O&M; recontracting; siting

(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken [1] obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after $2,000,000 has been obligated for response actions or 12 months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term "facility" does not include navigable waters or the beds underlying those waters. In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this

paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.

(4) SELECTION OF REMEDIAL ACTION.—The President shall select remedial actions to carry out this section in accordance with section 9621 of this title (relating to cleanup standards).

(5) STATE CREDITS.—

(A) GRANTING OF CREDIT.—The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) for the facility if—

(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

(C) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 of this title.

(D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before October 17, 1986.

(E) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after October 17, 1986, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.

(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

(7) LIMITATION ON SOURCE OF FUNDS FOR O&M.—During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A

of chapter 98 of title 26 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this chapter.

(8) RECONTRACTING.—The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed $2,000,000.

(9) SITING.—Effective 3 years after October 17, 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

(C) are acceptable to the President, and

(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.].

(d) Contracts or cooperative agreements by President with States or political subdivisions or Indian tribes; State applications, terms and conditions; reimbursements; cost-sharing provisions; enforcement requirements and procedures

(1) COOPERATIVE AGREEMENTS.—

(A) STATE APPLICATIONS.—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 9605(a)(8) of this title and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

(C) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on October 17, 1986, for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this chapter shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this chapter.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and

enforcement of any contract or subcontract in connection with response actions assisted under this subchapter, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

(e) Information gathering and access

(1) Action authorized

Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this subchapter, or otherwise enforcing the provisions of this subchapter.

(2) Access to information

Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either (i) shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

(3) Entry

Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this subchapter.

(4) Inspection and samples

(A) Authority

Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

(B) Samples

If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(5) Compliance orders

(A) Issuance

If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(B) Compliance

The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) Other authority

Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

(7) Confidentiality of information

(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers,

employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(B) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this chapter, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this chapter. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(E) No person required to provide information under this chapter may claim that the information is entitled to protection under this paragraph unless such person shows each of the following:

(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.], an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

(i) The trade name, common name, or generic class or category of the hazardous substance.

(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

(v) The location of disposal of any waste stream.

(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

(vii) Any hydrogeologic or geologic data.

(viii) Any groundwater monitoring data.

(f) Contracts for response actions; compliance with Federal health and safety standards

In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 9651(f) of this title by contractors and subcontractors as a condition of such contracts.

(g) Rates for wages and labor standards applicable to covered work

(1) All laborers and mechanics employed by contractors or subcontractors in the performance of

construction, repair, or alteration work funded in whole or in part under this section or section 9628(a)(1)(B)(ii)(III) of this title shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(h) Emergency procurement powers; exercise by President

Notwithstanding any other provision of law, subject to the provisions of section 9611 of this title, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this chapter. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.

(1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, and appropriate State and local health officials, effectuate and implement the health related authorities of this chapter. In addition, said Administrator shall—

(A) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

(B) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(C) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

(D) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing where appropriate, epidemiological studies, or any other assistance appropriate under the circumstances; and

(E) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

(2)(A) Within 6 months after October 17, 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency ("EPA") shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

(B) Within 24 months after October 17, 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of

priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after October 17, 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this chapter.

(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act [15 U.S.C. 2603(e)] on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

(iii) laboratory and other studies to determine the manner in which such substances are

metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

(iv) where there is a possibility of obtaining human data, the collection of such information.

(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider—

(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

(iii) such other scientific and technical factors as the Administrator of ATSDR may determine are necessary for the effective implementation of this subsection.

(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] and the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. 136 et seq.]. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.]. Within 1 year after October 17, 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], and recovery of such costs from responsible parties under this chapter.

(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 9605 of this title. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to October 17, 1986, or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after October 17, 1986.

(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

(D) Where a health assessment is done at a site on the National Priorities List, the Administrator

of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(F) For the purposes of this subsection and section 9611(c)(4) of this title, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this chapter. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 9605(a)(8)(A) of this title to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

(8) In any case in which the results of a health assessment indicate a potential significant risk to

human health, the Administrator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(10) Two years after October 17, 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

(A) health assessments and pilot health effects studies conducted;

(B) epidemiologic studies conducted;

(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

(D) registries established under paragraph (8); and

(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this chapter or the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] and any increased incidence or prevalence of adverse health effects in humans.

(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this chapter, including, but not limited to—

(A) provision of alternative water supplies, and

(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a significant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act [42 U.S.C. 6973]) or the response and abatement authorities of this chapter.

(13) All studies and results of research conducted under this subsection (other than health

assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

(14) In the implementation of this subsection and other health-related authorities of this chapter, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

(15) The activities of the Administrator of ATSDR described in this subsection and section 9611(c)(4) of this title shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act [42 U.S.C. 6939a(b)], health studies, registries, and health surveillance.

(16) The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

(17) In accordance with section 9620 of this title (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.

(j) Acquisition of property

(1) Authority

The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this chapter. There shall be no cause of action to compel the President to acquire any interest in real property under this chapter.

(2) State assurance

The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the President, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

(3) Exemption

No Federal, State, or local government agency shall be liable under this chapter solely as a result of acquiring an interest in real estate under this subsection.

(k) Brownfields revitalization funding

(1) Definition of eligible entity

In this subsection, the term "eligible entity" means—

(A) a general purpose unit of local government;

(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

(C) a government entity created by a State legislature;

(D) a regional council or group of general purpose units of local government;

(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;

(F) a State;

(G) an Indian Tribe other than in Alaska;

(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakatla Indian community;

(I) an organization described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of that title;

(J) a limited liability corporation in which all managing members are organizations described in subparagraph (I) or limited liability corporations whose sole members are organizations described in subparagraph (I);

(K) a limited partnership in which all general partners are organizations described in subparagraph (I) or limited liability corporations whose sole members are organizations described in subparagraph (I); or

(L) a qualified community development entity (as defined in section 45D(c)(1) of title 26).

(2) Brownfield site characterization and assessment grant program

(A) Establishment of program

The Administrator shall establish a program to—

(i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and

(ii) perform targeted site assessments at brownfield sites.

(B) Assistance for site characterization and assessment

(i) In general

On approval of an application made by an eligible entity, the Administrator may make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites.

(ii) Site characterization and assessment

A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 9601(35)(B) of this title.

(C) Exemption for certain publicly owned brownfield sites

Notwithstanding paragraph (5)(B)(iii), an eligible entity described in any of subparagraphs (A) through (H) of paragraph (1) may receive a grant under this paragraph for property acquired by that eligible entity prior to January 11, 2002, even if the eligible entity does not qualify as a bona fide prospective purchaser, so long as the eligible entity has not caused or contributed to a release or threatened release of a hazardous substance at the property.

(3) Grants and loans for brownfield remediation

(A) Grants provided by the President

Subject to paragraphs (5) and (6), the President shall establish a program to provide grants to—

(i) eligible entities, to be used for capitalization of revolving loan funds; and

(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed $500,000 for each site to be remediated, which limit may be waived by the Administrator, but not to exceed a total of $650,000 for each site, based on the anticipated level of contamination, size, or ownership status of the site.

(B) Loans and grants provided by eligible entities

An eligible entity that receives a grant under subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of—

(i) one or more loans to an eligible entity, a site owner, a site developer, or another person; or

(ii) one or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.

(C) Considerations

In determining whether a grant under subparagraph (A)(ii) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration—

(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;

(iv) the benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation; and

(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.

(D) Transition

Revolving loan funds that have been established before January 11, 2002, may be used in accordance with this paragraph.

(E) Exemption for certain publicly owned brownfield sites

Notwithstanding paragraph (5)(B)(iii), an eligible entity described in any of subparagraphs (A) through (H) of paragraph (1) may receive a grant or loan under this paragraph for property acquired by that eligible entity prior to January 11, 2002, even if the eligible entity does not qualify as a bona fide prospective purchaser, so long as the eligible entity has not caused or contributed to a release or threatened release of a hazardous substance at the property.

(4) Multipurpose brownfields grants

(A) In general

Subject to subparagraph (D) and paragraphs (5) and (6), the Administrator shall establish a program to provide multipurpose grants to an eligible entity based on the criteria under subparagraph (C) and the considerations under paragraph (3)(C), to carry out inventory, characterization, assessment, planning, or remediation activities at 1 or more brownfield sites in an area proposed by the eligible entity.

(B) Grant amounts

(i) Individual grant amounts

Each grant awarded under this paragraph shall not exceed $1,000,000.

(ii) Cumulative grant amounts

The total amount of grants awarded for each fiscal year under this paragraph may not exceed 15 percent of the funds made available for the fiscal year to carry out this subsection.

(C) Criteria

In awarding a grant under this paragraph, the Administrator shall consider the extent to which the eligible entity is able—

(i) to provide an overall plan for revitalization of the 1 or more brownfield sites in the proposed area in which the multipurpose grant will be used;

(ii) to demonstrate a capacity to conduct the range of eligible activities that will be funded by the multipurpose grant; and

(iii) to demonstrate that a multipurpose grant will meet the needs of the 1 or more brownfield sites in the proposed area.

(D) Condition

As a condition of receiving a grant under this paragraph, each eligible entity shall expend the full amount of the grant by not later than the date that is 5 years after the date on which the grant is awarded to the eligible entity, unless the Administrator provides an extension.

(E) Ownership

An eligible entity that receives a grant under this paragraph may not expend any of the grant funds for the remediation of a brownfield site unless the eligible entity owns the brownfield site.

(5) General provisions

(A) Maximum grant amount

(i) Brownfield site characterization and assessment

(I) In general

A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, $200,000.

(II) Waiver

The Administrator may waive the $200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed $350,000, based on the anticipated level of contamination, size, or status of ownership of the site.

(ii) Brownfield remediation

A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed $1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration—

(I) the number of sites and number of communities that are addressed by the revolving loan fund;

(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

(IV) such other similar factors as the Administrator considers appropriate to carry out this subsection.

(B) Prohibition

No part of a grant or loan under this subsection may be used for the payment of—

(i) a penalty or fine;

(ii) a Federal cost-share requirement;

(iii) a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 9607 of this title; or

(iv) a cost of compliance with any Federal law (including a Federal law specified in section 9601(39)(B) of this title), excluding the cost of compliance with laws applicable to the cleanup.

(C) Assistance for development of local government site remediation programs

A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include—

(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and

(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

(D) Insurance

A recipient of a grant or loan awarded under paragraph (2), (3), or (4) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

(E) Administrative costs

(i) In general

An eligible entity may use up to 5 percent of the amounts made available under a grant or loan under this subsection for administrative costs.

(ii) Restriction

For purposes of clause (i), the term "administrative costs" does not include—

(I) investigation and identification of the extent of contamination of a brownfield site;

(II) design and performance of a response action; or

(III) monitoring of a natural resource.

(6) Grant applications

(A) Submission

(i) In general

(I) Application

An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for one or more brownfield sites (including information on the criteria used by the Administrator to rank applications under subparagraph (C), to the extent that the information is available).

(II) NCP requirements

The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

(ii) Coordination

The Administrator shall coordinate with other Federal agencies to assist in making eligible entities aware of other available Federal resources.

(iii) Guidance

The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

(B) Approval

The Administrator shall—

(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

(ii) award grants under this subsection to eligible entities that the Administrator determines have the highest rankings under the ranking criteria established under subparagraph (C).

(C) Ranking criteria

The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which one or more brownfield sites are located.

(ii) The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in areas in which there is a greater-than-normal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

(vii) The extent to which the applicant is eligible for funding from other sources.

(viii) The extent to which a grant will further the fair distribution of funding between urban and nonurban areas.

(ix) The extent to which the grant provides for involvement of the local community in the process of making decisions relating to cleanup and future use of a brownfield site.

(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.

(xi) The extent to which a grant would address a site adjacent to a body of water or a federally designated flood plain.

(xii) The extent to which a grant would facilitate—

(I) the location at a brownfield site of a facility that generates renewable electricity from wind, solar, or geothermal energy; or

(II) any energy efficiency improvement project at a brownfield site, including a project for a combined heat and power system or a district energy system.

(D) Report on ranking criteria

Not later than September 30, 2022, the Administrator shall submit to Congress a report regarding the Administrator's use of the ranking criteria described in subparagraph (C) in awarding grants under this subsection.

(7) Implementation of brownfields programs

(A) Establishment of program

The Administrator may provide, or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

(B) Funding restrictions

The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

(8) Audits

(A) In general

The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.

(B) Procedure

An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the Government Accountability Office, including chapter 75 of title 31.

(C) Violations

If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may—

(i) terminate the grant or loan;

(ii) require the person to repay any funds received; and

(iii) seek any other legal remedies available to the Administrator.

(D) Report to Congress

Not later than September 30, 2022, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).

(9) Leveraging

An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2), (3), or (4).

(10) Agreements

Each grant or loan made under this subsection shall—

(A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and

(B) be subject to an agreement that—

(i) requires the recipient to—

(I) comply with all applicable Federal and State laws; and

(II) ensure that the cleanup protects human health and the environment;

(ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2), (3), or (4), as applicable;

(iii) in the case of an application by an eligible entity under paragraph (3)(A), requires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching share would place an undue hardship on the eligible entity; and

(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.

(11) Facility other than brownfield site

The fact that a facility may not be a brownfield site within the meaning of section 9601(39)(A)

of this title has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

(12) Effect on Federal laws

Nothing in this subsection affects any liability or response authority under any Federal law, including—

(A) this chapter (including the last sentence of section 9601(14) of this title);
(B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
(D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and
(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(13) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $200,000,000 for each of fiscal years 2019 through 2023.

(Pub. L. 96–510, title I, §104, Dec. 11, 1980, 94 Stat. 2774; Pub. L. 99–499, title I, §§104, 110, title II, §207(b), Oct. 17, 1986, 100 Stat. 1617, 1636, 1705; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–531, title III, §312(h), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 107–118, title II, §211(b), Jan. 11, 2002, 115 Stat. 2362; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–59, title I, §1956, Aug. 10, 2005, 119 Stat. 1515; Pub. L. 115–141, div. N, §§6–13, 14(b), Mar. 23, 2018, 132 Stat. 1054–1058.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsecs. (c)(3), (9)(D), (i)(10)(E), and (k)(12)(B), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Title III of the Amendments and Reauthorization Act of 1986, referred to in subsec. (e)(7)(E)(i), probably means title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classified generally to chapter 116 (§11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (g)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in subsecs. (i)(5)(C), (D) and (k)(12)(D), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (i)(5)(C), (D), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (k)(1)(H), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (k)(12)(C), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the

Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsec. (k)(12)(E), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

In subsec. (g)(1), "sections 3141–3144, 3146, and 3147 of title 40" substituted for "the Davis-Bacon Act" and, in subsec. (g)(2), "section 3145 of title 40" substituted for "section 276c of title 40 of the United States Code", on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2018—Subsec. (g)(1). Pub. L. 115–141, §14(b), inserted "or section 9628(a)(1)(B)(ii)(III) of this title" after "under this section".

Subsec. (k). Pub. L. 115–141, §9(4), substituted "paragraph (2), (3), or (4)" for "paragraph (2) or (3)" wherever appearing.

Subsec. (k)(1)(I) to (L). Pub. L. 115–141, §6, added subpars. (I) to (L).

Subsec. (k)(2)(C). Pub. L. 115–141, §7(1), added subpar. (C).

Subsec. (k)(3)(A). Pub. L. 115–141, §9(2), substituted "Subject to paragraphs (5) and (6)" for "Subject to paragraphs (4) and (5)" in introductory provisions.

Subsec. (k)(3)(A)(ii). Pub. L. 115–141, §8, substituted "$500,000 for each site to be remediated, which limit may be waived by the Administrator, but not to exceed a total of $650,000 for each site, based on the anticipated level of contamination, size, or ownership status of the site" for "$200,000 for each site to be remediated".

Subsec. (k)(3)(E). Pub. L. 115–141, §7(2), added subpar. (E).

Subsec. (k)(4). Pub. L. 115–141, §9(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (k)(5). Pub. L. 115–141, §9(1), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (k)(5)(B). Pub. L. 115–141, §10(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) related to prohibited uses of grants or loans under subsec. (k).

Subsec. (k)(5)(E). Pub. L. 115–141, §10(2), added subpar. (E).

Subsec. (k)(6). Pub. L. 115–141, §9(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (k)(6)(C)(xi), (xii). Pub. L. 115–141, §11(a), added cls. (xi) and (xii).

Subsec. (k)(6)(D). Pub. L. 115–141, §11(b), added subpar. (D).

Subsec. (k)(7). Pub. L. 115–141, §9(1), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (k)(8). Pub. L. 115–141, §9(1), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (k)(8)(D). Pub. L. 115–141, §12, substituted "September 30, 2022" for "3 years after January 11, 2002".

Subsec. (k)(9) to (12). Pub. L. 115–141, §9(1), redesignated pars. (8) to (11) as (9) to (12), respectively. Former par. (12) redesignated (13).

Subsec. (k)(13). Pub. L. 115–141, §13, amended par. (13) generally. Prior to amendment, par. (13) authorized appropriations for fiscal years 2002 through 2006 and specified conditions on use of certain funds.

Pub. L. 115–141, §9(1), redesignated par. (12) as (13).

2005—Subsec. (k)(4)(B)(iii). Pub. L. 109–59 added cl. (iii).

2004—Subsec. (k)(7)(B). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

2002—Subsec. (k). Pub. L. 107–118 added subsec. (k).

1992—Subsec. (i)(1). Pub. L. 102–531 substituted "Centers for Disease Control and Prevention" for "Centers for Disease Control".

1986—Subsec. (a)(1). Pub. L. 99–499, §104(a), substituted provisions authorizing the President to allow owner or operator of facility or vessel or any other responsible party to carry out action, conduct the remedial investigation, or conduct feasibility study under section 9622 of this title, specifying conditions under which a remedial investigation or feasibility study would be authorized, providing for treatment of potentially responsible parties, and requiring President to give primary attention to those releases which the President deems may present a public health threat, for ", unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party."

Subsec. (a)(2). Pub. L. 99–499, §104(b), amended par. (2) generally. Prior to amendment, par. (2) read as

follows: "For the purposes of this section, 'pollutant or contaminant' shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 9601(14)(A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas)."

Subsec. (a)(3), (4). Pub. L. 99–499, §104(c), added pars. (3) and (4).

Subsec. (b). Pub. L. 99–499, §104(d), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (c)(1). Pub. L. 99–499, §104(e)(1), substituted "$2,000,000" for "$1,000,000" and "12 months" for "six months".

Subsec. (c)(1)(C). Pub. L. 99–499, §104(e)(2), added cl. (C).

Subsec. (c)(3). Pub. L. 99–499, §§104(f), 207(b), substituted text of cl. (C)(ii) and sentence providing that "facility" does not include navigable waters or beds underlying those waters for "(ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 of this title relating to the specific release in question: *Provided, however*, That in no event shall the amount of the credit granted exceed the total response costs relating to the release." and inserted provisions relating to remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation.

Subsec. (c)(4). Pub. L. 99–499, §104(g), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under subchapter II of this chapter to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action."

Subsec. (c)(5). Pub. L. 99–499, §104(h), added par. (5).

Subsec. (c)(6). Pub. L. 99–499, §104(i), added par. (6).

Subsec. (c)(7). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 99–499, §104(i), added par. (7).

Subsec. (c)(8). Pub. L. 99–499, §104(j), added par. (8).

Subsec. (c)(9). Pub. L. 99–499, §104(k), added par. (9).

Subsec. (d)(1). Pub. L. 99–499, §104(l), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 9605(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section."

Subsec. (e)(1). Pub. L. 99–499, §104(m), added par. (1), and struck out former par. (1) which provided for access to, and copying of, records relating to covered substances, and entry by officers, employees or representatives of the President or a State into places where hazardous substances were or had been generated, stored, treated or disposed of, or transported from, and inspection and obtaining of samples of such substances and samples of containers or labeling for such substances.

Subsec. (e)(2) to (6). Pub. L. 99–499, §104(m), added pars. (2) to (6). Former par. (2) redesignated (7).

Subsec. (e)(7). Pub. L. 99–499, §104(m), (n), redesignated par. (2) as (7), aligned margin of par. (7) with pars. (1) through (6), and added par. heading and subpars. (E) and (F).

Subsec. (i). Pub. L. 99–499, §110, designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), in introductory provisions of par. (1), struck out "and" after "Health Administration," and inserted "the Secretary of Transportation, and appropriate State and local health officials," in par. (1)(D), inserted "where appropriate", and added pars. (2) to (18).

Subsec. (j). Pub. L. 99–499, §104(o)(1), added subsec. (j).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ADMINISTRATOR OF THE AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

Director of the Centers for Disease Control and Prevention to serve as the Administrator of the Agency for Toxic Substances and Disease Registry consistent with subsec. (i) of this section, see section 242c(a) of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i)(10) of this section relating to the requirement that the Administrator of ATSDR submit a biennial report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 13th item on page 154 of House Document No. 103–7.

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

[1] So in original. Probably should be followed by a comma.

§9605. National contingency plan

(a) Revision and republication

Within one hundred and eighty days after December 11, 1980, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 1321 of title 33, to reflect and effectuate the responsibilities and powers created by this chapter, in addition to those matters specified in section 1321(c)(2) [1] of title 33. Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this chapter;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of

potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release, State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after December 11, 1980, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once. Other priority facilities or incidents may be listed singly or grouped for response priority purposes;

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor and including consideration of minority firms in accordance with subsection (f); and

(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this chapter.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 1321(c)(2)(F) and (G) and (j)(1) of title 33. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

(b) Revision of plan

Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 [October 17, 1986], the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as "the National Hazardous Substance Response Plan" shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this chapter which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

(c) Hazard ranking system

(1) Revision

Not later than 18 months after October 17, 1986, and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such

amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after October 17, 1986. Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

(2) Health assessment of water contamination risks

In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

(3) Reevaluation not required

The President shall not be required to reevaluate, after October 17, 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

(4) New information

Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this chapter.

(d) Petition for assessment of release

Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

(e) Releases from earlier sites

Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date" on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

(f) Minority contractors

In awarding contracts under this chapter, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this chapter, the participation of minority firms in contracts carried out under this chapter. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this chapter and of the efforts made by the President to encourage the participation of such firms in programs carried out under this chapter.

(g) Special study wastes

(1) Application

This subsection applies to facilities—

(A) which as of October 17, 1986, were not included on, or proposed for inclusion on, the National Priorities List; and

(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 6921(b) of this title are present in significant quantities, including any such facility from which there has been a release of a special study waste.

(2) Considerations in adding facilities to NPL

Pending revision of the hazard ranking system under subsection (c), the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

(3) Savings provisions

Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of October 17, 1986, is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

(4) Information gathering and analysis

Nothing in this chapter shall be construed to preclude the expenditure of monies from the Fund for gathering and analysis of information which will enable the President to consider the specific factors required by paragraph (2).

(h) NPL deferral

(1) Deferral to State voluntary cleanups

At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that—

(A) the State, or another party under an agreement with or order from the State, is conducting a response action at the eligible response site—

(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

(ii) that will provide long-term protection of human health and the environment; or

(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

(2) Progress toward cleanup

If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

(3) Cleanup agreements

With respect to an eligible response site under paragraph (1)(B), if, after the last day of the

1-year period beginning on the date on which the President proposes to list the eligible response site on the National Priorities List, an agreement described in paragraph (1)(B) has not been reached, the President may defer the listing of the eligible response site on the National Priorities List for an additional period of not to exceed 180 days if the President determines deferring the listing would be appropriate based on—

(A) the complexity of the site;

(B) substantial progress made in negotiations; and

(C) other appropriate factors, as determined by the President.

(4) Exceptions

The President may decline to defer, or elect to discontinue a deferral of, a listing of an eligible response site on the National Priorities List if the President determines that—

(A) deferral would not be appropriate because the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party;

(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

(C) the conditions in paragraphs (1) through (3), as applicable, are no longer being met.

(Pub. L. 96–510, title I, §105, Dec. 11, 1980, 94 Stat. 2779; Pub. L. 99–499, title I, §105, Oct. 17, 1986, 100 Stat. 1625; Pub. L. 107–118, title II, §232, Jan. 11, 2002, 115 Stat. 2379.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c)(4), (f), and (g)(4), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Section 1321(c)(2) of title 33, referred to in subsec. (a), was amended generally by Pub. L. 101–380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

Such amendments and the amendments made by the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (b), are the amendments made by Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

AMENDMENTS

2002—Subsec. (h). Pub. L. 107–118 added subsec. (h).

1986—Subsec. (a). Pub. L. 99–499, §105(a)(1), designated existing provisions as subsec. (a) and added heading.

Subsec. (a)(8)(A). Pub. L. 99–499, §105(a)(2), inserted "the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release," after "ecosystems,".

Subsec. (a)(8)(B). Pub. L. 99–499, §105(a)(3), struck out "at least four hundred of" after "To the extent practicable,", substituted "one hundred highest priority facilities" for "one hundred highest priority facilities at least", and inserted "A State shall be allowed to designate its highest priority facility only once."

Subsec. (a)(9). Pub. L. 99–499, §105(a)(4), inserted "and including consideration of minority firms in accordance with subsection (f)".

Subsec. (a)(10). Pub. L. 99–499, §105(a)(5), added par. (10).

Subsecs. (b) to (g). Pub. L. 99–499, §105(b), added subsecs. (b) to (g).

[1] *See References in Text note below.*

§9606. Abatement actions

(a) Maintenance, jurisdiction, etc.

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

(b) Fines; reimbursement

(1) Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 9607(a) of this title and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 9607(a) of this title may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28.

(c) Guidelines for using imminent hazard, enforcement, and emergency response authorities; promulgation by Administrator of EPA, scope, etc.

Within one hundred and eighty days after December 11, 1980, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this chapter. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 1321(c)(2),[1] 1318, 1319, and 1364(a) of title 33, (2) sections 6927, 6928, 6934, and 6973 of this title, (3) sections 300j–4 and 300i of this title, (4) sections 7413, 7414, and 7603 of this title, and (5) section 2606 of title 15.

(Pub. L. 96–510, title I, §106, Dec. 11, 1980, 94 Stat. 2780; Pub. L. 99–499, title I, §§106, 109(b), Oct. 17, 1986, 100 Stat. 1628, 1633; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Section 1321(c)(2) of title 33, referred to in subsec. (c), was amended generally by Pub. L. 101–380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–499 designated existing provisions as par. (1), substituted "who, without sufficient cause, willfully" for "who willfully" and "$25,000" for "$5,000", and added par. (2).

Subsec. (b)(2)(A). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

[1] *See References in Text note below.*

§9607. Liability

(a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the

national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

(b) Defenses

There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c) Determination of amounts

(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel, other than an incineration vessel, which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, whichever is greater;

(B) for any other vessel, other than an incineration vessel, $300 per gross ton, or $500,000, whichever is greater;

(C) for any motor vehicle, aircraft, hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), or rolling stock, $50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 9601(14)(A) of this title into the navigable waters, $8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any incineration vessel or any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this subchapter.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of

willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 or vessels subject to the provisions of title 33 or 46, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 9612(c) of this title. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) Rendering care or advice

(1) In general

Except as provided in paragraph (2), no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ("NCP") or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(2) State and local governments

No State or local government shall be liable under this subchapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(3) Savings provision

This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.

(e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights

(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) Natural resources liability; designation of public trustees of natural resources

(1) Natural resources liability

In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural

resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: *Provided, however,* That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) Designation of Federal and State officials

(A) Federal

The President shall designate in the National Contingency Plan published under section 9605 of this title the Federal officials who shall act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this chapter and such section 1321 of title 33 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

(B) State

The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33 and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this chapter and such section 1321 of title 33 for those natural resources under their trusteeship.

(C) Rebuttable presumption

Any determination or assessment of damages to natural resources for the purposes of this chapter and section 1321 of title 33 made by a Federal or State trustee in accordance with the regulations promulgated under section 9651(c) of this title shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this chapter or section 1321 of title 33.

(g) Federal agencies

For provisions relating to Federal agencies, see section 9620 of this title.

(h) Owner or operator of vessel

The owner or operator of a vessel shall be liable in accordance with this section, under maritime

tort law, and as provided under section 9614 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff) [1] or the absence of any physical damage to the proprietary interest of the claimant.

(i) Application of a registered pesticide product

No person (including the United States or any State or Indian tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Obligations or liability pursuant to federally permitted release

Recovery by any person (including the United States or any State or Indian tribe) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 9601(10)(B) or (C) of this title shall be recoverable in an action brought under section 1319(b) of title 33.

(k) Transfer to, and assumption by, Post-Closure Liability Fund of liability of owner or operator of hazardous waste disposal facility in receipt of permit under applicable solid waste disposal law; time, criteria applicable, procedures, etc.; monitoring costs; reports

(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], shall be transferred to and assumed by the Post-closure Liability Fund established by section 9641 [1] of this title when—

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act [42 U.S.C. 6926(b)]) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 9641 [1] of this title, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not

complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 9641 [1] of this title may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(4)(A) Not later than one year after December 11, 1980, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in subchapter II [1] of this chapter.

(B) Not later than eighteen months after December 11, 1980, and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this chapter and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under subchapter II [1] of this chapter.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 9611 of this title, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 9641 [1] of this title prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

(ii) Members of the public will have reasonable confidence that hazardous wastes will be

managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C. 6925] and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

(i) the current and future financial capabilities of facility owners and operators;

(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq., 6991 et seq.];

(ii) voluntary risk pooling by owners and operators;

(iii) legislation to require risk pooling by owners and operators;

(iv) modification of the Post-Closure Liability Trust Fund previously established by section 9641 [1] of this title, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

(v) private insurance;

(vi) insurance provided by the Federal Government;

(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.

(l) Federal lien

(1) In general

All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a))

shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration

The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this chapter.

(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 9613 of this title.

(3) Notice and validity

The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided under section 6323(h) of title 26.

(4) Action in rem

The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

(m) Maritime lien

All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(n) Liability of fiduciaries

(1) In general

The liability of a fiduciary under any provision of this chapter for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(2) Exclusion

Paragraph (1) does not apply to the extent that a person is liable under this chapter independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity.

(3) Limitation

Paragraphs (1) and (4) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

(4) Safe harbor

A fiduciary shall not be liable in its personal capacity under this chapter for—

(A) undertaking or directing another person to undertake a response action under subsection (d)(1) or under the direction of an on scene coordinator designated under the National Contingency Plan;

(B) undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the vessel or facility;

(C) terminating the fiduciary relationship;

(D) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

(E) monitoring or undertaking 1 or more inspections of the vessel or facility;

(F) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

(G) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(H) administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began; or

(I) declining to take any of the actions described in subparagraphs (B) through (H).

(5) Definitions

As used in this chapter:

(A) Fiduciary

The term "fiduciary"—

(i) means a person acting for the benefit of another party as a bona fide—

(I) trustee;

(II) executor;

(III) administrator;

(IV) custodian;

(V) guardian of estates or guardian ad litem;

(VI) receiver;

(VII) conservator;

(VIII) committee of estates of incapacitated persons;

(IX) personal representative;

(X) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(XI) representative in any other capacity that the Administrator, after providing public notice, determines to be similar to the capacities described in subclauses (I) through (X); and

(ii) does not include—

(I) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a natural person; or

(II) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of any other person.

(B) Fiduciary capacity

The term "fiduciary capacity" means the capacity of a person in holding title to a vessel or facility, or otherwise having control of or an interest in the vessel or facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(6) Savings clause

Nothing in this subsection—

(A) affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this subsection; or

(B) creates any liability for a person or a private right of action against a fiduciary or any other person.

(7) No effect on certain persons

Nothing in this subsection applies to a person if the person—

(A)(i) acts in a capacity other than that of a fiduciary or in a beneficiary capacity; and

(ii) in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(8) Limitation

This subsection does not preclude a claim under this chapter against—

(A) the assets of the estate or trust administered by the fiduciary; or

(B) a nonemployee agent or independent contractor retained by a fiduciary.

(o) De micromis exemption

(1) In general

Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this chapter if liability is based solely on paragraph (3) or (4) of subsection (a), and the person, except as provided in paragraph (4) of this subsection, can demonstrate that—

(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

(2) Exceptions

Paragraph (1) shall not apply in a case in which—

(A) the President determines that—

(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility; or

(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

(B) a person has been convicted of a criminal violation for the conduct to which the exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

(3) No judicial review

A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

(4) Nongovernmental third-party contribution actions

In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this chapter, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

(p) Municipal solid waste exemption

(1) In general

Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is—

(A) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

(C) an organization described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term "affiliate" has the meaning of that term provided in the definition of "small business concern" in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

(2) Exception

Paragraph (1) shall not apply in a case in which the President determines that—

(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter; or

(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.

(3) No judicial review

A determination by the President under paragraph (2) shall not be subject to judicial review.

(4) Definition of municipal solid waste

(A) In general

For purposes of this subsection, the term "municipal solid waste" means waste material—

(i) generated by a household (including a single or multifamily residence); and

(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material—

(I) is essentially the same as waste normally generated by a household;

(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

(B) Examples

Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

(C) Exclusions

The term "municipal solid waste" does not include—

(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

(5) Burden of proof

In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under this section or section 9613 of this title by—

(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.

(6) Certain actions not permitted

No contribution action may be brought by a party, other than a Federal, State, or local government, under this chapter with respect to circumstances described in paragraph (1)(A).

(7) Costs and fees

A nongovernmental entity that commences, after January 11, 2002, a contribution action under this chapter shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o).

(q) Contiguous properties

(1) Not considered to be an owner or operator

(A) In general

A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) solely by reason of the contamination if—

(i) the person did not cause, contribute, or consent to the release or threatened release;

(ii) the person is not—

(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or

(II) the result of a reorganization of a business entity that was potentially liable;

(iii) the person takes reasonable steps to—

(I) stop any continuing release;

(II) prevent any threatened future release; and

(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;

(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);

(v) the person—

(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and

(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this chapter;

(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

(viii) at the time at which the person acquired the property, the person—

(I) conducted all appropriate inquiry within the meaning of section 9601(35)(B) of this title with respect to the property; and

(II) did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person.

(B) Demonstration

To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met.

(C) Bona fide prospective purchaser

Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real property may qualify as a bona fide prospective purchaser under section 9601(40) of this title if the person is otherwise described in that section.

(D) Ground water

With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

(2) Effect of law

With respect to a person described in this subsection, nothing in this subsection—

(A) limits any defense to liability that may be available to the person under any other provision of law; or

(B) imposes liability on the person that is not otherwise imposed by subsection (a).

(3) Assurances

The Administrator may—

(A) issue an assurance that no enforcement action under this chapter will be initiated against a person described in paragraph (1); and

(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 9613(f) of this title.

(r) Prospective purchaser and windfall lien

(1) Limitation on liability

Notwithstanding subsection (a)(1), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the bona fide prospective purchaser being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

(2) Lien

If there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (1), and if each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.

(3) Conditions

The conditions referred to in paragraph (2) are the following:

(A) Response action

A response action for which there are unrecovered costs of the United States is carried out at the facility.

(B) Fair market value

The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

(4) Amount; duration

A lien under paragraph (2)—

(A) shall be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;

(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

(C) shall be subject to the requirements of subsection (l)(3); and

(D) shall continue until the earlier of—

(i) satisfaction of the lien by sale or other means; or

(ii) notwithstanding any statute of limitations under section 9613 of this title, recovery of all response costs incurred at the facility.

(Pub. L. 96–510, title I, §107, Dec. 11, 1980, 94 Stat. 2781; Pub. L. 99–499, title I, §§107(a)–(d)(2), (e), (f), 127(b), (e), title II, §§201, 207(c), Oct. 17, 1986, 100 Stat. 1628–1630, 1692, 1693, 1705; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–429, §7(e)(2), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104–208, div. A, title II, §2502(a), Sept. 30, 1996, 110 Stat. 3009–462; Pub. L. 104–287, §6(j)(2), Oct. 11, 1996, 110 Stat. 3400; Pub. L. 107–118, title I, §102(a), title II, §§221, 222(b), Jan. 11, 2002, 115 Stat. 2356, 2368, 2371; Pub. L. 115–141, div. N, §5(b), Mar. 23, 2018, 132 Stat. 1054.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Such amendments, referred to in the last sentence of subsec. (a), probably means the amendments made by Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613, known as the "Superfund Amendments and Reauthorization Act of 1986". For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

Act of March 3, 1851 (46 U.S.C. 183ff), referred to in subsec. (h), is act Mar. 3, 1851, ch. 43, 9 Stat. 635, which was incorporated into the Revised Statutes as R.S. §§4282, 4283, 4284 to 4287 and 4289, which were classified to sections 182, 183, and 184 to 188 of the former Appendix to Title 46, Shipping, prior to being repealed and restated in chapter 305 of Title 46 by Pub. L. 109–304, §§6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (i), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (k)(1), (3), (6)(E)(i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitles C and I of the Solid Waste Disposal Act are classified generally to subchapters III (§6921 et seq.) and IX (§6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 9641 of this title, referred to in subsec. (k), was repealed by Pub. L. 99–499, title V, §514(b), Oct. 17, 1986, 100 Stat. 1767.

Subchapter II of this chapter, referred to in subsec. (k)(4)(A), (C), was in the original "title II of this Act", meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsec. (k)(6)(A), (E), is Pub. L. 98–616, Nov. 8, 1984, 98 Stat. 3221. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

The Small Business Act, referred to in subsec. (p)(1), is Pub. L. 85–536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2018—Subsec. (r)(1). Pub. L. 115–141 substituted "bona fide prospective purchaser being considered" for "purchaser's being considered".

2002—Subsecs. (o), (p). Pub. L. 107–118, §102(a), added subsecs. (o) and (p).

Subsec. (q). Pub. L. 107–118, §221, added subsec. (q).

Subsec. (r). Pub. L. 107–118, §222(b), added subsec. (r).

1996—Subsec. (c)(1)(C). Pub. L. 104–287 substituted "section 60101(a) of title 49" for "the Hazardous Liquid Pipeline Safety Act of 1979".

Subsec. (n). Pub. L. 104–208 added subsec. (n).

1994—Subsec. (c)(1)(C). Pub. L. 103–429 substituted "hazardous liquid pipeline facility" for "pipeline".

1986—Subsec. (a). Pub. L. 99–514, in penultimate sentence, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 99–499, §107(b), inserted concluding provisions relating to accrual and rate of interest on amounts recoverable under this section.

Subsec. (a)(1). Pub. L. 99–499, §107(a), struck out "(otherwise subject to the jurisdiction of the United States)" after "vessel".

Subsec. (a)(3). Pub. L. 99–499, §127(b)(1), inserted "or incineration vessel" after "facility".

Subsec. (a)(4). Pub. L. 99–499, §§107(b), 127(b)(2), 207(c)(1), in introductory provisions, inserted ", incineration vessels" after "vessels", in subpar. (A), inserted "or an Indian tribe" after "State", and added subpar. (D).

Subsec. (c)(1)(A). Pub. L. 99–499, §127(b)(3), inserted ", other than an incineration vessel," after "vessel".

Subsec. (c)(1)(B). Pub. L. 99–499, §127(b)(4), inserted "other than an incineration vessel," after "other vessel,".

Subsec. (c)(1)(D). Pub. L. 99–499, §127(b)(5), inserted "any incineration vessel or" before "any facility".

Subsec. (d). Pub. L. 99–499, §107(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "No person shall be liable under this subchapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence."

Subsec. (f)(1). Pub. L. 99–499, §107(d)(1), designated existing provisions as par. (1) and added heading.

Pub. L. 99–499, §207(c)(2)(A), inserted "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation" after third reference to "State".

Pub. L. 99–499, §207(c)(2)(B), inserted "or Indian tribe" after fourth reference to "State".

Pub. L. 99–499, §207(c)(2)(C), inserted in first sentence ", so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe".

Pub. L. 99–499, §107(d)(2), substituted "Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource" for "Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources".

Pub. L. 99–499, §207(c)(2)(D), which directed the insertion of "or the Indian tribe" after "State government", could not be executed because the prior amendment by section 107(d)(2) of Pub. L. 99–499, struck out third sentence referring to "State government".

Subsec. (f)(2). Pub. L. 99–499, §107(d)(1), added par. (2).

Subsec. (g). Pub. L. 99–499, §107(e), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section."

Subsec. (h). Pub. L. 99–499, §127(e), inserted ", under maritime tort law," after "with this section" and inserted "or the absence of any physical damage to the proprietary interest of the claimant" before the period at end.

Subsec. (i). Pub. L. 99–499, §207(c)(3), inserted "or Indian tribe" after "State".

Subsec. (j). Pub. L. 99–499, §207(c)(4), inserted "or Indian tribe" after first reference to "State".

Subsec. (k)(5), (6). Pub. L. 99–499, §201, added pars. (5) and (6).

Subsec. (l). Pub. L. 99–499, §107(f), added subsec. (l).

Subsec. (l)(3). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (m). Pub. L. 99–499, §107(f), added subsec. (m).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to any claim that has not been finally adjudicated as of Sept. 30, 1996, see section 2505 of Pub. L. 104–208, set out as a note under section 6991b of this title.

EFFECT ON CONCLUDED ACTIONS

Pub. L. 107–118, title I, §103, Jan. 11, 2002, 115 Stat. 2360, provided that: "The amendments made by this title [amending this section and section 9622 of this title] shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act [Jan. 11, 2002]."

CENTRAL HAZARDOUS MATERIALS FUND

Pub. L. 110–161, div. F, title I, Dec. 26, 2007, 121 Stat. 2116, as amended by Pub. L. 111–88, div. A, title I, Oct. 30, 2009, 123 Stat. 2924, provided in part: "That hereafter, notwithstanding 31 U.S.C. 3302, sums recovered from or paid by a party including any fines or penalties, shall be credited to this account, to be available until expended without further appropriation: *Provided further*, That hereafter such sums recovered from or paid by any party are not limited to monetary payments and may include stocks, bonds or other personal or real property, which may be retained, liquidated, or otherwise disposed of by the Secretary and which shall be credited to this account."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 109–54, title I, Aug. 2, 2005, 119 Stat. 518.

Pub. L. 108–447, div. E, title I, Dec. 8, 2004, 118 Stat. 3041.

Pub. L. 108–108, title I, §310, Nov. 10, 2003, 117 Stat. 1243.

Pub. L. 108–7, div. F, title I, Feb. 20, 2003, 117 Stat. 218.

Pub. L. 107–63, title I, Nov. 5, 2001, 115 Stat. 416.

Pub. L. 106–291, title I, Oct. 11, 2000, 114 Stat. 923.

Pub. L. 106–113, div. B, §1000(a)(3) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–136.

Pub. L. 105–277, div. A, §101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–233.

Pub. L. 105–83, title I, Nov. 14, 1997, 111 Stat. 1544.

Pub. L. 104–208, div. A, title I, §101(d) [title I], Sept. 30, 1996, 110 Stat. 3009–181, 3009–182.

Pub. L. 104–134, title I, §101(c) [title I], Apr. 26, 1996, 110 Stat. 1321–156, 1321–157; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–332, title I, Sept. 30, 1994, 108 Stat. 2500.

RECOVERY OF COSTS

Pub. L. 104–303, title II, §209, Oct. 12, 1996, 110 Stat. 3681, provided that: "Amounts recovered under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) for any response action taken by the Secretary in support of the civil works program of the Department of the Army and any other amounts recovered by the Secretary from a contractor, insurer, surety, or other person to reimburse the Department of the Army for any expenditure for environmental response activities in support of the Army civil works program shall be credited to the appropriate trust fund account from which the cost of such response action has been paid or will be charged."

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

[1] *See References in Text note below.*

§9608. Financial responsibility

(a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance

(1) The owner or operator of each vessel (except a nonself-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater) to cover the liability prescribed under paragraph (1) of section 9607(a) of this title.

Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 60105 of title 46 of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.

(b) Establishment and maintenance by owner or operator of production, etc., facilities; amount; adjustment; consolidated form of responsibility; coverage of motor carriers

(1) Beginning not earlier than five years after December 11, 1980, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after December 11, 1980, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements as quickly as can reasonably be achieved but in no event more than 4 years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the

applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this chapter shall be determined under section 31139 of title 49.

(c) Direct action

(1) Releases from vessels

In the case of a release or threatened release from a vessel, any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this subchapter. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(2) Releases from facilities

In the case of a release or threatened release from a facility, any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 9607 of this title is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 9607 of this title who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 9607 of this title if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

(d) Limitation of guarantor liability

(1) Total liability

The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 9607 of this title for the purpose of satisfying the requirement for evidence of financial responsibility.

(2) Other liability

Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 9607 of this title or other applicable law.

(Pub. L. 96–510, title I, §108, Dec. 11, 1980, 94 Stat. 2785; Pub. L. 99–499, title I, §§108, 127(c), Oct. 17, 1986, 100 Stat. 1631, 1692.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

This chapter, referred to in subsec. (b)(2), (5), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Bankruptcy Code, referred to in subsec. (c)(2), probably means a reference to Title 11, Bankruptcy.

CODIFICATION

In subsec. (a)(2), "section 60105 of title 46" substituted for "section 4197 of the Revised Statutes of the United States" on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

In subsec. (b)(5), "section 31139 of title 49" substituted for "section 30 of the Motor Carrier Act of 1980, Public Law 96–296" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–499, §127(c)(1), inserted "to cover the liability prescribed under paragraph (1) of section 9607(a) of this title" after "whichever is greater)".

Subsec. (a)(4). Pub. L. 99–499, §127(c)(2), added par. (4).

Subsec. (b)(2). Pub. L. 99–499, §108(a), inserted provisions relating to evidence of financial responsibility and authority of the President regarding establishment of that evidence.

Subsec. (b)(3). Pub. L. 99–499, §108(b), substituted "as quickly as can reasonably be achieved but in no event more than 4 years" for "over a period of not less than three and no more than six years".

Subsec. (c). Pub. L. 99–499, §108(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this subchapter. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him."

Subsec. (d). Pub. L. 99–499, §108(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Any guarantor acting in good faith against which claims under this chapter are asserted as a guarantor shall be liable under section 9607 of this title or section 9612(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under this section, and only to the extent that liability is not excluded by restrictive endorsement: *Provided*, That this subsection shall not alter the liability of any person under section 9607 of this title."

§9609. Civil penalties and awards

(a) Class I administrative penalty

(1) Violations

A civil penalty of not more than $25,000 per violation may be assessed by the President in the case of any of the following—

(A) A violation of the requirements of section 9603(a) or (b) of this title (relating to notice).

(B) A violation of the requirements of section 9603(d)(2) of this title (relating to destruction of records, etc.).

(C) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.

(D) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).

(E) Any failure or refusal referred to in section 9622(l) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

(2) Notice and hearings

No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(3) Determining amount

In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) Review

Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(5) Subpoenas

The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Class II administrative penalty

A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the President in the case of any of the following—

(1) A violation of the notice requirements of section 9603(a) or (b) of this title.

(2) A violation of section 9603(d)(2) of this title (relating to destruction of records, etc.).

(3) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.

(4) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).

(5) Any failure or refusal referred to in section 9622(l) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for hearing on the record in accordance with section 554 of title 5. In any proceeding for the assessment of a civil penalty under this subsection the President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection

and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(c) Judicial assessment

The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation (or failure or refusal) continues in the case of any of the following—

(1) A violation of the notice requirements of section 9603(a) or (b) of this title.

(2) A violation of section 9603(d)(2) of this title (relating to destruction of records, etc.).

(3) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.

(4) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).

(5) Any failure or refusal referred to in section 9622(l) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than $75,000 for each day during which the violation (or failure or refusal) continues. For additional provisions providing for judicial assessment of civil penalties for failure to comply with a request or order under section 9604(e) of this title (relating to information gathering and access authorities), see section 9604(e) of this title.

(d) Awards

The President may pay an award of up to $10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this chapter, including any violation of section 9603 of this title and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 9611 of this title.

(e) Procurement procedures

Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this chapter, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this chapter and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

(f) Savings clause

Action taken by the President pursuant to this section shall not affect or limit the President's authority to enforce any provisions of this chapter.

(Pub. L. 96–510, title I, §109, Dec. 11, 1980, 94 Stat. 2787; Pub. L. 99–499, title I, §109(c), Oct. 17, 1986, 100 Stat. 1633.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (d) to (f), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1986—Pub. L. 99–499 amended section generally. Prior to amendment, section read as follows: "Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 9608 of this title, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each day of violation."

STATUTORY NOTES AND RELATED SUBSIDIARIES

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§9610. Employee protection

(a) Activities of employee subject to protection

No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Administrative grievance procedure in cases of alleged violations

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this chapter.

(c) Assessment of costs and expenses against violator subsequent to issuance of order of abatement

Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Defenses

This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Presidential evaluations of potential loss of shifts of employment resulting from administration or enforcement of provisions; investigations; procedures applicable, etc.

The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this chapter, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore.[1] Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this chapter.

(Pub. L. 96–510, title I, §110, Dec. 11, 1980, 94 Stat. 2787.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (d), and (e), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

[1] *So in original.*

§9611. Uses of Fund

(a) In general

For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 not more than $8,500,000,000 for the 5-year period beginning on October 17, 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund). The President shall use the money in the Fund for the following purposes:

(1) Payment of governmental response costs incurred pursuant to section 9604 of this title, including costs incurred pursuant to the Intervention on the High Seas Act [33 U.S.C. 1471 et seq.].

(2) Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 1321(c) [1] of title 33 and amended by section 9605 of this title: *Provided, however*, That such costs must be approved under said plan and certified by the responsible Federal official.

(3) Payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 9612 of this title, including those costs set out in subsection 9612(c)(3) of this

title.

(4) Payment of costs specified under subsection (c) of this section.

(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 9617(e) of this title (relating to public participation grants for technical assistance).

(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed $15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this subchapter.

(b) Additional authorized purposes

(1) In general

Claims asserted and compensable but unsatisfied under provisions of section 1321 of title 33, which are modified by section 304 of this Act may be asserted against the Fund under this subchapter; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this subchapter for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however* , That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

(2) Limitation on payment of natural resource claims

(A) General requirements

No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 9607 of this title.

(B) Definition

As used in this paragraph, the term "natural resource claim" means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the costs of natural resource damage assessment.

(c) Peripheral matters and limitations

Uses of the Fund under subsection (a) of this section include—

(1) The costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

(2) The costs of Federal or State or Indian tribe efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

(3) Subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances.

(4) Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 9604(i) of this title, including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic

services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases.

(5) Subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this chapter and section 1321 of title 33, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan.

(6) Subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 9605 (d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 9605(d) of this title (relating to petitions for assessment of release).

(8) CONTRACT COSTS UNDER SECTION 9604(a)(1).—The costs of contracts or arrangements entered into under section 9604(a)(1) of this title to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

(9) ACQUISITION COSTS UNDER SECTION 9604(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 9604(j) of this title (relating to acquisition of property).

(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 9660.—The cost of carrying out section 9660 of this title (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under section 9623 of this title, except that during the 8-fiscal year period beginning October 1, 1986, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements.

(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 9660a of this title for training and education of workers to the extent that such costs do not exceed $20,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994.

(13) AWARDS UNDER SECTION 9609.—The costs of any awards granted under section 9609(d) of this title.

(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).

(d) Additional limitations

(1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(e) Funding requirements respecting moneys in Fund; limitation on certain claims; Fund use outside Federal property boundaries

(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under subchapter II [1] of this chapter shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) Obligation of moneys by Federal officials; obligation of moneys or settlement of claims by State officials or Indian tribe

The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State or Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 9604(d) of this title.

(g) Notice to potential injured parties by owner and operator of vessel or facility causing release of substance; rules and regulations

The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this subchapter. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(h) Repealed. Pub. L. 99–499, title I, §111(c)(2), Oct. 17, 1986, 100 Stat. 1643

(i) Restoration, etc., of natural resources

Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this chapter for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to

such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation, after adequate public notice and opportunity for hearing and consideration of all public comment.

(j) Use of Post-closure Liability Fund

The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 9607(k) of this title, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 9607 of this title or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

(k) Inspector General

In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this chapter shall conduct an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a sample of agreements with States (in accordance with the provisions of the Single Audit Act [31 U.S.C. 7501 et seq.]) carrying out response actions under this subchapter and an examination of remedial investigations and feasibility studies prepared for remedial actions. The Inspector General shall submit to the Congress an annual report regarding the audit report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each department, agency, or instrumentality of the United States shall cooperate with its inspector general in carrying out this subsection.

(l) Foreign claimants

To the extent that the provisions of this chapter permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(m) Agency for Toxic Substances and Disease Registry

There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 9604(i) of this title not less than $50,000,000 per fiscal year for each of fiscal years 1987 and 1988, not less than $55,000,000 for fiscal year 1989, and not less than $60,000,000 per fiscal year for each of fiscal years 1990, 1991, 1992, 1993, and 1994. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

(n) Limitations on research, development, and demonstration program

(1) Section 9660(b)

For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 9660(b) of this title (relating to

research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

(2) Section 9660(a)

From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 9660(a) of this title (relating to hazardous substance research, demonstration, and training activities):

(A) For the fiscal year 1987, $3,000,000.
(B) For the fiscal year 1988, $10,000,000.
(C) For the fiscal year 1989, $20,000,000.
(D) For the fiscal year 1990, $30,000,000.
(E) For each of the fiscal years 1991, 1992, 1993, and 1994, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 9660(a) of this title in any fiscal year.

(3) Section 9660(d)

For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 9660(d) of this title (relating to university hazardous substance research centers).

(o) Notification procedures for limitations on certain payments

Not later than 90 days after October 17, 1986, the President shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of the limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.

(p) General revenue share of Superfund

(1) In general

The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

(A) For fiscal year 1987, $212,500,000.
(B) For fiscal year 1988, $212,500,000.
(C) For fiscal year 1989, $212,500,000.
(D) For fiscal year 1990, $212,500,000.
(E) For fiscal year 1991, $212,500,000.
(F) For fiscal year 1992, $212,500,000.
(G) For fiscal year 1993, $212,500,000.
(H) For fiscal year 1994, $212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 9631(b) [1] of this title) as has not been appropriated before the beginning of the fiscal year involved.

(2) Computation

The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 9507(b)(2) of title 26 for the prior fiscal year.

(Pub. L. 96–510, title I, §111, Dec. 11, 1980, 94 Stat. 2788; Pub. L. 99–499, title I, §111, title II, §207(d), Oct. 17, 1986, 100 Stat. 1642, 1706; Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 857; Pub. L. 101–508, title VI, §6301, Nov. 5, 1990, 104 Stat. 1388–319.)

EDITORIAL NOTES

REFERENCES IN TEXT

Title II of Public Law 99–160 (relating to payment to the Hazardous Substances Trust Fund), referred to in subsec. (a), is title II of Pub. L. 99–160, Nov. 25, 1985, 99 Stat. 914. Provisions of title II relating to the Hazardous Substance Response Trust Fund are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Intervention on the High Seas Act, referred to in subsec. (a)(1), is Pub. L. 93–248, Feb. 5, 1974, 88 Stat. 8, which is classified generally to chapter 28 (§1471 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of Title 33 and Tables.

Section 1321(c) of title 33, referred to in subsec. (a)(2), was amended generally by Pub. L. 101–380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions establishing a National Contingency Plan. However, such provisions are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

Section 304 of this Act, referred to in subsec. (b), is section 304 of Pub. L. 96–510, title III, Dec. 11, 1980, 94 Stat. 2809, which enacted section 9654 of this title and amended section 1364 of Title 33.

Fishery conservation zone, referred to in subsec. (b), probably means the fishery conservation zone established by section 1811 of Title 16, Conservation, which as amended generally by Pub. L. 99–659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority over fish within the exclusive economic zone as defined in section 1802 of Title 16.

This chapter, referred to in subsecs. (c)(5), (i), (k), and (l), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (c)(14), is section 118(f) of Pub. L. 99–499, title I, Oct. 17, 1986, 100 Stat. 1657, which is not classified to the Code.

Subchapter II of this chapter, referred to in subsec. (e)(2), was in the original "title II of this Act", meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Single Audit Act, referred to in subsec. (k), probably means the Single Audit Act of 1984, Pub. L. 98–502, Oct. 19, 1984, 98 Stat. 2327, which enacted chapter 75 (§7501 et seq.) of Title 31, Money and Finance, and provisions set out as notes under section 7501 of Title 31. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 7501 of Title 31 and Tables.

The Outer Continental Shelf Lands Act as amended, referred to in subsec. (l)(3), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

The Deepwater Port Act of 1974, as amended, referred to in subsec. (l)(3), is Pub. L. 93–627, Jan. 3, 1975, 88 Stat. 2126, which is classified generally to chapter 29 (§1501 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 33 and Tables.

Section 9631(b) of this title, referred to in subsec. (p)(1), was repealed by Pub. L. 99–499, title V, §517(c)(1), Oct. 17, 1986, 100 Stat. 1774.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, §6301(1), inserted "and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994," after "October 17, 1986," in introductory provisions.

Subsec. (c)(11). Pub. L. 101–508, §6301(2), substituted "8-fiscal year period" for "5-fiscal-year period".

Subsec. (c)(12). Pub. L. 101–508, §6301(3), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (m). Pub. L. 101–508, §6301(4), substituted "1990, 1991, 1992, 1993, and 1994" for "1990 and 1991".

Subsec. (n)(1). Pub. L. 101–508, §6301(5), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (n)(2)(E). Pub. L. 101–508, §6301(6), added subpar. (E) and struck out former subpar. (E) which read as follows: "For the fiscal year 1991, $35,000,000."

Subsec. (n)(3). Pub. L. 101–508, §6301(7), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (p)(1)(F) to (H). Pub. L. 101–508, §6301(8), added subpars. (F) to (H).

1989—Subsec. (c)(12). Pub. L. 101–144, which directed that section 9611(c)(12) of the Superfund Amendments and Reauthorization Act of 1986 be amended by substituting "$20,000,000" for "$10,000,000", was executed by making the substitution in subsec. (c)(12) of this section, as the probable intent of Congress because the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, does not contain a section 9611, but section 111(d)(2) of Pub. L. 99–499 enacted subsec. (c)(12) of this section.

1986—Subsec. (a). Pub. L. 99–499, §111(a), (b), inserted heading and "For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 not more than $8,500,000,000 for the 5-year period beginning on October 17, 1986, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund)." in introductory provisions, substituted "Payment" for "payment" in pars. (1) to (4), a period for a semicolon in pars. (1) and (2), and a period for "; and" in par. (3), and added pars. (5) and (6).

Subsec. (b). Pub. L. 99–499, §§111(c)(1), 207(d)(1), designated existing provisions as par. (1), inserted ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation" in par. (1), and added par. (2).

Subsec. (c). Pub. L. 99–499, §§111(d), 207(d)(2), in par. (1), substituted "The" for "the" and substituted a period for the semicolon at end, in par. (2), substituted "The" for "the", inserted "or Indian tribe" and substituted a period for the semicolon at end, in par. (3), substituted "Subject" for "subject" and substituted a period for the semicolon at end, in par. (4), substituted "Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 9604(i) of this title, including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles" for "the costs of epidemiologic studies" and substituted a period for the semicolon at end, in par. (5), substituted a period for "; and", in pars. (5) and (6), substituted "Subject" for "subject", and added pars. (7) to (14).

Subsec. (e)(2). Pub. L. 99–499, §111(e), inserted at end "No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances."

Subsec. (e)(3). Pub. L. 99–499, §111(f), inserted before the period at end "; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party".

Subsec. (f). Pub. L. 99–499, §207(d)(3), inserted "or Indian tribe".

Subsec. (h). Pub. L. 99–499, §111(c)(2), struck out subsec. (h) which read as follows:

"(1) In accordance with regulations promulgated under section 9651(c) of this title, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this chapter and section 1321(f)(4) and (5) of title 33, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 9605 of this title, and such officials shall act for the President as trustee under this section and section 1321(f)(5) of title 33.

"(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this chapter and section 1321(f)(4) and (5) of title 33 shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 9607 of this title or a Federal agency) in any judicial or adjudicatory administrative proceeding under this chapter or section 1321 of title 33."

Subsec. (i). Pub. L. 99–499, §207(d)(4), inserted "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation," after "State,".

Subsec. (k). Pub. L. 99–499, §111(g), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements,

or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection."

Subsecs. (m) to (p). Pub. L. 99–499, §111(h), (i), added subsecs. (m) to (p).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (k) of this section relating to the requirement that the Inspector General submit an annual report to Congress on the audit report required under subsec. (k), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th item on page 151 of House Document No. 103–7.

SATISFACTION OF SUPERFUND AUDIT REQUIREMENTS BY INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

Pub. L. 108–375, div. A, title III, §311, Oct. 28, 2004, 118 Stat. 1842, provided that:

"(a) SATISFACTION OF REQUIREMENTS.—The Inspector General of the Department of Defense shall be deemed to be in compliance with the requirements of section 111(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(k)) if the Inspector General conducts periodic audits of the payments, obligations, reimbursements, and other uses of the Hazardous Substance Superfund by the Department of Defense, even if such audits do not occur on an annual basis.

"(b) REPORTS TO CONGRESS ON AUDITS.—The Inspector General shall submit to Congress a report on each audit conducted by the Inspector General as described in subsection (a)."

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

[1] *See References in Text note below.*

§9612. Claims procedure

(a) Claims against Fund for response costs

No claim may be asserted against the Fund pursuant to section 9611(a) of this title unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 9607 of this title. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

(b) Forms and procedures applicable

(1) Prescribing forms and procedures

The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(2) Payment or request for hearing

The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

(3) Burden of proof

In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

(4) Decisions

All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

(5) Finality and appeal

All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within 30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

(6) Payment

Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(c) Subrogation rights; actions maintainable

(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this chapter to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this chapter or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this subchapter, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d) Statute of limitations

(1) Claims for recovery of costs

No claim may be presented under this section for recovery of the costs referred to in section 9607(a) of this title after the date 6 years after the date of completion of all response action.

(2) Claims for recovery of damages

No claim may be presented under this section for recovery of the damages referred to in section 9607(a) of this title unless the claim is presented within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which final regulations are promulgated under section 9651(c) of this title.

(3) Minors and incompetents

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such person's incompetency ends or the date on which a legal representative is duly appointed for such incompetent person.

(e) Other statutory or common law claims not waived, etc.

Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this subchapter shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this subchapter arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this subchapter shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this subchapter arising from the same incident, transaction, or set of circumstances.

(f) Double recovery prohibited

Where the President has paid out of the Fund for any response costs or any costs specified under section 9611(c)(1) or (2) of this title, no other claim may be paid out of the Fund for the same costs.

(Pub. L. 96–510, title I, §112, Dec. 11, 1980, 94 Stat. 2792; Pub. L. 99–499, title I, §§109(a)(3), 112, Oct. 17, 1986, 100 Stat. 1633, 1646.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–499, §112(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "All claims which may be asserted against the Fund pursuant to section 9611 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 9607 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment."

Subsec. (b)(1). Pub. L. 99–499, §112(b), added heading.

Pub. L. 99–499, §109(a)(3), substituted "in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both" for "up to $5,000 or imprisoned for not more than one year, or both".

Subsec. (b)(2) to (6). Pub. L. 99–499, §112(b), added pars. (2) to (6) and struck out former pars. (2) to (4) which related to the settlement and arbitration of claims against liable persons and against the Fund.

Subsec. (d). Pub. L. 99–499, §112(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "No claim may be presented, nor may an action be commenced for damages under this subchapter, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or December 11, 1980, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him."

Subsec. (f). Pub. L. 99–499, §112(d), added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§9613. Civil proceedings

(a) Review of regulations in Circuit Court of Appeals of the United States for the District of Columbia

Review of any regulation promulgated under this chapter may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Jurisdiction; venue

Except as provided in subsections (a) and (h) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this chapter, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) Controversies or other matters resulting from tax collection or tax regulation review

The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by subchapter II [1] of this chapter, or to the review of any regulation promulgated under title 26.

(d) Litigation commenced prior to December 11, 1980

No provision of this chapter shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to December 11, 1980.

(e) Nationwide service of process

In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(f) Contribution

(1) Contribution

Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title.

(2) Settlement

A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable

persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(3) Persons not party to settlement

(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

(g) Period in which action may be brought

(1) Actions for natural resource damages

Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 9601(6) of this title) under this chapter, unless that action is commenced within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 9651(c) of this title.

With respect to any facility listed on the National Priorities List (NPL), any Federal facility identified under section 9620 of this title (relating to Federal facilities), or any vessel or facility at which a remedial action under this chapter is otherwise scheduled, an action for damages under this chapter must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this chapter with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 9604(b) of this title or section 9620 of this title (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before October 17, 1986.

(2) Actions for recovery of costs

An initial action for recovery of the costs referred to in section 9607 of this title must be commenced—

(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 9604(c)(1)(C) of this title for continued response action; and

(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 9607 of this title for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of

all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 9607 of this title for recovery of costs at any time after such costs have been incurred.

(3) Contribution

No action for contribution for any response costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this chapter for recovery of such costs or damages, or

(B) the date of an administrative order under section 9622(g) of this title (relating to de minimis settlements) or 9622(h) of this title (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

(4) Subrogation

No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this subchapter more than 3 years after the date of payment of such claim.

(5) Actions to recover indemnification payments

Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 9619 of this title, an action under section 9607 of this title for recovery of such indemnification payment from a potentially responsible party may be brought at any time before the expiration of 3 years from the date on which such payment is made.

(6) Minors and incompetents

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(h) Timing of review

No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 9621 of this title (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 9604 of this title, or to review any order issued under section 9606(a) of this title, in any action except one of the following:

(1) An action under section 9607 of this title to recover response costs or damages or for contribution.

(2) An action to enforce an order issued under section 9606(a) of this title or to recover a penalty for violation of such order.

(3) An action for reimbursement under section 9606(b)(2) of this title.

(4) An action under section 9659 of this title (relating to citizens suits) alleging that the removal or remedial action taken under section 9604 of this title or secured under section 9606 of this title was in violation of any requirement of this chapter. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.

(5) An action under section 9606 of this title in which the United States has moved to compel a remedial action.

(i) Intervention

In any action commenced under this chapter or under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest,

unless the President or the State shows that the person's interest is adequately represented by existing parties.

(j) Judicial review

(1) Limitation

In any judicial action under this chapter, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(2) Standard

In considering objections raised in any judicial action under this chapter, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(3) Remedy

If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

(4) Procedural errors

In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(k) Administrative record and participation procedures

(1) Administrative record

The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

(2) Participation procedures

(A) Removal action

The President shall promulgate regulations in accordance with chapter 5 of title 5 establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

(B) Remedial action

The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

(ii) A reasonable opportunity to comment and provide information regarding the plan.

(iii) An opportunity for a public meeting in the affected area, in accordance with section 9617(a)(2) of this title (relating to public participation).

(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 9617(d) of this title. The President shall promulgate regulations in accordance with chapter 5 of title 5 to carry out the requirements of this subparagraph.

(C) Interim record

Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this chapter shall not include an adjudicatory hearing.

(D) Potentially responsible parties

The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

(l) Notice of actions

Whenever any action is brought under this chapter in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.

(Pub. L. 96–510, title I, §113, Dec. 11, 1980, 94 Stat. 2795; Pub. L. 99–499, title I, §113, Oct. 17, 1986, 100 Stat. 1647; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Subchapter II of this chapter, referred to in subsec. (c), was in the original "title II of this Act", meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Solid Waste Disposal Act, referred to in subsec. (i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–499, §113(c)(1), substituted "subsections (a) and (h)" for "subsection (a)".

Subsec. (c). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsecs. (e) to (l). Pub. L. 99–499, §113(a), (b), (c)(2), added subsecs. (e) to (l).

[1] *See References in Text note below.*

§9614. Relationship to other law

(a) Additional State liability or requirements with respect to release of substances within State

Nothing in this chapter shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Recovery under other State or Federal law of compensation for removal costs or damages, or payment of claims

Any person who receives compensation for removal costs or damages or claims pursuant to this chapter shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this chapter.

(c) Recycled oil

(1) Service station dealers, etc.

No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 9607 of this title, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 9606 of this title against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 9607 of this title, if such recycled oil—

(A) is not mixed with any other hazardous substance, and

(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act [42 U.S.C. 6935] and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

(2) Presumption

Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it—

(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.

(3) Definition

For purposes of this subsection, the terms "used oil" and "recycled oil" have the same meanings as set forth in sections 1004(36) and 1004(37) of the Solid Waste Disposal Act [42 U.S.C. 6903(36), (37)] and regulations promulgated pursuant to that Act [42 U.S.C. 6901 et seq.].

(4) Effective date

The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act [42 U.S.C. 6935] that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act [42 U.S.C. 6921 et seq., 6991 et seq.].

(d) Financial responsibility of owner or operator of vessel or facility under State or local law, rule, or regulation

Except as provided in this subchapter, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this subchapter shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this subchapter shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

(Pub. L. 96–510, title I, §114, Dec. 11, 1980, 94 Stat. 2795; Pub. L. 99–499, title I, §114(a), Oct. 17, 1986, 100 Stat. 1652.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (c)(3), (4), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitles C and I of the Solid Waste Disposal Act are classified generally to subchapters III (§6921 et seq.) and IX (§6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–499 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Except as provided in this chapter, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this subchapter. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State."

§9615. Presidential delegation and assignment of duties or powers and promulgation of regulations

The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this subchapter.

(Pub. L. 96–510, title I, §115, Dec. 11, 1980, 94 Stat. 2796.)

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12580. SUPERFUND IMPLEMENTATION

Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended by Ex. Ord. No. 12777, §1(a), Oct. 18, 1991, 56 F.R. 54757; Ex. Ord. No. 13016, Aug. 28, 1996, 61 F.R. 45871; Ex. Ord. No. 13286, §43, Feb. 28, 2003, 68 F.R. 10627; Ex. Ord. No. 13308, June 20, 2003, 68 F.R. 37691, provided:

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9615 *et seq*.) ("the Act"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. *National Contingency Plan*. (a)(1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional

Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Department of Homeland Security, Environmental Protection Agency,, [sic] United States Coast Guard, and the Nuclear Regulatory Commission.

(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), (g) and (h), 125, and 301(f) of the Act [42 U.S.C. 9605(a), (b), (c), (g), (h), 9625, 9651(f)], by Section 311(d)(1) of the Federal Water Pollution Control Act [33 U.S.C. 1321(d)(1)], and by Section 4201(c) of the Oil Pollution Act of 1990 [Pub. L. 101–380, 33 U.S.C. 1321 note] is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").

(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499) ("SARA") [100 Stat. 1662] is delegated to the Administrator.

(c) In accord with Section 107(f)(2)(A) of the Act [42 U.S.C. 9607(f)(2)(A)], Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), and Section 1006(b)(1) and (2) of the Oil Pollution Act of 1990 [33 U.S.C. 2706(b)(1), (2)], the following shall be among those designated in the NCP as Federal trustees for natural resources:

(1) Secretary of Defense;

(2) Secretary of the Interior;

(3) Secretary of Agriculture;

(4) Secretary of Commerce;

(5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget ("OMB").

SEC. 2. *Response and Related Authorities*. (a) The functions vested in the President by the first sentence of Section 104(b)(1) of the Act [42 U.S.C. 9604(b)(1)] relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) The functions vested in the President by Sections 104(e)(7)(C), 113(k)(2), 119(c)(7), and 121(f)(1) of the Act [42 U.S.C. 9604(e)(7)(C), 9613(k)(2), 9619(c)(7), 9621(f)(1)], relating to promulgation of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the NRT.

(c)(1) The functions vested in the President by Sections 104(a) and the second sentence of 126(b) of the Act [42 U.S.C. 9604(a), 9626(b)], to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(2) Subject to subsection (b) of this Section, the functions vested in the President by Sections 117(a) and (c), and 119 of the Act [42 U.S.C. 9617(a), (c), 9619], to the extent such authority is needed to carry out the functions delegated under paragraph (1) of this subsection, are delegated to the Director of the Federal Emergency Management Agency.

(d) Subject to subsections (a), (b) and (c) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9613(k), 9617(a), (c), 9619, 9621] are delegated to the Secretaries of Defense and Energy, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated. These functions must be exercised consistent with the requirements of Section 120 of the Act [42 U.S.C. 9620].

(e)(1) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9621] are delegated to the heads of Executive departments and agencies, with respect to remedial actions for releases or threatened releases which are not on the National Priorities List ("the NPL") and removal actions other than emergencies, where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated. The Administrator shall define the term "emergency", solely for the purposes of this subsection, either by regulation or by a memorandum of understanding with the head of an Executive department or agency.

(2) Subject to subsections (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(b)(2), 113(k), 117(a) and (c), and 119 of the Act [42 U.S.C. 9604(b)(2), 9613(k), 9617(a), (c), 9619] are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated.

(f) Subject to subsections (a), (b), (c), (d), and (e) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9613(k), 9617(a), (c), 9619, 9621] are delegated to the Secretary of the Department in which the Coast Guard is operating ("the Coast Guard"), with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(g) Subject to subsections (a), (b), (c), (d), (e), and (f) of this Section, the functions vested in the President by Sections 101(24), 104(a), (b), (c)(4) and (c)(9), 113(k), 117(a) and (c), 119, 121, and 126(b) of the Act [42 U.S.C. 9601(24), 9604(a), (b), (c)(4), (9), 9613(k), 9617(a), (c), 9619, 9621, 9626(b)] are delegated to the Administrator. The Administrator's authority under Section 119 of the Act is retroactive to the date of enactment of SARA [Oct. 17, 1986].

(h) The functions vested in the President by Section 104(c)(3) of the Act [42 U.S.C. 9604(c)(3)] are delegated to the Administrator, with respect to providing assurances for Indian tribes, to be exercised in consultation with the Secretary of the Interior.

(i) Subject to subsections (d), (e), (f), (g) and (h) of this Section, the functions vested in the President by Section 104(c) and (d) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by this Section.

(j)(1) The functions vested in the President by Section 104(e)(5)(A) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, to be exercised with the concurrence of the Attorney General.

(2) Subject to subsection (b) of this Section and paragraph (1) of this subsection, the functions vested in the President by Section 104(e) are delegated to the heads of Executive departments and agencies in order to carry out their functions under this Order or the Act.

(k) The functions vested in the President by Section 104(f), (g), (h), (i)(11), and (j) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

SEC. 3. *Cleanup Schedules*. (a) The functions vested in the President by Sections 116(a) and the first two sentences of 105(d) of the Act [42 U.S.C. 9616(a), 9605(d)] are delegated to the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody or control of those departments and agencies.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Sections 116 and 105(d) are delegated to the Administrator.

SEC. 4. *Enforcement*. (a) The functions vested in the President by Sections 109(d) and 122(e)(3)(A) of the Act [42 U.S.C. 9609(d), 9622(e)(3)(A)], relating to development of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(b)(1) Subject to subsection (a) of this Section, the functions vested in the President by Section 122 [42 U.S.C. 9622] (except subsection (b)(1)) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(2) Subject to subsection (a) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Section 122 of the Act, are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(c)(1) Subject to subsection[s] (a) and (b)(1) of this Section, the functions vested in the President by Sections 106(a) and 122 of the Act [42 U.S.C. 9606(a), 9622] are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(2) Subject to subsection[s] (a) and (b)(2) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Sections 103(a) and (b), and 122 of the Act [42 U.S.C. 9603(a), (b), 9622], are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(3) Subject to subsections (a) and (b)(1) of this section, the functions vested in the President by sections 106(a) [42 U.S.C. 9606(a)] and 122 [42 U.S.C. 9622] (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Energy, to be exercised only with the concurrence of the Coast Guard, with respect to any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Coast Guard is the lead Federal agency for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.

(d)(1) Subject to subsections (a), (b)(1), and (c)(1) of this Section, the functions vested in the President by Sections 106 and 122 of the Act [42 U.S.C. 9606, 9622] are delegated to the Administrator.

(2) Subject to subsections (a), (b)(2), and (c)(2) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Sections 103 and 122 of the Act [42 U.S.C. 9603, 9622], are delegated to the Administrator.

(3) Subject to subsections (a), (b)(1), and (c)(1) of this section, the functions vested in the President by sections 106(a) [42 U.S.C. 9606(a)] and 122 [42 U.S.C. 9622] (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Department of Energy, to be exercised only with the concurrence of the Administrator, with respect to any release or threatened release affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Administrator is the lead Federal official for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.

(e) Notwithstanding any other provision of this Order, the authority under Sections 104(e)(5)(A) and 106(a)

of the Act [42 U.S.C. 9604(e)(5)(A), 9606(a)] to seek information, entry, inspection, samples, or response actions from Executive departments and agencies may be exercised only with the concurrence of the Attorney General.

SEC. 5. *Liability*. (a) The function vested in the President by Section 107(c)(1)(C) of the Act [42 U.S.C. 9607(c)(1)(C)] is delegated to the Secretary of Transportation.

(b) The functions vested in the President by Section 107(c)(3) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107(c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f)(1) of the Act are delegated to each of the Federal trustees for natural resources designated in the NCP for resources under their trusteeship.

(e) The functions vested in the President by Section 107(f)(2)(B) of the Act, to receive notification of the state natural resource trustee designations, are delegated to the Administrator.

(f) The functions vested in the President by Section 107(o) and (p) of the Act are delegated to the heads of the Executive departments and agencies, to be exercised in consultation with the Administrator, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody, or control of those departments and agencies.

(g) Subject to subsection (f) of this Section, the functions vested in the President by Section 107(o) and (p) of the Act are delegated to the Administrator except that, with respect to determinations regarding natural resource restoration, the Administrator shall make such determinations in consultation with the appropriate Federal natural resource trustee.

SEC. 6. *Litigation*. (a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 113(g) of the Act [42 U.S.C. 9613(g)], to receive notification of a natural resource trustee's intent to file suit, are delegated to the heads of Executive departments and agencies with respect to response actions for which they have been delegated authority under Section 2 of this Order. The Administrator shall promulgate procedural regulations for providing such notification.

(d) The functions vested in the President by Sections [sic] 310(d) and (e) of the Act [42 U.S.C. 9659(d), (e)], relating to promulgation of regulations, are delegated to the Administrator.

SEC. 7. *Financial Responsibility*. (a) The functions vested in the President by Section 107(k)(4)(B) of the Act [42 U.S.C. 9607(k)(4)(B)] are delegated to the Secretary of the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b)(1) The functions vested in the President by Section 108(a)(1) of the Act [42 U.S.C. 9608(a)(1)] are delegated to the Coast Guard.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Section 108(a)(1) of the Act, are delegated to the Coast Guard.

(c)(1) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(3) of the Act, are delegated to the Secretary of Transportation.

(3) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(b) of the Act, are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(d)(1) Subject to subsection (c)(1) of this Section, the functions vested in the President by Section 108(a)(4) and (b) of the Act are delegated to the Administrator.

(2) Subject to Section 4(a) of this Order and subsection (c)(3) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(4) and (b) of the Act, are delegated to the Administrator.

SEC. 8. *Employee Protection and Notice to Injured*. (a) The functions vested in the President by Section 110(e) of the Act [42 U.S.C. 9610(e)] are delegated to the Administrator.

(b) The functions vested in the President by Section 111(g) of the Act [42 U.S.C. 9611(g)] are delegated to the Secretaries of Defense and Energy with respect to releases from facilities or vessels under the jurisdiction,

custody or control of their departments, respectively, including vessels bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

SEC. 9. *Management of the Hazardous Substance Superfund and Claims*. (a) The functions vested in the President by Section 111(a) of the Act [42 U.S.C. 9611(a)] are delegated to the Administrator, subject to the provisions of this Section and other applicable provisions of this Order.

(b) The Administrator shall transfer to other agencies, from the Hazardous Substance Superfund out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These amounts shall be consistent with the President's Budget, within the total approved by the Congress, unless a revised amount is approved by OMB. Funds appropriated specifically for the Agency for Toxic Substances and Disease Registry ("ATSDR"), shall be directly transferred to ATSDR, consistent with fiscally responsible investment of trust fund money.

(c) The Administrator shall chair a budget task force composed of representatives of Executive departments and agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit to OMB a budget for the Hazardous Substance Superfund which is based on recommended levels developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request, consistent with budgetary reporting requirements issued by OMB. The Administrator shall prescribe forms to agency task force members for reporting the expenditure of funds on a site specific basis.

(d) The Administrator and each department and agency head to whom funds are provided pursuant to this Section, with respect to funds provided to them, are authorized in accordance with Section 111(f) of the Act [42 U.S.C. 9611(f)] to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act [42 U.S.C. 9612] are delegated to the Administrator for all claims presented pursuant to Section 111 of the Act.

(f) The functions vested in the President by Section 111(o) of the Act are delegated to the Administrator.

(g) The functions vested in the President by Section 117(e) of the Act [42 U.S.C. 9617(e)] are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(h) The functions vested in the President by Section 123 of the Act [42 U.S.C. 9623] are delegated to the Administrator.

(i) Funds from the Hazardous Substance Superfund may be used, at the discretion of the Administrator or the Coast Guard, to pay for removal actions for releases or threatened releases from facilities or vessels under the jurisdiction, custody or control of Executive departments and agencies but must be reimbursed to the Hazardous Substance Superfund by such Executive department or agency.

SEC. 10. *Federal Facilities*. (a) When necessary, prior to selection of a remedial action by the Administrator under Section 120(e)(4)(A) of the Act [42 U.S.C. 9620(e)(4)(A)], Executive agencies shall have the opportunity to present their views to the Administrator after using the procedures under Section 1–6 of Executive Order No. 12088 of October 13, 1978 [set out as a note under section 4321 of this title], or any other mutually acceptable process. Notwithstanding subsection 1–602 of Executive Order No. 12088, the Director of the Office of Management and Budget shall facilitate resolution of any issues.

(b) Executive Order No. 12088 of October 13, 1978, is amended by renumbering the current Section 1–802 as Section 1–803 and inserting the following new Section 1–802.

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

SEC. 11. *General Provisions*. (a) The function vested in the President by Section 101(37) of the Act [42 U.S.C. 9601(37)] is delegated to the Administrator.

(b)(1) The function vested in the President by Section 105(f) of the Act [42 U.S.C. 9605(f)], relating to reporting on minority participation in contracts, is delegated to the Administrator.

(2) Subject to paragraph 1 of this subsection, the functions vested in the President by Section 105(f) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Order. Each Executive department and agency shall provide to the Administrator any requested information on minority contracting for inclusion in the Section 105(f) annual report.

(c) The functions vested in the President by Section 126(c) of the Act [42 U.S.C. 9626(c)] are delegated to the Administrator, to be exercised in consultation with the Secretary of the Interior.

(d) The functions vested in the President by Section 301(c) of the Act [42 U.S.C. 9651(c)] are delegated to the Secretary of the Interior.

(e) Each agency shall have authority to issue such regulations as may be necessary to carry out the functions delegated to them by this Order.

(f) The performance of any function under this Order shall be done in consultation with interested Federal departments and agencies represented on the NRT, as well as with any other interested Federal agency.

(g) The following functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any Executive department or agency with his consent: functions set forth in Sections 2 (except subsection (b)), 3, 4(b), 4(c), 4(d), 5(b), 5(c), and 8(c) of this Order.

(h) Executive Order No. 12316 of August 14, 1981, is revoked.

SEC. 12. *Brownfields*. (a) The functions vested in the President by Sections 101(39) and (41) and 104(k) of the Act [42 U.S.C. 9601(39), (41), 9604(k)] are delegated to the Administrator.

(b) The functions vested in the President by Section 128(b)(1)(B)(ii) of the Act [42 U.S.C. 9628(b)(1)(B)(ii)] are delegated to the heads of the Executive departments and agencies, to be exercised in consultation with the Administrator, with respect to property subject to their jurisdiction, custody, or control.

(c) The functions vested in the President by Section 128(b)(1)(E) of the Act [42 U.S.C. 9628(b)(1)(E)] are delegated to the heads of Executive departments and agencies in cases where they have acted under subsection (b) of this Section.

(d) Subject to subsections (b) and (c) of this Section, the functions vested in the President by Section 128 of the Act [42 U.S.C. 9628] are delegated to the Administrator.

SEC. 13. *Preservation of Authorities*. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

SEC. 14. *General Provision*. This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

§9616. Schedules

(a) Assessment and listing of facilities

It shall be a goal of this chapter that, to the maximum extent practicable—

(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of October 17, 1986) on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

(b) Evaluation

Within 4 years after October 17, 1986, each facility listed (as of October 17, 1986) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established in section 9605 of this title under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after October 17, 1986, the facility shall be evaluated within 4 years after the date of such listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

(c) Explanations

If any of the goals established by subsection (a) or (b) are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

(d) Commencement of RI/FS

The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to October 17, 1986, in accordance with the following schedule:

(1) not fewer than 275 by the date 36 months after October 17, 1986, and

(2) if the requirement of paragraph (1) is not met, not fewer than an additional 175 by the date 4 years after October 17, 1986, an additional 200 by the date 5 years after October 17, 1986, and a total of 650 by the date 5 years after October 17, 1986.

(e) Commencement of remedial action

The President shall assure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List, in addition to those facilities on which remedial action has commenced prior to October 17, 1986, at a rate not fewer than:

(1) 175 facilities during the first 36-month period after October 17, 1986; and

(2) 200 additional facilities during the following 24 months after such 36-month period.

(Pub. L. 96–510, title I, §116, as added Pub. L. 99–499, title I, §116, Oct. 17, 1986, 100 Stat. 1653.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

§9617. Public participation

(a) Proposed plan

Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other person, under section 9604, 9606, 9620, or 9622 of this title, the President or State, as appropriate, shall take both of the following actions:

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 9621(d)(4) of this title (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

(b) Final plan

Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

(c) Explanation of differences

After adoption of a final remedial action plan—

(1) if any remedial action is taken,

(2) if any enforcement action under section 9606 of this title is taken, or

(3) if any settlement or consent decree under section 9606 of this title or section 9622 of this title is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

(d) Publication

For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

(e) Grants for technical assistance

(1) Authority

Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

(2) Amount

The amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

(Pub. L. 96–510, title I, §117, as added Pub. L. 99–499, title I, §117, Oct. 17, 1986, 100 Stat. 1654.)

§9618. High priority for drinking water supplies

For purposes of taking action under section 9604 or 9606 of this title and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

(Pub. L. 96–510, title I, §118, as added Pub. L. 99–499, title I, §118(a), Oct. 17, 1986, 100 Stat. 1655.)

§9619. Response action contractors

(a) Liability of response action contractors

(1) Response action contractors

A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this subchapter or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) Negligence, etc.

Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

(3) Effect on warranties; employer liability

Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

(4) Governmental employees

A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

(b) Savings provisions

(1) Liability of other persons

The defense provided by section 9607(b)(3) of this title shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) and the preceding sentence, nothing in this section shall affect the liability under this chapter or under any other Federal or State law of any person, other than a response action contractor.

(2) Burden of plaintiff

Nothing in this section shall affect the plaintiff's burden of establishing liability under this subchapter.

(c) Indemnification

(1) In general

The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this subchapter, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

(2) Applicability

This subsection shall apply only with respect to a response action carried out under written agreement with—

(A) the President;

(B) any Federal agency;

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 9604(d)(1) of this title; or

(D) any potentially responsible party carrying out any agreement under section 9622 of this title (relating to settlements) or section 9606 of this title (relating to abatement).

(3) Source of funding

This subsection shall not be subject to section 1301 or 1341 of title 31 or section 6301(a) and (b) of title 41 or to section 9662 of this title. For purposes of section 9611 of this title, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 9604 of this title. If sufficient funds are unavailable in the

Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

(4) Requirements

An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

(5) Limitations

(A) Liability covered

Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

(B) Deductibles and limits

An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(C) Contracts with potentially responsible parties

(i) Decision to indemnify

In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the President shall determine an amount which the potentially responsible party is able to indemnify the contractor. The President may enter into such an indemnification agreement only if the President determines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The President shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

(ii) Conditions

The President may pay a claim under an indemnification agreement referred to in clause (i) for the amount determined under clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(D) RCRA facilities

No owner or operator of a facility regulated under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] may be indemnified under this subsection with respect to such facility.

(E) Persons retained or hired

A person retained or hired by a person described in subsection (e)(2)(B) shall be eligible for indemnification under this subsection only if the President specifically approves of the retaining or hiring of such person.

(6) Cost recovery

For purposes of section 9607 of this title, amounts expended pursuant to this subsection for indemnification of any person who is a response action contractor with respect to any release or threatened release shall be considered a cost of response incurred by the United States Government with respect to such release.

(7) Regulations

The President shall promulgate regulations for carrying out the provisions of this subsection. Before promulgation of the regulations, the President shall develop guidelines to carry out this section. Development of such guidelines shall include reasonable opportunity for public comment.

(8) Study

The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

(d) Exception

The exemption provided under subsection (a) and the authority of the President to offer indemnification under subsection (c) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 9607(a) of this title with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

(e) Definitions

For purposes of this section—

(1) Response action contract

The term "response action contract" means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

(A) the President;

(B) any Federal agency;

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 9604(d)(1) of this title; or

(D) any potentially responsible party carrying out an agreement under section 9606 or 9622 of this title;

to provide any remedial action under this chapter at a facility listed on the National Priorities List, or any removal under this chapter, with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

(2) Response action contractor

The term "response action contractor" means—

(A) any—

(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and [1]

(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 9660(b) of this title; and

(iii) Recipients [2] of grants (including sub-grantees) under section 9660a [3] of this title for the training and education of workers who are or may be engaged in activities related to hazardous waste removal, containment, or emergency response under this chapter; and [1]

(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action; and

(C) any surety who after October 16, 1990, provides a bid, performance or payment bond to a response action contractor, and begins activities to meet its obligations under such bond, but only in connection with such activities or obligations.

(3) Insurance

The term "insurance" means liability insurance which is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response action contract to provide response action.

(f) Competition

Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. [3] The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal governmental agencies involved in carrying out this chapter. Such procedures shall be followed by response action contractors and subcontractors.

(g) Surety bonds

(1) If under sections 3131 and 3133 of title 40, surety bonds are required for any direct Federal procurement of any response action contract and are not waived pursuant to section 3134 of title 40, they shall be issued in accordance with sections 3131 and 3133 of title 40.

(2) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, no right of action shall accrue on the performance bond issued on such response action contract to or for the use of any person other than the obligee named in the bond.

(3) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, unless otherwise provided for by the procuring agency in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) Nothing in this subsection shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices or procedures. Nothing in this subsection shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgments, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(5) This subsection shall not apply to bonds executed before October 17, 1990.

(Pub. L. 96–510, title I, §119, as added Pub. L. 99–499, title I, §119, Oct. 17, 1986, 100 Stat. 1662; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–202, §101(f) [title II, §201], Dec. 22, 1987, 101 Stat. 1329–187, 1329–198; Pub. L. 101–584, §1, Nov. 15, 1990, 104 Stat. 2872; Pub. L. 102–484, div. A, title III, §331(a), Oct. 23, 1992, 106 Stat. 2373; Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2497.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1), (e)(1), (2)(A)(iii), and (f), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (c)(5)(D), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 9660a of this title, referred to in subsec. (e)(2)(A)(iii), was in the original "section 126" probably meaning section 126 of Pub. L. 99–499, title I, Oct. 17, 1986, 100 Stat. 1690. Subsecs. (a) to (f) of section 126, which relate to worker protection standards, are set out as a note under section 655 of Title 29, Labor. Subsec. (g) of section 126, which relates to grants for training and education of workers who are or may be engaged in activities related to hazardous waste removal, etc., is classified to section 9660a of this title.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (f), is act June 30, 1949, ch. 288, 63 Stat. 377. Title IX of the Act, which was classified generally to subchapter VI (§541 et seq.) of chapter 10 of former Title 40, Public Buildings, Property, and Works, was repealed and reenacted by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapter 11 (§1101 et seq.) of Title 40, Public Buildings, Property, and Works. For disposition of sections of former Title 40 to revised Title 40, see Table preceding section 101 of Title 40. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (c)(3), "section 6301(a) and (b) of title 41" substituted for "section 3732 of the Revised Statutes (41 U.S.C. 11)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (g)(1), "sections 3131 and 3133 of title 40" substituted for "the Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the 'Miller Act' " and for "such Act of August 24, 1935" and "section 3134 of title 40" substituted for "the Act of April 29, 1941 (40 U.S.C. 270e–270f)", on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1998—Subsec. (e)(2)(C). Pub. L. 105–276 struck out "and before January 1, 1996," after "1990,".

Subsec. (g)(5). Pub. L. 105–276 struck out ", or after December 31, 1995" before period at end.

1992—Subsec. (e)(2)(C). Pub. L. 102–484, §321(a)(1)(A), substituted "January 1, 1996," for "January 1, 1993".

Subsec. (g)(1). Pub. L. 102–484, §331(a)(2), substituted "the Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the 'Miller Act'," for "the Miller Act, 40 U.S.C. sections 270a–270f,", inserted "and are not waived pursuant to the Act of April 29, 1941 (40 U.S.C. 270e–270f)", and substituted "in accordance with such Act of August 24, 1935." for "in accordance with 40 U.S.C. sections 270a–270d."

Subsec. (g)(5). Pub. L. 102–484, §331(a)(1)(B), substituted "December 31, 1995" for "December 31, 1992".

1990—Subsec. (e)(2)(C). Pub. L. 101–584, §1(1), (2), added subpar. (C).

Subsec. (g). Pub. L. 101–584, §1(3), added subsec. (g).

1987—Subsec. (e)(2)(A)(iii). Pub. L. 100–202 added cl. (iii).

1986—Subsec. (c)(3). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

[1] So in original. The word "and" probably should not appear.

[2] So in original. Probably should not be capitalized.

[3] *See References in Text note below.*

§9620. Federal facilities

(a) Application of chapter to Federal Government

(1) In general

Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title. Nothing in this section shall be construed to affect the liability of any person or entity under sections 9606 and 9607 of this title.

(2) Application of requirements to Federal facilities

All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this chapter for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this chapter.

(3) Exceptions

This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this chapter shall be construed to require a State to comply with section 9604(c)(3) of this title in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) State laws

State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States or facilities that are the subject of a deferral under subsection (h)(3)(C) when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

(b) Notice

Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C. 6937] (in addition to the information required under section 3016(a)(3) of such Act [42 U.S.C. 6937(a)(3)]) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) Federal Agency Hazardous Waste Compliance Docket

The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the "docket") which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C. 6937] and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this chapter with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act [42 U.S.C. 6925, 6930].

(3) Information submitted by the department, agency, or instrumentality under section 9603 of this title.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) Assessment and evaluation

(1) In general

The Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

(A) evaluate such facilities in accordance with the criteria established in accordance with section 9605 of this title under the National Contingency Plan for determining priorities among releases; and

(B) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

(2) Application of criteria

(A) In general

Subject to subparagraph (B), the criteria referred to in paragraph (1) shall be applied in the same manner as the criteria are applied to facilities that are owned or operated by persons other than the United States.

(B) Response under other law

It shall be an appropriate factor to be taken into consideration for the purposes of section 9605(a)(8)(A) of this title that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this chapter, to a release or threatened release of a hazardous substance.

(3) Completion

Evaluation and listing under this subsection shall be completed in accordance with a reasonable schedule established by the Administrator.

(e) Required action by department

(1) RI/FS

Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before October 17, 1986, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after October 17, 1986. The Administrator

and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) Commencement of remedial action; interagency agreement

The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 9617 of this title.

(3) Completion of remedial actions

Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) Contents of agreement

Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

(5) Annual report

Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

(6) Settlements with other parties

If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 9622 of this title (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 9606 of this title.

(f) State and local participation

The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 9621 of this title.

(g) Transfer of authorities

Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

(h) Property transferred by Federal agencies

(1) Notice

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) Form of notice; regulations

Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after October 17, 1986, but not later than 18 months after October 17, 1986, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds

(A) In general

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(i) to the extent such information is available on the basis of a complete search of agency files—

(I) a notice of the type and quantity of such hazardous substances,

(II) notice of the time at which such storage, release, or disposal took place, and

(III) a description of the remedial action taken, if any;

(ii) a covenant warranting that—

(I) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(II) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States; and

(iii) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

(B) Covenant requirements

For purposes of subparagraphs (A)(ii)(I) and (C)(iii), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (A)(ii) that has not been taken on the date of the lease.

(C) Deferral

(i) In general

The Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List), or the Governor of the State in which the facility is located (in the case of real property at a Federal facility not listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determines that the property is suitable for transfer, based on a finding that—

(I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;

(II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause (ii);

(III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

(IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

(ii) Response action assurances

With regard to a release or threatened release of a hazardous substance for which a Federal

agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that—

(I) provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment;

(II) provide that there will be restrictions on use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

(III) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and

(IV) provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

(iii) Warranty

When all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of subparagraph (A)(ii)(I).

(iv) Federal responsibility

A deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under this section and sections 9606 and 9607 of this title existing prior to transfer) with respect to a property transferred under this subparagraph.

(4) Identification of uncontaminated property

(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Such identification shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:

(i) A detailed search of Federal Government records pertaining to the property.

(ii) Recorded chain of title documents regarding the real property.

(iii) Aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies.

(iv) A visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property.

(v) A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

(vi) Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.

(vii) Interviews with current or former employees involved in operations on the real property.

Such identification shall also be based on sampling, if appropriate under the circumstances. The

results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

(B) The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is obtained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. In the case of a concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.

(C)(i) Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.

(ii) In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after October 19, 1992.

(iii) In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date by which a joint resolution disapproving the closure or realignment of the real property under section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain—

(i) a covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and

(ii) a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

(E)(i) This paragraph applies to—

(I) real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

(ii) For purposes of this paragraph, the term "base closure law" includes the following:

(I) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(II) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(III) Section 2687 of title 10.

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after October 19, 1992.

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

(5) Notification of States regarding certain leases

In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

(i) Obligations under Solid Waste Disposal Act

Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] (including corrective action requirements).

(j) National security

(1) Site specific Presidential orders

The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this subchapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.] with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(2) Classified information

Notwithstanding any other provision of law, all requirements of the Atomic Energy Act [42 U.S.C. 2011 et seq.] and all Executive orders concerning the handling of restricted data and national security information, including "need to know" requirements, shall be applicable to any grant of access to classified information under the provisions of this chapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.].

(Pub. L. 96–510, title I, §120, as added Pub. L. 99–499, title I, §120(a), Oct. 17, 1986, 100 Stat. 1666; amended Pub. L. 102–426, §§3–5, Oct. 19, 1992, 106 Stat. 2175–2177; Pub. L. 104–106, div. B, title XXVIII, §2834, Feb. 10, 1996, 110 Stat. 559; Pub. L. 104–201, div. A, title III, §§330, 331, 334, Sept. 23, 1996, 110 Stat. 2484, 2486.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) to (3), (c)(1), (d)(2)(B), and (j)(2), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Section 2904(b) of such base closure law, referred to in subsec. (h)(4)(C)(iii), means section 2904(b) of Pub. L. 101–510, which is set out as a note under section 2687 of Title 10, Armed Forces.

The Solid Waste Disposal Act, referred to in subsec. (i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Title III of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (j), is title III of Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classified generally to chapter 116 (§11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Atomic Energy Act, referred to in subsec. (j)(2), probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–201, §334(b), inserted "or facilities that are the subject of a deferral under subsection (h)(3)(C)" after "United States".

Subsec. (d). Pub. L. 104–201, §330(2)–(4), designated existing provisions as par. (1), inserted par. heading, substituted "The Administrator" for "Not later than 18 months after October 17, 1986, the Administrator", realigned margins of par. (1) and subpars. (A) and (B), and substituted pars. (2) and (3) for "Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after October 17, 1986. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket."

Pub. L. 104–201, §330(1), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively.

Subsec. (h)(3). Pub. L. 104–201, §334(a)(8), added subpar. (C).

Pub. L. 104–201, §334(a)(6), (7), designated existing provisions as subpar. (B), inserted heading, substituted "For purposes of subparagraphs (A)(ii)(I) and (C)(iii)" for "For purposes of subparagraph (B)(i)", and substituted "subparagraph (A)(ii)" for "subparagraph (B)" in three places.

Pub. L. 104–201, §334(a)(1)–(5), designated first sentence as subpar. (A), inserted heading, redesignated former subpar. (A) and cls. (i) to (iii) of that subpar. as cl. (i) of subpar. (A) and subcls. (I) to (III) of that cl., respectively, redesignated former subpar. (B) and cls. (i) and (ii) of that subpar. as cl. (ii) of subpar. (A) and subcls. (I) and (II) of that cl., respectively, redesignated former subpar. (C) as cl. (iii) of subpar. (A), and realigned margins of such cls. and subcls.

Pub. L. 104–106, §2834(2), which directed that par. (3) be amended in the matter following subpar. (C) by adding at the end, flush to the paragraph margin, the following, was executed by inserting the following provision at the end of the concluding provisions "The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (B) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (B) that has not been taken on the date of the lease."

Pub. L. 104–106, §2834(1), struck out first sentence of concluding provisions which read as follows: "The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property."

Subsec. (h)(4)(A). Pub. L. 104–201, §331, substituted "known to have been released" for "stored for one year or more, known to have been released,".

1992—Subsec. (h)(3). Pub. L. 102–426, §4(a), inserted at end "For purposes of subparagraph (B)(i), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property."

Subsec. (h)(3)(C). Pub. L. 102–426, §4(b), added subpar. (C).

Subsec. (h)(4). Pub. L. 102–426, §3, added par. (4).

Subsec. (h)(5). Pub. L. 102–426, §5, added par. (5).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (e)(5) of this section is listed as the 5th item on page 151), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

ENVIRONMENTAL COMPLIANCE NOT AFFECTED BY PUB. L. 114–120

Pub. L. 114–120, title V, §534(a), Feb. 8, 2016, 130 Stat. 75, as amended by Pub. L. 116–92, div. C, title XXXV, §3514(e), Dec. 20, 2019, 133 Stat. 1984, provided that: "After the date on which the Secretary of the Interior conveys land under section 533 of this Act [section 533 of Pub. L. 114–120, 130 Stat. 74, not classified to Code], nothing in this Act [see Tables for classification] or any amendment made by this Act may be construed to affect or limit the application of or obligation to comply with any applicable environmental law, including section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), with respect to contaminants on such land prior to the date on which the land is conveyed."

IDENTIFICATION OF UNCONTAMINATED PROPERTY AT INSTALLATIONS TO BE CLOSED

Pub. L. 103–160, div. B, title XXIX, §2910, Nov. 30, 1993, 107 Stat. 1924, provided that: "The identification by the Secretary of Defense required under section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)), and the concurrence required under section 120(h)(4)(B) of such Act, shall be made not later than the earlier of—

"(1) the date that is 9 months after the date of the submittal, if any, to the transition coordinator for the installation concerned of a specific use proposed for all or a portion of the real property of the installation; or

"(2) the date specified in section 120(h)(4)(C)(iii) of such Act."

CONGRESSIONAL FINDINGS

Pub. L. 102–426, §2, Oct. 19, 1992, 106 Stat. 2174, provided that: "The Congress finds the following:

"(1) The closure of certain Federal facilities is having adverse effects on the economies of local communities by eliminating jobs associated with such facilities, and delay in remediation of environmental contamination of real property at such facilities is preventing transfer and private development of such property.

"(2) Each department, agency, or instrumentality of the United States, in cooperation with local communities, should expeditiously identify real property that offers the greatest opportunity for reuse and redevelopment on each facility under the jurisdiction of the department, agency, or instrumentality where operations are terminating.

"(3) Remedial actions, including remedial investigations and feasibility studies, and corrective actions at such Federal facilities should be expedited in a manner to facilitate environmental protection and the sale or transfer of such excess real property for the purpose of mitigating adverse economic effects on the surrounding community.

"(4) Each department, agency, or instrumentality of the United States, in accordance with applicable law, should make available without delay such excess real property.

"(5) In the case of any real property owned by the United States and transferred to another person, the

United States Government should remain responsible for conducting any remedial action or corrective action necessary to protect human health and the environment with respect to any hazardous substance or petroleum product or its derivatives, including aviation fuel and motor oil, that was present on such real property at the time of transfer."

APPLICABILITY

Pub. L. 99–499, title I, §120(b), Oct. 17, 1986, 100 Stat. 1671, provided that: "Section 120 of CERCLA [42 U.S.C. 9620] shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act [Oct. 17, 1986] with respect to facilities—

"(1) owned or operated by the United States and subject to the jurisdiction of such Department;

"(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

"(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency."

§9621. Cleanup standards

(a) Selection of remedial action

The President shall select appropriate remedial actions determined to be necessary to be carried out under section 9604 of this title or secured under section 9606 of this title which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

(b) General rules

(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

(A) the long-term uncertainties associated with land disposal;

(B) the goals, objectives, and requirements of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.];

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) short- and long-term potential for adverse health effects from human exposure;

(E) long-term maintenance costs;

(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment

technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

(c) Review

If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section 9604 or 9606 of this title, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

(d) Degree of cleanup

(1) Remedial actions selected under this section or otherwise required or agreed to by the President under this chapter shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

(i) any standard, requirement, criteria, or limitation under any Federal environmental law, including, but not limited to, the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Clean Air Act [42 U.S.C. 7401 et seq.], the Clean Water Act [33 U.S.C. 1251 et seq.], the Marine Protection, Research and Sanctuaries Act [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]; or

(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 9604 of this title or secured under section 9606 of this title shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and water quality criteria established under section 304 or 303 of the Clean Water Act [33 U.S.C. 1314, 1313], where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

(B)(i) In determining whether or not any water quality criteria under the Clean Water Act [33 U.S.C. 1251 et seq.] is relevant and appropriate under the circumstances of the release or threatened

release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

(I) there are known and projected points of entry of such groundwater into surface water; and

(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water

then the assumed point of human exposure may be at such known and projected points of entry.

(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1), of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act [42 U.S.C. 6924, 6925] (or, where applicable, in compliance with the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:

(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.

(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.].

The President shall notify the owner or operator of such facility of determinations under this paragraph.

(4) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that—

(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

(C) compliance with such requirements is technically impracticable from an engineering perspective;

(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

(F) in the case of a remedial action to be undertaken solely under section 9604 of this title using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

(e) Permits and enforcement

(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this chapter in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.

(f) State involvement

(1) The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

(B) Allocation of responsibility for hazard ranking system scoring.

(C) State concurrence in deleting sites from the National Priorities List.

(D) State participation in the long-term planning process for all remedial sites within the State.

(E) A reasonable opportunity for States to review and comment on each of the following:

(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

(ii) The planned remedial action identified in the remedial investigation and feasibility study.

(iii) The engineering design following selection of the final remedial action.

(iv) Other technical data and reports relating to implementation of the remedy.

(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4).

(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.

(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plans under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) on compliance with promulgated State standards. A copy of such response shall also be provided to the State.

(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.

Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State, and such State may participate in such negotiations and, subject to paragraph (2), any settlements.

(2)(A) This paragraph shall apply to remedial actions secured under section 9606 of this title. At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, the State may become a signatory to the consent decree.

(B) If the State does not concur in such selection, and the State desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State shall intervene in the action under section 9606 of this title before entry of the consent decree, to seek to have the remedial action so conform. Such intervention shall be a matter of right. The remedial action shall conform to such standard, requirement, criteria, or limitation if the State establishes, on the administrative record, that the finding of the President was not supported by substantial evidence. If the court determines that the remedial action shall conform to such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State may become a signatory to the decree. If the court determines that the remedial action need not conform to such standard, requirement, criteria, or limitation, and the State pays or assures the payment of the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State shall become a signatory to the decree.

(C) The President may conclude settlement negotiations with potentially responsible parties without State concurrence.

(3)(A) This paragraph shall apply to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States. At least 30 days prior to the publication of the President's final remedial action plan, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or

limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, or does not act within 30 days, the remedial action may proceed.

(B) If the State does not concur in such selection as provided in subparagraph (A), and desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State may maintain an action as follows:

(i) If the President has notified the State of selection of such a remedial action, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the finding of the President is supported by substantial evidence. Such action shall be brought in the United States district court for the district in which the facility is located.

(ii) If the State establishes, on the administrative record, that the President's finding is not supported by substantial evidence, the remedial action shall be modified to conform to such standard, requirement, criteria, or limitation.

(iii) If the State fails to establish that the President's finding was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be selected to meet such standard, requirement, criteria, or limitation. If the State fails to pay within 60 days, the remedial action selected by the President shall proceed through completion.

(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelated to or not inconsistent with such standard, requirement, criteria, or limitation.

(Pub. L. 96–510, title I, §121, as added Pub. L. 99–499, title I, §121(a), Oct. 17, 1986, 100 Stat. 1672.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (b)(1)(B) and (d)(2)(A)(i), (3)(B), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

This chapter, referred to in subsecs. (d)(1) and (e)(2), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Toxic Substances Control Act, referred to in subsec. (d)(2)(A)(i), (3), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (d)(2)(A), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (d)(2)(A)(i), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Clean Water Act, referred to in subsec. (d)(2)(A)(i), (B)(i), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Marine Protection, Research and Sanctuaries Act, referred to in subsec. (d)(2)(A)(i), probably means the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052,

which enacted chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 99–499, title I, §121(b), Oct. 17, 1986, 100 Stat. 1678, provided that: "With respect to section 121 of CERCLA [this section], as added by this section—

"(1) The requirements of section 121 of CERCLA shall not apply to any remedial action for which the Record of Decision (hereinafter in this section referred to as the 'ROD') was signed, or the consent decree was lodged, before date of enactment [Oct. 17, 1986].

"(2) If the ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the Act [Oct. 17, 1986], the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies to the maximum extent practicable with section 121 of CERCLA.

Any ROD signed before enactment of this Act [Oct. 17, 1986] and reopened after enactment of this Act to modify or supplement the selection of remedy shall be subject to the requirements of section 121 of CERCLA."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the report under subsec. (c) of this section appears to be the report listed as the 15th item on page 20), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§9622. Settlements

(a) Authority to enter into agreements

The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 9604(b) of this title) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

(b) Agreements with potentially responsible parties

(1) Mixed funding

An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 9607 of this title or under other relevant authorities.

(2) Reviewability

The President's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

(3) Retention of funds

If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

(4) Future obligation of Fund

In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

(c) Effect of agreement

(1) Liability

Whenever the President has entered into an agreement under this section, the liability to the United States under this chapter of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with subsection (f). A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

(2) Actions against other persons

If an agreement has been entered into under this section, the President may take any action under section 9606 of this title against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following:

(A) The liability of any person under section 9606 or 9607 of this title with respect to any costs or damages which are not included in the agreement.

(B) The authority of the President to maintain an action under this chapter against any person who is not a party to the agreement.

(d) Enforcement

(1) Cleanup agreements

(A) Consent decree

Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under section 9606 of this title, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g), the agreement shall be entered in the appropriate United States district court as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

(B) Effect

The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in

the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(C) Structure

The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

(2) Public participation

(A) Filing of proposed judgment

At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

(B) Opportunity for comment

The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

(3) 9604(b) agreements

Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 9604(b) of this title, the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

(e) Special notice procedures

(1) Notice

Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 9604(b) of this title) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 9607(a) of this title), to the extent such information is available.

(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 9604 of this title regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work

product. Nothing contained in this paragraph or in other provisions of this chapter shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

(2) Negotiation

(A) Moratorium

Except as provided in this subsection, the President may not commence action under section 9604(a) of this title or take any action under section 9606 of this title for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 9604(b) of this title for 90 days after providing notice and information under this subsection with respect to such action. The President may commence any additional studies or investigations authorized under section 9604(b) of this title, including remedial design, during the negotiation period.

(B) Proposals

Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 9606 of this title shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 9606 of this title. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 9604(b) of this title shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 9604(b) of this title.

(C) Additional parties

If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

(3) Preliminary allocation of responsibility

(A) In general

The President shall develop guidelines for preparing nonbinding preliminary allocations of responsibility. In developing these guidelines the President may include such factors as the President considers relevant, such as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this section and remedial action, the President may, after completion of the remedial investigation and feasibility study, provide a nonbinding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the facility.

(B) Collection of information

To collect information necessary or appropriate for performing the allocation under subparagraph (A) or for otherwise implementing this section, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(C) Effect

The nonbinding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the nonbinding preliminary

allocation of responsibility. The nonbinding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

(D) Costs

The costs incurred by the President in producing the nonbinding preliminary allocation of responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President. Where an offer under this section is not accepted, such costs shall be considered costs of response.

(E) Decision to reject offer

Where the President, in his discretion, has provided a nonbinding preliminary allocation of responsibility and the potentially responsible parties have made a substantial offer providing for response to the President which he rejects, the reasons for the rejection shall be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.

(4) Failure to propose

If the President determines that a good faith proposal for undertaking or financing action under section 9606 of this title has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 9604(a) of this title or take an action against any person under section 9606 of this title. If the President determines that a good faith proposal for undertaking or financing action under section 9604(b) of this title has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 9604(b) of this title.

(5) Significant threats

Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this subsection.

(6) Inconsistent response action

When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this chapter, has initiated a remedial investigation and feasibility study for a particular facility under this chapter, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

(f) Covenant not to sue

(1) Discretionary covenants

The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this chapter, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 9605 of this title.

(C) The person is in full compliance with a consent decree under section 9606 of this title (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

(D) The response action has been approved by the President.

(2) Special covenants not to sue

In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 6924(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 6925(c) of this title, where the President has rejected a proposed remedial action that is

consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) which involves the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the President, the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability to the United States under this chapter for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable to the United States under section 9606 or 9607 of this title with respect to such release or threatened release at a future time.

(3) Requirement that remedial action be completed

A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this chapter at the facility that is the subject of such covenant.

(4) Factors

In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the response action is demonstrated to be effective.

(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(5) Satisfactory performance

Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(6) Additional condition for future liability

(A) Except for the portion of the remedial action which is subject to a covenant not to sue under paragraph (2) or under subsection (g) (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.

(B) In extraordinary circumstances, the President may determine, after assessment of relevant factors such as those referred to in paragraph (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and

inequities and aggravating factors, not to include the exception referred to in subparagraph (A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

(C) The President is authorized to include any provisions allowing future enforcement action under section 9606 or 9607 of this title that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment.

(g) De minimis settlements

(1) Expedited final settlement

Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 9606 or 9607 of this title if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

(i) The amount of the hazardous substances contributed by that party to the facility.

(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

(B) The potentially responsible party—

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(2) Covenant not to sue

The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f).

(3) Expedited agreement

The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

(4) Consent decree or administrative order

A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed $500,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

(5) Effect of agreement

A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement

does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(6) Settlements with other potentially responsible parties

Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this chapter.

(7) Reduction in settlement amount based on limited ability to pay

(A) In general

The condition for settlement under this paragraph is that the potentially responsible party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

(B) Considerations

In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

(C) Information

A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

(D) Alternative payment methods

If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the President shall consider such alternative payment methods as may be necessary or appropriate.

(8) Additional conditions for expedited settlements

(A) Waiver of claims

The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this chapter) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

(B) Failure to comply

The President may decline to offer a settlement to a potentially responsible party under this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this chapter or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

(C) Responsibility to provide information and access

A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) or section 9604(e) of this title.

(9) Basis of determination

If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible party that requested a settlement under this subsection.

(10) Notification

As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of

the person's eligibility for an expedited settlement.

(11) No judicial review

A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.

(12) Notice of settlement

After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.

(h) Cost recovery settlement authority

(1) Authority to settle

The head of any department or agency with authority to undertake a response action under this chapter pursuant to the national contingency plan may consider, compromise, and settle a claim under section 9607 of this title for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. In the case of any facility where the total response costs exceed $500,000 (excluding interest), any claim referred to in the preceding sentence may be compromised and settled only with the prior written approval of the Attorney General.

(2) Use of arbitration

Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States where the total response costs for the facility concerned do not exceed $500,000 (excluding interest). After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection.

(3) Recovery of claims

If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

(4) Claims for contribution

A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(i) Settlement procedures

(1) Publication in Federal Register

At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under subsection (h), or under subsection (g) in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

(2) Comment period

For a 30-day period beginning on the date of publication of notice under paragraph (1) of a proposed settlement, the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

(3) Consideration of comments

The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

(j) Natural resources

(1) Notification of trustee

Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the President shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

(2) Covenant not to sue

An agreement under this section may contain a covenant not to sue under section 9607(a)(4)(C) of this title for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

(k) Section not applicable to vessels

The provisions of this section shall not apply to releases from a vessel.

(l) Civil penalties

A potentially responsible party which is a party to an administrative order or consent decree entered pursuant to an agreement under this section or section 9620 of this title (relating to Federal facilities) or which is a party to an agreement under section 9620 of this title and which fails or refuses to comply with any term or condition of the order, decree or agreement shall be subject to a civil penalty in accordance with section 9609 of this title.

(m) Applicability of general principles of law

In the case of consent decrees and other settlements under this section (including covenants not to sue), no provision of this chapter shall be construed to preclude or otherwise affect the applicability of general principles of law regarding the setting aside or modification of consent decrees or other settlements.

(Pub. L. 96–510, title I, §122, as added Pub. L. 99–499, title I, §122(a), Oct. 17, 1986, 100 Stat. 1678; amended Pub. L. 107–118, title I, §102(b), Jan. 11, 2002, 115 Stat. 2359.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Rules of Evidence, referred to in subsec. (d)(1)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2002—Subsec. (g)(7) to (12). Pub. L. 107–118 added pars. (7) to (12).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECT ON CONCLUDED ACTIONS

Amendment by Pub. L. 107–118 not to apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before Jan. 11, 2002, see section 103 of Pub. L. 107–118, set out as a note under section 9607 of this title.

APPLICATION TO SECTION

Pub. L. 119–74, div. C, title II, Jan. 23, 2026, 140 Stat. 128, provided in part: "That section 122(b)(3) of CERCLA (42 U.S.C. 9622(b)(3)) shall be applied in this fiscal year by inserting before the period: ', including for the hire, maintenance, and operation of aircraft'".

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§9623. Reimbursement to local governments

(a) Application

Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

(b) Reimbursement

(1) Temporary emergency measures

The President is authorized to reimburse local community authorities for expenses incurred (before or after October 17, 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

(2) Local funds not supplanted

Reimbursement under this section shall not supplant local funds normally provided for response.

(c) Amount

The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

(d) Procedure

Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after October 17, 1986.

(Pub. L. 96–510, title I, §123, as added Pub. L. 99–499, title I, §123(a), Oct. 17, 1986, 100 Stat. 1688.)

§9624. Methane recovery

(a) In general

In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this chapter:

(1) The owner or operator of such equipment shall not be considered an "owner or operator", as defined in section 9601(20) of this title, with respect to such facility.

(2) The owner or operator of such equipment shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 9607 of this title.

(3) The owner or operator of such equipment shall not be subject to any action under section 9606 of this title with respect to such facility.

(b) Exceptions

Subsection (a) does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) if either of the following circumstances exist:

(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a).

(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 9607 of this title with respect to such release or threatened release if he were not the owner or operator of such equipment.

In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) shall be liable under this chapter only for costs or damages primarily caused by the activities of such owner or operator.

(Pub. L. 96–510, title I, §124, as added Pub. L. 99–499, title I, §124(a), Oct. 17, 1986, 100 Stat. 1688.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

§9625. Section 6921(b)(3)(A)(i) waste

(a) Revision of hazard ranking system

This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 6921(b)(3)(A)(i) of this title. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

(3) The degree of risk to human health and the environment posed by such constituents.

(b) Inclusion prohibited

Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 6921(b)(3)(A)(i) of this title on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this chapter with respect to such other substances.

(Pub. L. 96–510, title I, §125, as added Pub. L. 99–499, title I, §125, Oct. 17, 1986, 100 Stat. 1689.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

§9626. Indian tribes

(a) Treatment generally

The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 9603(a) of this title (regarding notification of releases), section 9604(c)(2) of this title (regarding consultation on remedial actions), section 9604(e) of this title (regarding access to information), section 9604(i) of this title (regarding health authorities) and section 9605 of this title (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

(b) Community relocation

Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

(c) Study

The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this chapter, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

(d) Limitation

Notwithstanding any other provision of this chapter, no action under this chapter by an Indian tribe shall be barred until the later of the following:

(1) The applicable period of limitations has expired.

(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this chapter.

(Pub. L. 96–510, title I, §126, as added Pub. L. 99–499, title II, §207(e), Oct. 17, 1986, 100 Stat. 1706.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c) and (d), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

§9627. Recycling transactions

(a) Liability clarification

(1) As provided in subsections (b), (c), (d), and (e), a person who arranged for recycling of recyclable material shall not be liable under sections 9607(a)(3) and 9607(a)(4) of this title with respect to such material.

(2) A determination whether or not any person shall be liable under section 9607(a)(3) of this title or section 9607(a)(4) of this title for any material that is not a recyclable material as that term is used in subsections (b) and (c), (d), or (e) of this section shall be made, without regard to subsections [1] (b), (c), (d), or (e) of this section.

(b) Recyclable material defined

For purposes of this section, the term "recyclable material" means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include—

(1) shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or

(2) any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.

(c) Transactions involving scrap paper, plastic, glass, textiles, or rubber

Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

(1) The recyclable material met a commercial specification grade.

(2) A market existed for the recyclable material.

(3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a new saleable product.

(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

(5) For transactions occurring 90 days or more after November 29, 1999, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a "consuming facility") was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material.

(6) For purposes of this subsection, "reasonable care" shall be determined using criteria that include (but are not limited to)—

(A) the price paid in the recycling transaction;

(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and

(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto,

applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

(d) Transactions involving scrap metal

(1) Transactions involving scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;

(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] subsequent to November 29, 1999, and with regard to transactions occurring after the effective date of such regulations or standards; and

(C) the person did not melt the scrap metal prior to the transaction.

(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as "sweating").

(3) For purposes of this subsection, the term "scrap metal" means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation.

(e) Transactions involving batteries

Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(1) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but the person did not recover the valuable components of such batteries; and

(2)(A) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

(B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

(C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

(f) Exclusions

(1) The exemptions set forth in subsections (c), (d), and (e) shall not apply if—

(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction—

(i) that the recyclable material would not be recycled;

(ii) that the recyclable material would be burned as fuel, or for energy recovery or

incineration; or

(iii) for transactions occurring before 90 days after November 29, 1999, that the consuming facility was not in compliance with a substantive (not procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(g) Effect on other liability

Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 9607(a) of this title.

(h) Regulations

The Administrator has the authority, under section 9615 of this title, to promulgate additional regulations concerning this section.

(i) Effect on pending or concluded actions

The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to November 29, 1999.

(j) Liability for attorney's fees for certain actions

Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

(k) Relationship to liability under other laws

Nothing in this section shall affect—

(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]; or

(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.

(l) Limitation on statutory construction

Nothing in this section shall be construed to—

(1) affect any defenses or liabilities of any person to whom subsection (a)(1) does not apply; or

(2) create any presumption of liability against any person to whom subsection (a)(1) does not apply.

(Pub. L. 96–510, title I, §127, as added Pub. L. 106–113, div. B, §1000(a)(9) [title VI, §6001(b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–599.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (d)(1)(B) and (k), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SUPERFUND RECYCLING EQUITY; PURPOSES

Pub. L. 106–113, div. B, §1000(a)(9) [title VI, §6001(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–598, provided that: "The purposes of this section [enacting this section] are—

"(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

"(2) to create greater equity in the statutory treatment of recycled versus virgin materials; and

"(3) to remove the disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions."

[1] *So in original. Probably should be "subsection".*

§9628. State response programs

(a) Assistance to States

(1) In general

(A) States

The Administrator may award a grant to a State or Indian tribe that—

(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or

(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

(B) Use of grants by States

(i) In general

A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

(ii) Additional uses

In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to—

(I) capitalize a revolving loan fund for brownfield remediation under section 9604(k)(3) of this title;

(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program; or

(III) assist small communities, Indian tribes, rural areas, or disadvantaged areas in carrying out activities described in section 9604(k)(7)(A) of this title with respect to brownfield sites.

(iii) Small communities, Indian tribes, rural areas, and disadvantaged areas

(I) In general

To make grants to States or Indian tribes under clause (ii)(III), the Administrator may use, in addition to amounts available to carry out this subsection, not more than $1,500,000 of the amounts made available to carry out section 9604(k)(7) of this title in each fiscal year.

(II) Limitation

Each grant made under subclause (I) may be not more than $20,000.

(III) Inclusion in other grants

The Administrator may, at the request of a State or Indian tribe, include a grant under this clause in any other grant to the State or Indian tribe made under this subsection.

(iv) Definitions

In this subparagraph:

(I) Disadvantaged area

The term "disadvantaged area" means a community with an annual median household income that is less than 80 percent of the statewide annual median household income, as determined by the President based on the latest available decennial census.

(II) Small community

The term "small community" means a community with a population of not more than 15,000 individuals, as determined by the President based on the latest available decennial census.

(2) Elements

The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:

(A) Timely survey and inventory of brownfield sites in the State.

(B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that—

(i) a response action will—

(I) protect human health and the environment; and

(II) be conducted in accordance with applicable Federal and State law; and

(ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

(C) Mechanisms and resources to provide meaningful opportunities for public participation, including—

(i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

(ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and

(iii) a mechanism by which—

(I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and

(II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).

(D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

(3) Funding

There is authorized to be appropriated to carry out this subsection $50,000,000 for each of fiscal years 2019 through 2023.

(b) Enforcement in cases of a release subject to State program

(1) Enforcement

(A) In general

Except as provided in subparagraph (B) and subject to subparagraph (C), in the case of an eligible response site at which—

(i) there is a release or threatened release of a hazardous substance, pollutant, or contaminant; and

(ii) a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment,

the President may not use authority under this chapter to take an administrative or judicial enforcement action under section 9606(a) of this title or to take a judicial enforcement action to recover response costs under section 9607(a) of this title against the person regarding the specific release that is addressed by the response action.

(B) Exceptions

The President may bring an administrative or judicial enforcement action under this chapter during or after completion of a response action described in subparagraph (A) with respect to a release or threatened release at an eligible response site described in that subparagraph if—

(i) the State requests that the President provide assistance in the performance of a response action;

(ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;

(iii) after taking into consideration the response activities already taken, the Administrator determines that—

(I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and

(II) additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release; or

(iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.

(C) Public record

The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response

actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) shall maintain and make available to the public a record of sites as provided in this paragraph.

(D) EPA notification

(i) In general

In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—

(I) notify the State of the action the Administrator intends to take; and

(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.

(ii) State reply

Not later than 48 hours after a State receives notice from the Administrator under clause (i), the State shall notify the Administrator if—

(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and

(II) the State is planning to abate the release or threatened release, any actions that are planned.

(iii) Immediate Federal action

The Administrator may take action immediately after giving notification under clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that one or more exceptions under subparagraph (B) are met.

(E) Report to Congress

Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).

(2) Savings provision

(A) Costs incurred prior to limitations

Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to January 11, 2002, or during a period in which the limitations of paragraph (1)(A) were not applicable.

(B) Effect on agreements between States and EPA

Nothing in paragraph (1)—

(i) modifies or otherwise affects a memorandum of agreement, memorandum of understanding, or any similar agreement relating to this chapter between a State agency or an Indian tribe and the Administrator that is in effect on or before January 11, 2002 (which agreement shall remain in effect, subject to the terms of the agreement); or

(ii) limits the discretionary authority of the President to enter into or modify an agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.

(3) Effective date

This subsection applies only to response actions conducted after February 15, 2001.

(c) Effect on Federal laws

Nothing in this section affects any liability or response authority under any Federal law,

including—

(1) this chapter, except as provided in subsection (b);
(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and
(5) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(Pub. L. 96–510, title I, §128, as added Pub. L. 107–118, title II, §231(b), Jan. 11, 2002, 115 Stat. 2375; amended Pub. L. 115–141, div. N, §§14(a), 15, Mar. 23, 2018, 132 Stat. 1058, 1059.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1)(A), (B), (2)(B)(i) and (c)(1), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (c)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (c)(4), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(5), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

2018—Subsec. (a)(1)(B)(ii)(III). Pub. L. 115–141, §14(a)(1), added subcl. (III).

Subsec. (a)(1)(B)(iii), (iv). Pub. L. 115–141, §14(a)(2), added cls. (iii) and (iv).

Subsec. (a)(3). Pub. L. 115–141, §15, amended par. (3) generally. Prior to amendment, text read as follows: "There is authorized to be appropriated to carry out this subsection $50,000,000 for each of fiscal years 2002 through 2006."

SUBCHAPTER II—HAZARDOUS SUBSTANCE RESPONSE REVENUE

PART A—HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

§§9631 to 9633. Repealed. Pub. L. 99–499, title V, §517(c)(1), Oct. 17, 1986, 100 Stat. 1774

Section 9631, Pub. L. 96–510, title II, §221, Dec. 11, 1980, 94 Stat. 2801; Pub. L. 99–499, title II, §204, Oct. 17, 1986, 100 Stat. 1696, provided for establishment of a Hazardous Substances Superfund, so redesignated by section 204 of Pub. L. 99–499. See section 9507 of Title 26, Internal Revenue Code.

Section 9632, Pub. L. 96–510, title II, §222, Dec. 11, 1980, 94 Stat. 2802, limited liability of United States to amount in Trust Fund.

Section 9633, Pub. L. 96–510, title II, §223, Dec. 11, 1980, 94 Stat. 2802, contained administrative provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 99–499 effective Jan. 1, 1987, see section 517(e) of Pub. L. 99–499, set out as an Effective Date note under section 9507 of Title 26, Internal Revenue Code.

PART B—POST-CLOSURE LIABILITY TRUST FUND

§9641. Repealed. Pub. L. 99–499, title V, §514(b), Oct. 17, 1986, 100 Stat. 1767

Section, Pub. L. 96–510, title II, §232, Dec. 11, 1980, 94 Stat. 2804, provided for establishment of the Post-closure Liability Trust Fund in the Treasury of the United States.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 99–499, title V, §514(c), Oct. 17, 1986, 100 Stat. 1767, provided that:

"(1) IN GENERAL.—The amendments made by this section [repealing this section and sections 4681 and 4682 of Title 26, Internal Revenue Code] shall take effect on October 1, 1983.

"(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act."

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§9651. Reports and studies

(a) Implementation experiences; identification and disposal of waste

(1) The President shall submit to the Congress, within four years after December 11, 1980, a comprehensive report on experience with the implementation of this chapter including, but not limited to—

(A) the extent to which the chapter and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this chapter;

(F) the impact of the taxes imposed by subchapter II [1] of this chapter on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this chapter. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this chapter, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of title 26 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after December 11, 1980, a report identifying additional wastes designated by rule as hazardous after the effective date of this chapter and pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980 [42 U.S.C. 6921(b)(2)(B) and 6921(b)(3)(A)], has determined should be subject to regulation under subtitle C of such Act [42 U.S.C. 6921 et seq.], (ii) within three years after December 11, 1980, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) Private insurance protection

The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 9607 of this title, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of December 11, 1980, and shall submit an interim report on his study within one year of December 11, 1980.

(c) Regulations respecting assessment of damages to natural resources

(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 9605 of this title, shall study and, not later than two years after December 11, 1980, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this chapter and section 1321(f)(4) and (5) of title 33. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in

individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) Issues, alternatives, and policy considerations involving selection of locations for waste treatment, storage, and disposal facilities

The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of December 11, 1980, on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e) Adequacy of existing common law and statutory remedies

(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of December 11, 1980.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation

for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) Modification of national contingency plan

The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after December 11, 1980, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

(g) Insurability study

(1) Study by Comptroller General

The Comptroller General of the United States, in consultation with the persons described in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

(A) Persons who generate hazardous substances: liability for costs and damages under this chapter.

(B) Persons who own or operate facilities: liability for costs and damages under this chapter.

(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

(2) Consultation

In conducting the study under this subsection, the Comptroller General shall consult with the following:

(A) Representatives of the Administrator.

(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

(D) Representatives of property and casualty insurers.

(E) Representatives of reinsurers.

(F) Persons responsible for the regulation of insurance at the State level.

(3) Items evaluated

The study under this section shall include, among other matters, an evaluation of the following:

(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

(B) Current trends in statutory and common law remedies.

(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

(D) The effect of the standard of liability and extent of the persons upon whom it is imposed

under this chapter on the protection of human health and the environment and on the availability, underwriting, and pricing of insurance coverage.

(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of such contracts and the description of the risks assumed, could affect such trends.

(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding October 17, 1986.

(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this chapter on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies, as well as waste generation minimization.

(4) Submission

The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after October 17, 1986.

(Pub. L. 96–510, title III, §301, Dec. 11, 1980, 94 Stat. 2805; Pub. L. 99–499, title I, §107(d)(3), title II, §§208, 212, Oct. 17, 1986, 100 Stat. 1630, 1707, 1726; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (E), (G), (c)(1), and (g), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Subchapter II of this chapter, referred to in subsec. (a)(1)(F), was in the original "title II of this Act", meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

For effective date of this chapter, referred to in subsec. (a)(2), see section 9652 of this title.

Subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, referred to in subsec. (a)(2), probably mean section 3001(b)(2)(B) and (3)(A) of the Solid Waste Disposal Act, as amended by the Solid Waste Disposal Act Amendments of 1980, which enacted section 6921(b)(2)(B) and (3)(A) of this title.

The Solid Waste Disposal Act, referred to in subsecs. (a)(2) and (d)(C), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Subsec. (h) of this section, which required the Administrator of the Environmental Protection Agency to submit an annual report to Congress of such Agency on the progress achieved in implementing this chapter during the preceding fiscal year, required the Inspector General of the Agency to review the report for reasonableness and accuracy and submit to Congress, as a part of that report, a report on the results of the review, and required the appropriate authorizing committees of Congress, after receiving those reports, to conduct oversight hearings to ensure that this chapter is being implemented according to the purposes of this

chapter and congressional intent in enacting this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 164 of House Document No. 103–7.

AMENDMENTS

1986—Subsec. (a)(1)(H). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (c)(1). Pub. L. 99–499, §107(d)(3), inserted at end "Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986."

Subsec. (g). Pub. L. 99–499, §208, added subsec. (g).

Subsec. (h). Pub. L. 99–499, §212, added subsec. (h).

[1] *See References in Text note below.*

§9652. Effective dates; savings provisions

(a) Unless otherwise provided, all provisions of this chapter shall be effective on December 11, 1980.

(b) Any regulation issued pursuant to any provisions of section 1321 of title 33 which is repealed or superseded by this chapter and which is in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this chapter, and

(3) in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this chapter shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

(Pub. L. 96–510, title III, §302, Dec. 11, 1980, 94 Stat. 2808.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c)(2), (3), and (d), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

§9653. Repealed. Pub. L. 99–499, title V, §511(b), Oct. 17, 1986, 100 Stat. 1761

Section, Pub. L. 96–510, title III, §303, Dec. 11, 1980, 94 Stat. 2808, provided for termination of authority to collect taxes under this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1987, see section 511(c) of Pub. L. 99–499, set out as an Effective Date of 1986 Amendment note under section 4611 of Title 26, Internal Revenue Code.

§9654. Applicability of Federal water pollution control funding, etc., provisions

(a) Omitted

(b) One-half of the unobligated balance remaining before December 11, 1980, under subsection (k) [1] of section 1321 of title 33 and all sums appropriated under section 1364(b) [1] of title 33 shall be transferred to the Fund established under subchapter II [1] of this chapter.

(c) In any case in which any provision of section 1321 of title 33 is determined to be in conflict with any provisions of this chapter, the provisions of this chapter shall apply.

(Pub. L. 96–510, title III, §304, Dec. 11, 1980, 94 Stat. 2809.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsection (k) of section 1321 of title 33, referred to in subsec. (b), was repealed by Pub. L. 101–380, title II, §2002(b)(2), Aug. 18, 1990, 104 Stat. 507.

Section 1364(b) of title 33, referred to in subsec. (b), was repealed by Pub. L. 96–510, title III, §304(a), Dec. 11, 1980, 94 Stat. 2809.

Subchapter II of this chapter, referred to in subsec. (b), was in the original "title II of this Act", meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

CODIFICATION

Subsec. (a) of this section repealed section 1364(b) of Title 33, Navigation and Navigable Waters.

[1] *See References in Text note below.*

§9655. Legislative veto of rule or regulation

(a) Transmission to Congress upon promulgation or repromulgation of rule or regulation; disapproval procedures

Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of subchapter I of this chapter, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the

resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the dealing with the matter of , which rule or regulation was transmitted to Congress on .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) Approval; effective dates

If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) Sessions of Congress as applicable

For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, resolution of disapproval

Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

(Pub. L. 96–510, title III, §305, Dec. 11, 1980, 94 Stat. 2809.)

§9656. Transportation of hazardous substances; listing as hazardous material; liability for release

(a) Each hazardous substance which is listed or designated as provided in section 9601(14) of this title shall, within 30 days after October 17, 1986, or at the time of such listing or designation, whichever is later, be listed and regulated as a hazardous material under chapter 51 of title 49.

(b) A common or contract carrier shall be liable under other law in lieu of section 9607 of this title for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing and regulation of such substance as a hazardous material under chapter 51 of title 49, or for substances listed pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however*, That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

(Pub. L. 96–510, title III, §306(a), (b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 99–499, title II, §202, Oct. 17, 1986, 100 Stat. 1695.)

EDITORIAL NOTES

CODIFICATION

In subsecs. (a) and (b), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–499, §202(a), substituted "within 30 days after October 17, 1986" for "within ninety days after December 11, 1980" and inserted "and regulated" before "as a hazardous material".

Subsec. (b). Pub. L. 99–499, §202(b), inserted "and regulation" after "prior to the effective date of the listing".

§9657. Separability; contribution

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby. If an administrative settlement under section 9622 of this title has the effect of limiting any person's right to obtain contribution from any party to such settlement, and if the effect of such limitation would constitute a taking without just compensation in violation of the fifth amendment of the Constitution of the United States, such person shall not be entitled, under other laws of the United States, to recover compensation from the United States for such taking, but in any such case, such limitation on the right to obtain contribution shall be treated as having no force and effect.

(Pub. L. 96–510, title III, §308, Dec. 11, 1980, 94 Stat. 2811; Pub. L. 99–499, title I, §122(b), Oct. 17, 1986, 100 Stat. 1688.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1986—Pub. L. 99–499 inserted sentence at end relating to administrative settlements under section 9622 of this title which have effect of limiting any person's right to obtain contribution from any party to such settlement.

§9658. Actions under State law for damages from exposure to hazardous substances

(a) State statutes of limitations for hazardous substance cases

(1) Exception to State statutes

In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

(2) State law generally applicable

Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are

caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) Actions under section 9607

Nothing in this section shall apply with respect to any cause of action brought under section 9607 of this title.

(b) Definitions

As used in this section—

(1) Subchapter I terms

The terms used in this section shall have the same meaning as when used in subchapter I of this chapter.

(2) Applicable limitations period

The term "applicable limitations period" means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

(3) Commencement date

The term "commencement date" means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) Federally required commencement date

(A) In general

Except as provided in subparagraph (B), the term "federally required commencement date" means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

(B) Special rules

In the case of a minor or incompetent plaintiff, the term "federally required commencement date" means the later of the date referred to in subparagraph (A) or the following:

(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

(Pub. L. 96–510, title III, §309, as added Pub. L. 99–499, title II, §203(a), Oct. 17, 1986, 100 Stat. 1695.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 99–499, title II, §203(b), Oct. 17, 1986, 100 Stat. 1696, provided that: "The amendment made by subsection (a) of this section [enacting this section] shall take effect with respect to actions brought after December 11, 1980."

§9659. Citizens suits

(a) Authority to bring civil actions

Except as provided in subsections (d) and (e) of this section and in section 9613(h) of this title (relating to timing of judicial review), any person may commence a civil action on his own behalf—

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged

to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter (including any provision of an agreement under section 9620 of this title, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this chapter, including an act or duty under section 9620 of this title (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 9660 of this title (relating to research, development, and demonstration).

(b) Venue

(1) Actions under subsection (a)(1)

Any action under subsection (a)(1) shall be brought in the district court for the district in which the alleged violation occurred.

(2) Actions under subsection (a)(2)

Any action brought under subsection (a)(2) may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the President or other officer to perform the act or duty concerned.

(d) Rules applicable to subsection (a)(1) actions

(1) Notice

No action may be commenced under subsection (a)(1) before 60 days after the plaintiff has given notice of the violation to each of the following:

(A) The President.

(B) The State in which the alleged violation occurs.

(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

(2) Diligent prosecution

No action may be commenced under paragraph (1) of subsection (a) if the President has commenced and is diligently prosecuting an action under this chapter, or under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

(e) Rules applicable to subsection (a)(2) actions

No action may be commenced under paragraph (2) of subsection (a) before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Intervention

In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 9613 of this title.

(h) Other rights

This chapter does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in section 9613(h) of this title or as otherwise provided in section 9658 of this title (relating to actions under State law).

(i) Definitions

The terms used in this section shall have the same meanings as when used in subchapter I.

(Pub. L. 96–510, title III, §310, as added Pub. L. 99–499, title II, §206, Oct. 17, 1986, 100 Stat. 1703.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d)(2), and (h), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (d)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§9660. Research, development, and demonstration

(a) Hazardous substance research and training

(1) Authorities of Secretary

The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Administrator, shall establish and support a basic research and training program (through grants, cooperative agreements, and contracts) consisting of the following:

(A) Basic research (including epidemiologic and ecologic studies) which may include each of the following:

(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

(ii) Methods to assess the risks to human health presented by hazardous substances.

(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

(B) Training, which may include each of the following:

(i) Short courses and continuing education for State and local health and environment

agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.

(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this chapter.

(2) Director of NIEHS

The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.

(3) Recipients of grants, etc.

A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

(A) Generators of hazardous wastes.

(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

(C) Owners and operators of facilities at which hazardous substances are located.

(D) State and local governments.

(4) Procedures

In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the allocation of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act [42 U.S.C. 281 et seq.] shall be followed under this subsection.

(5) Advisory council

To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the "Advisory Council") which shall consist of representatives of the following:

(A) The relevant Federal agencies.

(B) The chemical industry.

(C) The toxic waste management industry.

(D) Institutions of higher education.

(E) State and local health and environmental agencies.

(F) The general public.

(6) Planning

Within nine months after October 17, 1986, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need

for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this chapter. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).

(b) Alternative or innovative treatment technology research and demonstration program

(1) Establishment

The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the "program") which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(2) Administration

The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development.

(3) Contracts and grants

In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of title 26. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

(4) Use of sites

In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 9604 of this title for the purposes of carrying out research, testing, evaluation, development, and demonstration projects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

(5) Demonstration assistance

(A) Program components

The demonstration assistance program shall include the following:

(i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.

(ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

(iii) The development of detailed plans for innovative technology demonstration projects.

(iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

(v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

(B) Solicitation

Within 90 days after October 17, 1986, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 9604 of this title. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be

included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

(C) Applications

Any person and any public or private nonprofit entity may submit an application to the Administrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

(D) Project selection

In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

(E) Site selection

The Administrator shall propose 10 sites at which a response may be undertaken under section 9604 of this title to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity for notice and public comment, the Administrator shall select such sites and projects. In selecting any such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated offsite.

(F) Demonstration plan

Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

(G) Supervision and testing

Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

(H) Project completion

Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

(I) Extensions

The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

(J) Funding restrictions

The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and

conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than $10,000,000 for assistance under the program in any fiscal year and shall not expend more than $3,000,000 for any single project.

(6) Field demonstrations

In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 9604 of this title, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

(7) Criteria

In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

(8) Technology transfer

In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 and section 1905 of title 18, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information or portion thereof obtained under this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

(A) trade secrets; or

(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

(9) Training

The Administrator is authorized and directed to carry out, through the Office of Technology Demonstration, a program of training and an evaluation of training needs for each of the following:

(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

(10) Definition

For purposes of this subsection, the term "alternative or innovative treatment technologies" means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

(c) Hazardous substance research

The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

(d) University hazardous substance research centers

(1) Grant program

The Administrator shall make grants to institutions of higher learning to establish and operate not fewer than 5 hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated 10 hazardous substance research centers in the United States.

(2) Responsibilities of centers

The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

(3) Applications

Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria

The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in

hazardous substance management and research.

(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

(5) Maintenance of effort

No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding October 17, 1986.

(6) Federal share

The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

(7) Limitation on use of funds

No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

(8) Administration through the Office of the Administrator

Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

(9) Equitable distribution of funds

The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

(10) Technology transfer activities

Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

(e) Report to Congress

At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a), a report on the progress of the research, development, and demonstration program authorized by subsection (b), including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

(f) Saving provision

Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(g) Small business participation

The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b).

(Pub. L. 96–510, title III, §311, as added Pub. L. 99–499, title II, §209(b), Oct. 17, 1986, 100 Stat. 1708; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(B)(iii), (6), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Public Health Service Act, referred to in subsec. (a)(4), is act July 1, 1944, ch. 373, 58 Stat. 682. Title IV of the Public Health Service Act is classified generally to subchapter III (§281 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

METHAMPHETAMINE REMEDIATION RESEARCH

Pub. L. 110–143, Dec. 21, 2007, 121 Stat. 1809, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Methamphetamine Remediation Research Act of 2007'.

"SEC. 2. FINDINGS.

"The Congress finds the following:

"(1) Methamphetamine use and production is growing rapidly throughout the United States.

"(2) Materials and residues remaining from the production of methamphetamine pose novel environmental problems in locations where methamphetamine laboratories have been closed.

"(3) There has been little standardization of measures for determining when the site of a closed methamphetamine laboratory has been successfully remediated.

"(4) Initial cleanup actions are generally limited to removal of hazardous substances and contaminated materials that pose an immediate threat to public health or the environment. It is not uncommon for significant levels of contamination to be found throughout residential structures after a methamphetamine laboratory has closed, partially because of a lack of knowledge of how to achieve an effective cleanup.

"(5) Data on methamphetamine laboratory-related contaminants of concern are very limited, and cleanup standards do not currently exist. In addition, procedures for sampling and analysis of contaminants need to be researched and developed.

"(6) Many States are struggling with establishing remediation guidelines and programs to address the rapidly expanding number of methamphetamine laboratories being closed each year.

"SEC. 3. VOLUNTARY GUIDELINES.

"(a) ESTABLISHMENT OF VOLUNTARY GUIDELINES.—Not later than one year after the date of enactment of this Act [Dec. 21, 2007], the Administrator of the Environmental Protection Agency (in this Act referred to as the 'Administrator'), in consultation with the National Institute of Standards and Technology, shall establish voluntary guidelines, based on the best currently available scientific knowledge, for the remediation of former methamphetamine laboratories, including guidelines regarding preliminary site assessment and the remediation of residual contaminants.

"(b) CONSIDERATIONS.—In developing the voluntary guidelines under subsection (a), the Administrator shall consider, at a minimum—

"(1) relevant standards, guidelines, and requirements found in Federal, State, and local laws and regulations;

"(2) the varying types and locations of former methamphetamine laboratories; and

"(3) the expected cost of carrying out any proposed guidelines.

"(c) STATES.—The voluntary guidelines should be designed to assist State and local governments in the development and the implementation of legislation and other policies to apply state-of-the-art knowledge and research results to the remediation of former methamphetamine laboratories. The Administrator shall work

with State and local governments and other relevant non-Federal agencies and organizations, including through the conference described in section 5, to promote and encourage the appropriate adoption of the voluntary guidelines.

"(d) UPDATING THE GUIDELINES.—The Administrator shall periodically update the voluntary guidelines as the Administrator, in consultation with States and other interested parties, determines to be necessary and appropriate to incorporate research findings and other new knowledge.

"SEC. 4. RESEARCH PROGRAM.

"The Administrator shall establish a program of research to support the development and revision of the voluntary guidelines described in section 3. Such research shall—

"(1) identify methamphetamine laboratory-related chemicals of concern;

"(2) assess the types and levels of exposure to chemicals of concern identified under paragraph (1), including routine and accidental exposures, that may present a significant risk of adverse biological effects, and the research necessary to better address biological effects and to minimize adverse human exposures;

"(3) evaluate the performance of various methamphetamine laboratory cleanup and remediation techniques; and

"(4) support other research priorities identified by the Administrator in consultation with States and other interested parties.

"SEC. 5. TECHNOLOGY TRANSFER CONFERENCE.

"(a) CONFERENCE.—Not later than 90 days after the date of enactment of this Act [Dec. 21, 2007], and at least every third year thereafter, the Administrator shall convene a conference of appropriate State agencies, as well as individuals or organizations involved in research and other activities directly related to the environmental, or biological impacts of former methamphetamine laboratories. The conference should be a forum for the Administrator to provide information on the guidelines developed under section 3 and on the latest findings from the research program described in section 4, and for the non-Federal participants to provide information on the problems and needs of States and localities and their experience with guidelines developed under section 3.

"(b) REPORT.—Not later than 3 months after each conference, the Administrator shall submit a report to the Congress that summarizes the proceedings of the conference, including a summary of any recommendations or concerns raised by the non-Federal participants and how the Administrator intends to respond to them. The report shall also be made widely available to the general public.

"SEC. 6. RESIDUAL EFFECTS STUDY.

"(a) STUDY.—Not later than 6 months after the date of enactment of this Act [Dec. 21, 2007], the Administrator shall enter into an arrangement with the National Academy of Sciences for a study of the status and quality of research on the residual effects of methamphetamine laboratories. The study shall identify research gaps and recommend an agenda for the research program described in section 4. The study shall pay particular attention to the need for research on the impacts of methamphetamine laboratories on—

"(1) the residents of buildings where such laboratories are, or were, located, with particular emphasis given to biological impacts on children; and

"(2) first responders.

"(b) REPORT.—Not later than 3 months after the completion of the study, the Administrator shall transmit to Congress a report on how the Administrator will use the results of the study to carry out the activities described in sections 3 and 4.

"SEC. 7. METHAMPHETAMINE DETECTION RESEARCH AND DEVELOPMENT PROGRAM.

"The Director of National Institute of Standards and Technology, in consultation with the Administrator, shall support a research program to develop—

"(1) new methamphetamine detection technologies, with emphasis on field test kits and site detection; and

"(2) appropriate standard reference materials and validation procedures for methamphetamine detection testing.

"SEC. 8. SAVINGS CLAUSE.

"Nothing in this Act shall be construed to affect or limit the application of, or any obligation to comply with, any State or Federal environmental law or regulation, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

"SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

"(a) ENVIRONMENTAL PROTECTION AGENCY.—There are authorized to be appropriated to the Environmental Protection Agency to carry out this Act $1,750,000 for each of the fiscal years 2007 and 2008.

"(b) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—There are authorized to be appropriated to the National Institute of Standards and Technology to carry out this Act $750,000 for each of the fiscal years 2007 and 2008."

GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Pub. L. 99–499, title I, §118(l), Oct. 17, 1986, 100 Stat. 1660, provided that:

"(1) ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the 'Center') for the purpose of conducting research to aid in more effective hazardous substance response and waste management throughout the Gulf Coast.

"(2) PURPOSES OF THE CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions or in normal handling of hazardous wastes to achieve better protection of human health and the environment.

"(3) OPERATION OF CENTER.—(A) For purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a university related institute involved with the improvement of waste management. Such institute shall be located in Jefferson County, Texas.

"(B) The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida in order to carry out the purposes of the Center.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for purposes of carrying out this subsection for fiscal years beginning after September 30, 1986, not more than $5,000,000."

PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Pub. L. 99–499, title I, §118(o), Oct. 17, 1986, 100 Stat. 1661, provided that:

"(1) ESTABLISHMENT.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the 'Center') for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest.

"(2) PURPOSES OF CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

"(3) OPERATION OF CENTER.—

"(A) NONPROFIT ENTITY.—For the purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a nonprofit private entity as defined in section 201(i) of Public Law 96-517 [probably means section 201(i) of Title 35, Patents, which was enacted by section 6(a) of Pub. L. 96–517, Dec. 12, 1980, 94 Stat. 3020] which entity shall agree to provide the basic technical and management personnel. Such nonprofit private entity shall also agree to provide at least two permanent research facilities, one of which shall be located in Benton County, Washington, and one of which shall be located in Clallam County, Washington.

"(B) AUTHORITIES.—The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Washington, Oregon, Idaho, and Montana in order to carry out the purposes of the Center.

"(4) HAZARDOUS WASTE RESEARCH AT THE HANFORD SITE.—

"(A) INTERAGENCY AGREEMENTS.—The Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing for research, evaluation, testing, development, and demonstration into alternative or innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site, in the State of Washington.

"(B) FUNDING.—There is authorized to be appropriated to the Secretary of Energy for purposes of carrying out this paragraph for fiscal years beginning after September 30, 1986, not more than $5,000,000. All sums appropriated under this subparagraph shall be provided to the Administrator by the Secretary of

Energy, pursuant to the interagency agreement entered into under subparagraph (A), for the purpose of the Administrator entering into contracts and cooperative agreements with, and making grants to, the Center in order to carry out the research, evaluation, testing, development, and demonstration described in paragraph (1).

"(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for purposes of carrying out this subsection (other than paragraph (4)) for fiscal years beginning after September 30, 1986, not more than $5,000,000."

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 99–499, title II, §209(a), Oct. 17, 1986, 100 Stat. 1708, provided that: "The purposes of this section [enacting this section] are as follows:

"(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the CERCLA program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate the effects on and risks to human health from hazardous substances.

"(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

"(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

"(4) To enhance the Environmental Protection Agency's internal research capabilities related to CERCLA activities, including site assessment and technology evaluation.

"(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements or coordinates with, but does not compete with or duplicate, private sector development of such technologies."

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

§9660a. Grant program

(1) Grant purposes

Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this section.

(2) Administration

Grants under this section shall be administered by the National Institute of Environmental Health Sciences.

(3) Grant recipients

Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

(Pub. L. 99–499, title I, §126(g), Oct. 17, 1986, 100 Stat. 1692.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Superfund Amendments and Reauthorization Act of 1986, and not as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which comprises this chapter.

§9661. Love Canal property acquisition

(a) Acquisition of property in Emergency Declaration Area

The Administrator of the Environmental Protection Agency (hereinafter referred to as the "Administrator") may make grants not to exceed $2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, non-profit, and vacant properties.

(b) Procedures for acquisition

No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

(c) State ownership

The Administrator shall not provide any funds under this section for the acquisition of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

(d) Maintenance of property

The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 9604(c) of this title). The Administrator is authorized, in his discretion, to provide technical assistance to any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

(e) Habitability and land use study

The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall—

(1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area;

(2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and

(3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses.

The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

(f) Funding

For purposes of section 9611 of this title [and 9631(c) [1] of this title], the expenditures authorized by this section shall be treated as a cost specified in section 9611(c) of this title.

(g) Response

The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before October 17, 1986) to be necessary to protect the public health or welfare or the environment.

(h) Definitions

For purposes of this section:

(1) Emergency Declaration Area

The terms "Emergency Declaration Area" and "Love Canal Emergency Declaration Area" mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on October 17, 1986.

(2) Private property

As used in subsection (a), the term "private property" means all property which is not owned by a department, agency, or instrumentality of—

(A) the United States, or

(B) the State of New York (or any public agency or authority thereof).

(Pub. L. 96–510, title III, §312, as added Pub. L. 99–499, title II, §213(b), Oct. 17, 1986, 100 Stat. 1727.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 9631 of this title, referred to in subsec. (f), was repealed by Pub. L. 99–499, title V, §517(c)(1), Oct. 17, 1986, 100 Stat. 1774.

STATUTORY NOTES AND RELATED SUBSIDIARIES

LOVE CANAL PROPERTY ACQUISITION; CONGRESSIONAL FINDINGS

Pub. L. 99–499, title II, §213(a), Oct. 17, 1986, 100 Stat. 1726, provided that:

"(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.)] to deal with these problems.

"(2) Because Love Canal came to the Nation's attention prior to the passage of CERCLA and because the fund under CERCLA was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation, or selection of any other response actions at Love Canal or at any other facilities."

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

[1] *See References in Text note below.*

§9662. Limitation on contract and borrowing authority

Any authority provided by this Act, including any amendment made by this Act, to enter into

contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 99–499, §3, Oct. 17, 1986, 100 Stat. 1614.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613, known as the Superfund Amendments and Reauthorization Act of 1986. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Superfund Amendments and Reauthorization Act of 1986, and not as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which comprises this chapter.

SUBCHAPTER IV—POLLUTION INSURANCE

§9671. Definitions

As used in this subchapter—

(1) Insurance

The term "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

(2) Pollution liability

The term "pollution liability" means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) Risk retention group

The term "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

(4) Purchasing group

The term "purchasing group" means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

(Pub. L. 96–510, title IV, §401, as added Pub. L. 99–499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1716; renumbered §210(a), Pub. L. 99–563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

STATE POWERS AND AUTHORITIES UNDER RISK RETENTION AMENDMENTS OF 1986

Pub. L. 99–499, title II, §210(b), as added by Pub. L. 99–563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177, provided that: "For purposes of subsection (a) of this section [enacting this subchapter], the powers and authorities of States addressed by the Risk Retention Amendments of 1986 [Pub. L. 99–563, see Short Title of 1986 Amendment note set out under section 3901 of Title 15, Commerce and Trade] are in addition to those of this Act [see Short Title of 1986 Amendment note set out under section 9601 of this title]."

§9672. State laws; scope of subchapter

(a) State laws

Nothing in this subchapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this subchapter, including recognition or qualification of risk retention groups or purchasing groups.

(b) Scope of subchapter

The authority to offer or to provide insurance under this subchapter shall be limited to coverage of pollution liability risks and this subchapter does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

(Pub. L. 96–510, title IV, §402, as added Pub. L. 99–499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1716; renumbered §210(a), Pub. L. 99–563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§9673. Risk retention groups

(a) Exemption

Except as provided in this section, a risk retention group shall be exempt from the following:

(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) Exceptions

(1) State laws generally applicable

Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) State regulations not subject to exemption

Subsection (a) shall not apply to any State law which requires a risk retention group to do any

of the following:

(A) Comply with the unfair claim settlement practices law of the State.

(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

(c) Application of exemptions

The exemptions specified in subsection (a) apply to—

(1) pollution liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of pollution liability insurance coverage for a risk retention group; and

(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(d) Agents or brokers

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub. L. 96–510, title IV, §403, as added Pub. L. 99–499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1717; renumbered §210(a), Pub. L. 99–563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§9674. Purchasing groups

(a) Exemption

Except as provided in this section, a purchasing group is exempt from the following:

(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms,

coverages, or other matters.

(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

(8) A State law, rule, or order which otherwise discriminate [1] against a purchasing group or any of its members.

(b) Application of exemptions

The exemptions specified in subsection (a) apply to the following:

(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group.

(2) The sale of any one of the following to a purchasing group or a member of the group:

(A) Pollution liability insurance and comprehensive general liability coverage.

(B) Insurance related services.

(C) Management services.

(c) Agents or brokers

A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub. L. 96–510, title IV, §404, as added Pub. L. 99–499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1718; renumbered §210(a), Pub. L. 99–563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

[1] *So in original. Probably should be "discriminates".*

§9675. Applicability of securities laws

(a) Ownership interests

The ownership interests of members of a risk retention group shall be considered to be—

(1) exempted securities for purposes of section 77e of title 15 and for purposes of section 78l of title 15; and

(2) securities for purposes of the provisions of section 77q of title 15 and the provisions of section 78j of title 15.

(b) Investment Company Act

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(c) Blue sky law

The ownership interests of members in a risk retention group shall not be considered securities for

purposes of any State blue sky law.

(Pub. L. 96–510, title IV, §405, as added Pub. L. 99–499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1719; renumbered §210(a), Pub. L. 99–563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

CHAPTER 104—NUCLEAR SAFETY RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.

9701. Congressional findings and declaration of policy.
9702. Definitions.
9703. Research, development, and demonstration program; establishment; purposes; implementation.
9704. National reactor engineering simulator feasibility study.
9705. Federal Nuclear Operations Corps' study.
9706. Dissemination of information.
9707. Comprehensive program management plan.
9708. Authorization of appropriations.

§9701. Congressional findings and declaration of policy

(a) The Congress finds that—

(1) nuclear energy is one of the two major energy sources available for electric energy production in the United States during the balance of the twentieth century;

(2) continued development of nuclear power is dependent upon maintaining an extremely high level of safety in the operation of nuclear plants, and on public recognition that these facilities do not constitute a significant threat to human health or safety;

(3) it is the responsibility of utilities, as owners and operators of nuclear powerplants, to assure that such plants are designed and operated safely and reliably; and

(4) a proper role of the Federal Government in assuring nuclear powerplant safety, in addition to its regulatory function, is the conduct of a research, development, and demonstration program to provide important scientific and technical information which can contribute to sound design and safe operation of these plants.

(b) It is declared to be the policy of the United States and the purpose of this chapter to establish a research, development, and demonstration program for developing practical improvements in the generic safety of nuclear powerplants during the next five years, beginning in the fiscal year 1981. The objectives of such program shall be—

(1) to reduce the likelihood and severity of potentially serious nuclear powerplant accidents; and

(2) to reduce the likelihood of disrupting the population in the vicinity of nuclear powerplants as the result of nuclear powerplant accidents.

Nothing in this chapter shall be construed as preventing the Secretary from undertaking projects or activities, in addition to those specified in this chapter, which appropriately further the purpose and objectives set forth in this subsection. Nothing in this chapter shall authorize the Secretary to assume

responsibility for the management, cleanup or repair of any commercial nuclear powerplant. Nothing in this chapter shall be construed as limiting the authority of the Secretary under any other law.

(Pub. L. 96–567, §2, Dec. 22, 1980, 94 Stat. 3329.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–567, §1, Dec. 22, 1980, 94 Stat. 3329, provided: "That this Act [enacting this chapter] may be cited as the 'Nuclear Safety Research, Development, and Demonstration Act of 1980'."

§9702. Definitions

For purposes of this chapter—

(1) the term "Secretary" means the Secretary of Energy;

(2) the term "Government agency" means any department, agency, commission, or independent establishment in the executive branch of the Federal Government, or any corporation, wholly or partly owned by the United States, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Federal Government;

(3) the term "Commission" means the Nuclear Regulatory Commission; and

(4) the term "Advisory Committee" means the Advisory Committee on Reactor Safeguards established by section 2039 of this title.

(Pub. L. 96–567, §3, Dec. 22, 1980, 94 Stat. 3329.)

§9703. Research, development, and demonstration program; establishment; purposes; implementation

(a) The Secretary shall establish a research, development, and demonstration program to carry out the purpose of this chapter. As part of such program, the Secretary shall at a minimum—

(1) refine further the assessment of risk factors associated with the generic design and operation of nuclear powerplants to determine the degree and consequences of propagation of failures of systems, subsystems, and components, including consideration of the interaction between the primary and secondary systems;

(2) develop potentially cost-beneficial changes in the generic design and operation of nuclear powerplants that can (A) significantly reduce the risks from unintentional release of radioactive material from the various engineered barriers of nuclear powerplants and (B) reduce the radiation exposure to workers during plant operation and maintenance;

(3) develop potentially cost-beneficial generic methods and designs that will significantly improve the performance of operators of nuclear powerplants under routine, abnormal, and accident conditions;

(4) identify the effect of total or partial automation of generic plant systems on reactor safety, operation, reliability, economics, and operator performance;

(5) conduct further experimental investigations under abnormal operational and postulated accident conditions primarily for light water reactors to determine the consequences of such conditions. These investigations shall include, but not be limited to, the following:

(A) fuel failure at higher than standard burn-up levels;

(B) fuel-cladding interactions;

(C) fuel and cladding interactions with coolant under various temperatures and pressures;

(D) thermohydraulic behavior in the reactor core;

(E) mechanisms to suppress and control the generation of hydrogen gas;

(F) improved instrumentation for monitoring reactor cores;

(G) engineered-barrier failure modes; and
(H) fission product release and transport from failed fuel;

(6) provide for the examination and analysis of any nuclear powerplant fuel, component, or system which the Secretary deems to offer significant benefit in safety analysis and which is made available to the Secretary for a nominal cost, such as $1: *Provided, however*, That the Secretary shall accept only the number of samples of such fuel, component, or system necessary to carry out such examination and analysis; and
(7) identify the aptitudes, training, and manning levels which are necessary to assure reliable operator performance under normal, abnormal, and emergency conditions.

(b) In carrying out the generic safety research, development, and demonstration program established under this chapter, the Secretary—
(1) shall coordinate with the Commission and, to the extent necessary, enter into a new memorandum of understanding or revise existing memoranda for the purpose of eliminating unnecessary duplication and avoiding programmatic conflict with any reactor safety research program of the Commission, including the Improved Safety Systems Research program;
(2) shall, to the extent practical, coordinate his activities with such other Government agencies, foreign governments, and industry as he deems appropriate to utilize their expertise, to minimize duplication of effort, and to ensure that information useful for improved concepts applicable to nuclear powerplant safety can be applied in a timely manner. The Secretary may enter into agreements and memoranda of understanding to accomplish these ends, but no such agreement shall have the effect of delaying the development and implementation of programs authorized under this chapter;
(3) shall utilize, to the extent feasible, underutilized federally owned research reactors and facilities, along with the associated personnel, to maintain existing capabilities and to ensure that the research is generic in nature; and
(4) shall make such recommendations as are practical to minimize the complexity of nuclear powerplant systems, including secondary systems, and operations.

(Pub. L. 96–567, §4, Dec. 22, 1980, 94 Stat. 3330.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§9704. National reactor engineering simulator feasibility study

(a) Consultative requirements; purpose

The Secretary, in consultation with the Commission and the Advisory Committee, shall initiate a study of the need for and feasibility of establishing a reactor engineering simulator facility at a national laboratory, for the primary purpose of fostering research in generic design improvements and simplifications through the simulation of the performance of various types of light water reactors under a wide variety of abnormal conditions and postulated accident conditions.

(b) Applicability of relevant factors

In performing the study, the Secretary shall consider relevant factors including, but not limited to—
(1) the potential advantages that would accrue from the establishment of such a facility;
(2) the extent to which such a facility would further the generic safety research and development program established by this chapter;

(3) the extent to which such a facility can be established by nongovernmental entities;

(4) the opportunities for cost sharing by nongovernmental entities in the construction and operation of such a facility;

(5) the importance of such a facility in emergencies to limit the extent of any future nuclear powerplant excursions;

(6) the potential for international cooperation in the establishment and operation of such a facility; and

(7) the appropriate national laboratory for siting such a facility.

(c) Report to Congressional committees

The Secretary shall, by January 1, 1982, submit to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report characterizing the study and the resulting conclusions and recommendations.

(Pub. L. 96–567, §5, Dec. 22, 1980, 94 Stat. 3331.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§9705. Federal Nuclear Operations Corps' study

(a) Cooperation and coordination requirements; purpose

The Secretary, in cooperation with the Nuclear Regulatory Commission, shall initiate a study as to the sufficiency of efforts in the United States to provide specially trained professionals to operate the controls of nuclear powerplants and other facilities in the back-end of the nuclear fuel cycle. In carrying out the study, the Secretary shall coordinate his activities with the ongoing programs of the utility industry and other Federal governmental agencies for obtaining high standards of operator performance.

(b) Assessments

(1) In conducting the study the Secretary shall assess the desirability and feasibility of creating a Federal Corps of such professionals to inspect and supervise such operations.

(2) The assessment shall consider the establishment of an academy to train Corps professionals in all aspects of nuclear technology, nuclear operations, nuclear regulatory and related law, and health science.

(3) The assessment shall include the appropriate organizational approach for the establishment of a Federal Corps within the executive branch.

(c) Report to Congress

The Secretary shall complete the study within one year after December 22, 1980, and shall submit a report along with his recommendations to the Congress.

(Pub. L. 96–567, §6, Dec. 22, 1980, 94 Stat. 3332.)

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§9706. Dissemination of information

The Secretary shall assure that full and complete safety-related information resulting from any project or other activity conducted under this chapter is made available in a timely manner to appropriate committees of Congress, Federal, State, and local authorities, relevant segments of private industry, the scientific community, and the public.

(Pub. L. 96–567, §7, Dec. 22, 1980, 94 Stat. 3332.)

§9707. Comprehensive program management plan

(a) Preparation; scope; consultative requirements

The Secretary is authorized and directed to prepare a comprehensive program management plan for the conduct of research, development, and demonstration activities under this chapter consistent with the provisions of section 9703 of this title. In the preparation of such plan, the Secretary shall consult with the Commission and the Advisory Committee and with the heads of such other Government agencies and such public and private organizations as he deems appropriate.

(b) Transmission to Congressional committees; revisions

The Secretary shall transmit the comprehensive program management plan along with any comments by the Commission on the plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the Senate within twelve months after December 22, 1980. Revisions to the plan shall be transmitted to such committees whenever deemed appropriate by the Secretary.

(Pub. L. 96–567, §8, Dec. 22, 1980, 94 Stat. 3332; Pub. L. 104–66, title I, §1051(l), Dec. 21, 1995, 109 Stat. 717.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–66 struck out subsec. (c) which directed Secretary of Energy to transmit to Congress, concurrently with submission of President's annual budget to Congress, detailed description of comprehensive plan as then in effect.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§9708. Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this chapter such sums as may be authorized by legislation hereafter enacted.

(Pub. L. 96–567, §9, Dec. 22, 1980, 94 Stat. 3333.)

CHAPTER 105—COMMUNITY SERVICES PROGRAMS

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9820. Grants to plan economic development and cooperative programs.
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9857. Short title and purposes.
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9858c. Application and plan.
9858d. Limitations on State allotments.
9858e. Activities to improve the quality of child care.
9858f. Criminal background checks.
9858g. Administration and enforcement.
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9858j. Reports, hotline, and Web site.
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9871. Authorization of appropriations.
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9881 to 9887. Repealed.

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CODIFICATION

Subchapter is based on subchapter A of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 489, as amended.

§9801. Statement of purpose

The purpose of this subchapter is to encourage the development of special programs by which the residents of urban and rural low-income areas may, through self-help and mobilization of the community at large, with appropriate Federal assistance, improve the quality of their economic and social participation in community life in such a way as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.

(Pub. L. 97–35, title VI, §612, Aug. 13, 1981, 95 Stat. 489.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–186, §1, Nov. 19, 2014, 128 Stat. 1971, provided that: "This Act [enacting sections 9858f and 9858r of this title and amending sections 9858, 9858b to 9858e, 9858g, 9858i, 9858j, and 9858m to 9858o of this title and provisions set out as notes under this section and section 9858 of this title] may be cited as the 'Child Care and Development Block Grant Act of 2014'."

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–134, §1(a), Dec. 12, 2007, 121 Stat. 1363, provided that: "This Act [enacting sections 9837b and 9852a to 9852c of this title and amending sections 1758, 1766, 9831 to 9835, 9836 to 9844, 9846, 9848, 9850, and 9851 of this title and sections 6312 and 9409 of Title 20, Education] may be cited as the 'Improving Head Start for School Readiness Act of 2007'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–285, §1, Oct. 27, 1998, 112 Stat. 2702, provided that: "This Act [see Tables for classification]

may be cited as the 'Community Opportunities, Accountability, and Training and Educational Services Act of 1998' or the 'Coats Human Services Reauthorization Act of 1998'."

Pub. L. 105–285, title I, §101, Oct. 27, 1998, 112 Stat. 2703, provided that: "This title [enacting section 9837a of this title, amending sections 9831 to 9835, 9836 to 9837, 9838 to 9840a, 9843 to 9844, and 9846 of this title, and repealing sections 9852a and 9855 to 9855g of this title and provisions set out as a note under this section] may be cited as the 'Head Start Amendments of 1998'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–193, title VI, §601(a), Aug. 22, 1996, 110 Stat. 2278, provided that: "This title [enacting section 618 of this title, amending sections 9858, 9858b to 9858e, 9858g to 9858j, 9858m, and 9858n of this title, repealing section 9858f of this title, enacting provisions set out as notes under section 9858 of this title, and amending provisions set out as a note below] may be cited as the 'Child Care and Development Block Grant Amendments of 1996'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–252, §1, May 18, 1994, 108 Stat. 623, provided that: "This Act [see Tables for classification] may be cited as the 'Human Services Amendments of 1994'."

Pub. L. 103–252, title I, §101(a), May 18, 1994, 108 Stat. 624, provided that: "This title [enacting sections 9836a, 9840a, 9843a, and 9852a of this title, transferring sections 3161 to 3161g of Title 20, Education, to sections 1235 to 1235g of Title 20, respectively, amending sections 1396r–5, 9832 to 9835, 9836, 9837, 9839, 9840, 9841, 9843, 9844, 9846, 9855a, 9871, and 10905 of this title and sections 1235, 1235a, and 1235c to 1235e of Title 20, repealing sections 9835a, 9845, 9846a, 9847, and 9881 to 9887 of this title, enacting provisions set out as notes under sections 9832, 9839, 9844, and 9881 of this title, and repealing provisions set out as notes under this section and section 9881 of this title] may be cited as the 'Head Start Act Amendments of 1994'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–401, §1, Oct. 7, 1992, 106 Stat. 1956, provided that: "This Act [amending sections 9835 to 9839, 9846, 9846a, and 9858n of this title and enacting provisions set out as notes under sections 9835 and 9836 of this title] may be cited as the 'Head Start Improvement Act of 1992'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–501, §1(a), Nov. 3, 1990, 104 Stat. 1222, provided that: "This Act [see Tables for classification] may be cited as the 'Augustus F. Hawkins Human Services Reauthorization Act of 1990'."

Pub. L. 101–501, title I, §101, Nov. 3, 1990, 104 Stat. 1224, provided that: "This subtitle [subtitle A (§§101–123) of title I of Pub. L. 101–501, enacting sections 9835a and 9846a of this title and amending sections 9831, 9832, 9834, 9835, 9836 to 9841, 9843 to 9846, 9847, and 9848 of this title] may be cited as the 'Head Start Expansion and Quality Improvement Act'."

Pub. L. 101–501, title I, §131, Nov. 3, 1990, 104 Stat. 1238, provided that subtitle B (§§131–140) of title I of Pub. L. 101–501, enacting subchapter II–A of this chapter and amending section 9834 of this title, could be cited as the "Head Start Transition Project Act", prior to repeal by Pub. L. 105–285, title I, §119, Oct. 27, 1998, 112 Stat. 2728.

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–120, §1, Oct. 23, 1989, 103 Stat. 700, provided that: "This Act [amending section 9834 of this title] may be cited as the 'Head Start Supplemental Authorization Act of 1989'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–297, title II, §2501, Apr. 28, 1988, 102 Stat. 325, provided that part E (§§2501–2504) of title II of Pub. L. 100–297, which enacted subchapter V of this chapter, amended section 9833 of this title, and enacted provisions set out as notes under this section and section 9881 of this title, could be cited as the "Comprehensive Child Development Centers Act of 1988", prior to repeal by Pub. L. 103–252, title I, §112(b)(1), (2)(A), May 18, 1994, 108 Stat. 640, 641.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–425, §1, Sept. 30, 1986, 100 Stat. 966, provided: "That this Act [enacting sections 8628a, 9812a, 9910b, and 10901 to 10905 of this title, amending sections 8621, 8623, 8624, 8629, 9803, 9834, 9835, 9837, 9840, 9862, 9867, 9871, 9874, 9877, 9901 to 9904, 9905a, 9908 to 9910, and 9910a of this title and section 4033 of Title 20, Education, enacting provisions set out as notes under this section and sections 8621, 8623,

and 10901 of this title, and amending provisions set out as notes under section 9861 of this title and section 1932 of Title 7, Agriculture] may be cited as the 'Human Services Reauthorization Act of 1986'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–558, §1, Oct. 30, 1984, 98 Stat. 2878, provided: "That this Act [enacting sections 9871 to 9877, 9905a, and 9910a of this title and sections 1070d–31 to 1070d–41, 1119d to 1119d–8, 1119e to 1119e–5, and 4201 to 4206 of Title 20, Education, amending sections 2991b, 2992b to 2992d, 6862, 6865, 8621 to 8624, 8626, 8627, 8629, 9832, 9834 to 9836, 9840, 9843, 9844, 9846, 9862, 9901, 9902, 9904, 9908, and 9910 of this title and section 4061 of Title 20, enacting provisions set out as notes under sections 2991, 8621, and 9904 of this title, and amending provisions set out as a note under section 9861 of this title] may be cited as the 'Human Services Reauthorization Act'."

SHORT TITLE

Pub. L. 97–35, title VI, §611, Aug. 13, 1981, 95 Stat. 489, provided that: "This subchapter [subchapter A (§§611–633) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, enacting this subchapter] may be cited as the 'Community Economic Development Act of 1981'."

Pub. L. 97–35, title VI, §635, Aug. 13, 1981, 95 Stat. 499, provided that: "This subchapter [subchapter B (§§635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, enacting subchapter II of this chapter] may be cited as the 'Head Start Act'."

Pub. L. 97–35, title VI, subtitle A, ch. 8, subch. C, §658A(a), as added by Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §602(2), Aug. 22, 1996, 110 Stat. 2279; Pub. L. 113–186, §2, Nov. 19, 2014, 128 Stat. 1971, which provided that subchapter II–B of this chapter could be cited as the "Child Care and Development Block Grant Act of 1990" and was formerly set out as a note under this section, was transferred to section 9857(a) of this title.

Pub. L. 97–35, title VI, subtitle A, ch. 8, subch. D, §661, formerly subch. C, §661, Aug. 13, 1981, 95 Stat. 508, as renumbered by Pub. L. 101–508, title V, §5082(1), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that former subchapter III of this chapter could be cited as the "Follow Through Act", prior to repeal by Pub. L. 103–382, title III, §391(w), Oct. 20, 1994, 108 Stat. 4025.

Pub. L. 97–35, title VI, subtitle A, ch. 8, subch. E, §670H, formerly subch. D, §670H, as added by Pub. L. 99–425, title III, §304, Sept. 30, 1986, 100 Stat. 968, renumbered by Pub. L. 101–508, title V, §5082(1), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that: "This subchapter [subchapter E (§§670A–670H), formerly subchapter D, of chapter 8 of subtitle A of title VI of Pub. L. 97–35, enacting subchapter IV of this chapter] may be cited as the 'State Dependent Care Development Grants Act'."

Pub. L. 97–35, title VI, subtitle A, ch. 8, subch. F, §670M, formerly subch. E, §670M, as added by Pub. L. 100–297, title II, §2503, Apr. 28, 1988, 102 Stat. 325, renumbered by Pub. L. 101–508, title V, §5082(1), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that former subchapter V of this chapter could be cited as the "Comprehensive Child Development Act", prior to repeal by Pub. L. 103–252, title I, §112(b)(1), (2)(B), May 18, 1994, 108 Stat. 640, 641.

INCONSISTENT LAWS SUPERSEDED DURING FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97–35, title VI, §601, Aug. 13, 1981, 95 Stat. 483, provided that:

"(a) Any provision of law which is not consistent with the provisions of this subtitle [subtitle A (§§601–670) of title VI of Pub. L. 97–35, see Tables for classification] hereby is superseded and shall have only such force and effect during each of the fiscal years 1982, 1983, and 1984 which is consistent with this subtitle.

"(b) Notwithstanding any authorization of appropriations for fiscal year 1982, 1983, or 1984 contained in any provision of law which is specified in this subtitle, no funds are authorized to be appropriated in excess of the limitations imposed upon appropriations by the provisions of this subtitle."

§9802. "Community development corporation" defined

For purposes of this subchapter, the term "community development corporation" means a nonprofit organization responsible to residents of the area it serves which is receiving financial assistance under part A and any organization more than 50 percent of which is owned by such an

organization, or otherwise controlled by such an organization, or designated by such an organization for the purpose of this subchapter.

(Pub. L. 97–35, title VI, §613, Aug. 13, 1981, 95 Stat. 489.)

§9803. Repealed. Pub. L. 105–285, title II, §202(b)(1), Oct. 27, 1998, 112 Stat. 2755

Section, Pub. L. 97–35, title VI, §614, Aug. 13, 1981, 95 Stat. 489; Pub. L. 99–425, title IV, §405(c)(3), Sept. 30, 1986, 100 Stat. 970, related to source of funds for carrying out this subchapter.

§9804. Advisory Community Investment Board

(a) National Community Investment Board; functions, composition, etc.

(1) The President is authorized to establish a National Advisory Community Investment Board (hereinafter in this section referred to as the "Investment Board"). Such Investment Board shall be composed of 15 members appointed, for staggered terms and without regard to the civil service laws, by the President, in consultation with the Secretary of Health and Human Services (hereinafter in this subchapter referred to as the "Secretary"). Such members shall be representative of the investment and business communities and appropriate fields of endeavor related to this subchapter. The Investment Board shall meet at the call of the chairperson, but not less often than 3 times each year. The Secretary and the administrator of community economic development programs shall be ex officio members of the Investment Board.

(2) The Secretary shall carry out the provisions of this subchapter through an appropriate office.

(b) Function

The Investment Board shall promote cooperation between private investors and businesses and community development corporation projects through—

(1) advising the Secretary and the community development corporations on ways to facilitate private investment;

(2) advising businesses and other investors of opportunities in community development corporation projects; and

(3) advising the Secretary, community development corporations, and private investors and businesses of ways in which they might engage in mutually beneficial efforts.

(c) Local advisory community investment boards; establishment, composition, etc.

The governing body of each Community Development Corporation may establish an advisory community investment board composed of not to exceed 15 members who shall be appointed by the governing body after consultation with appropriate local officials. Each such board shall promote cooperation between private investors and businesses and the governing body of the Community Development Corporation through—

(1) advising the governing body on ways to facilitate private investors;

(2) advising businesses and other investors of opportunities in Community Development Corporation projects; and

(3) advising the governing body, private investors, and businesses of ways in which they might engage in mutually beneficial efforts.

(Pub. L. 97–35, title VI, §615, Aug. 13, 1981, 95 Stat. 489; Pub. L. 105–285, title II, §202(b)(2), Oct. 27, 1998, 112 Stat. 2755.)

EDITORIAL NOTES

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–285 substituted "through an appropriate office" for "through the Office

of Community Services established in section 9905(a) of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

PART A—URBAN AND RURAL SPECIAL IMPACT PROGRAMS

§9805. Statement of purpose

The purpose of this part is to establish special programs of assistance to nonprofit private locally initiated community development corporations which (1) are directed to the solution of the critical problems existing in particular communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) within those urban and rural areas having concentrations or substantial numbers of low-income persons; (2) are of sufficient size, scope, and duration to have an appreciable impact in such communities, neighborhoods, and rural areas in arresting tendencies toward dependency, chronic unemployment, and community deterioration; (3) hold forth the prospect of continuing to have such impact after the termination of financial assistance under this part; and (4) provide financial and other assistance to start, expand, or locate enterprises in or near the area to be served so as to provide employment and ownership opportunities for residents of such areas, including those who are disadvantaged in the labor market because of their limited speaking, reading, and writing abilities in the English language.

(Pub. L. 97–35, title VI, §616, Aug. 13, 1981, 95 Stat. 490.)

§9806. Establishment and scope of programs

(a) The Secretary is authorized to provide financial assistance in the form of grants to nonprofit and for profit community development corporations and other affiliated and supportive agencies and organizations associated with qualifying community development corporations for the payment of all or part of the cost of programs which are designed to carry out the purposes of this part. Financial assistance shall be provided so that each community economic development program is of sufficient size, scope, and duration to have an appreciable impact on the area served. Such programs may include—

(1) community business and commercial development programs, including (A) programs which provide financial and other assistance (including equity capital) to start, expand, or locate businesses in or near the area served so as to provide employment and ownership opportunities for residents of such areas; and (B) programs for small businesses located in or owned by residents of such areas;

(2) community physical development programs, including industrial parks and housing activities, which contribute to an improved environment and which create new training, employment and ownership opportunities for residents of such area;

(3) training and public service employment programs and related services for unemployed or low-income persons which support and complement community development programs financed under this part, including, without limitation, activities such as the activities described in title I of the Workforce Investment Act of 1998; [1] and

(4) social service programs which support and complement community business and commercial development programs financed under this part, including child care, educational services, health services, credit counseling, energy conservation, recreation services, and programs for the maintenance of housing facilities.

(b) The Secretary shall conduct programs assisted under this part so as to contribute, on an equitable basis between urban and rural areas, to the elimination of poverty and the establishment of permanent economic and social benefits in such areas.

(Pub. L. 97–35, title VI, §617, Aug. 13, 1981, 95 Stat. 491; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(40), (f)(31)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427, 2681–434.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(3), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, and was repealed by Pub. L. 113–128, title V, §§506, 511(a), July 22, 2014, 128 Stat. 1703, 1705, effective July 1, 2015. Title I of the Act was classified principally to former chapter 30 (former §2801 et seq.) of Title 29, Labor. Pursuant to section 3361(a) of Title 29, references to a provision of the Workforce Investment Act of 1998 are deemed to refer to the corresponding provision of the Workforce Innovation and Opportunity Act, Pub. L. 113–128, July 22, 2014, 128 Stat. 1425, effective July 1, 2015. For complete classification of the Workforce Investment Act of 1998 to the Code, see Tables. For complete classification of the Workforce Innovation and Opportunity Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–277, §101(f) [title VIII, §405(f)(31)], struck out "the Job Training Partnership Act or" after "activities described in".

Pub. L. 105–277, §101(f) [title VIII, §405(d)(40)], substituted "activities such as the activities described in the Job Training Partnership Act or title I of the Workforce Investment Act of 1998" for "activities such as those described in the Comprehensive Employment and Training Act".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(40)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(31)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

[1] *See References in Text note below.*

§9807. Financial assistance requirements

(a) Conditions

The Secretary, under such regulations as the Secretary may establish, shall not provide financial assistance for any community economic development program under this part unless the Secretary determines that—

(1) such community development corporation is responsible to residents of the area served (A) through a governing body not less than 50 percent of the members of which are area residents; and (B) in accordance with such other guidelines as may be established by the Secretary, except that the composition of the governing bodies of organizations owned or controlled by the community development corporation need not be subject to such residency requirement;

(2) the program will be appropriately coordinated with local planning under this subchapter

with housing and community development programs, with employment and training programs, and with other relevant planning for physical and human resources in the areas served;

(3) adequate technical assistance is made available and committed to the programs being supported;

(4) such financial assistance will materially further the purposes of this part;

(5) the applicant is fulfilling or will fulfill a need for services, supplies, or facilities which is otherwise not being met;

(6) all projects and related facilities will, to the maximum feasible extent, be located in the areas served;

(7) projects will, where feasible, promote the development of entrepreneurial and management skills and the ownership or participation in ownership of assisted businesses and housing, cooperatively or otherwise, by residents of the area served;

(8) projects will be planned and carried out with the fullest possible participation of resident or local businessmen and representatives of financial institutions, including participation through contract, joint venture, partnership, stock ownership or membership on the governing boards or advisory councils of such projects consistent with the self-help purposes of this subchapter;

(9) no participant will be employed on projects involving political parties, or the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship;

(10) the program will not result in the displacement of employed workers or impair existing contracts for services, or result in the substitution of Federal or other funds in connection with work that would otherwise be performed;

(11) the rates of pay for time spent in work training and education, and other conditions of employment, will be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant;

(12) the program will, to the maximum extent feasible, contribute to the occupational development or upward mobility of individual participants;

(13) preference will be given to low-income or economically disadvantaged residents of the areas served in filling jobs and training opportunities; and

(14) training programs carried out in connection with projects financed under this part shall be designed wherever feasible to provide those persons who successfully complete such training with skills which are also in demand in communities, neighborhoods, or rural areas other than those for which programs are established under this part.

(b) Relocations substantially increasing unemployment

Financial assistance under this section shall not be extended to assist in the relocation of establishments from one location to another if such relocation would result in a substantial increase in unemployment in the area of original location.

(c) Community economic development program; application; specification of goals

Financial assistance for commercial development under this part shall not be extended until the community economic development program that has applied for assistance under this subchapter has specified in some detail its development goals and its development timetable. The Secretary, in providing continued financial assistance to a community economic development program, shall give serious consideration to the experience such program has had in meeting development goals or in adhering to development timetables.

(Pub. L. 97–35, title VI, §618, Aug. 13, 1981, 95 Stat. 491.)

§9808. Federal share; amount; availability; ownership of property acquired with Federal financial assistance

(a)(1) Assistance provided under this subchapter to any program described in section 9807(a) of this title shall not exceed 90 percent of the cost of such program, including costs of administration,

unless the Secretary determines that the assistance in excess of such percentage is required in furtherance of the purposes of this subchapter. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(2) The assistance referred to in paragraph (1) shall be made available (A) for deposit to the order of grantees which have demonstrated successful program performance, under conditions which the Secretary deems appropriate, within 30 days following approval of the grant agreement by the Secretary and such grantee; or (B) whenever the Secretary deems appropriate, in accordance with applicable rules and regulations prescribed by the Secretary of the Treasury, and including any other conditions which the Secretary of Health and Human Services deems appropriate, within 30 days following approval of the grant agreement by the Secretary and such grantee.

(b) Property acquired as a result of capital investments made by any community development corporation with funds granted as its Federal share of the cost of programs carried out under this subchapter, and the proceeds from such property, shall become the property of the community development corporation and shall not be considered to be Federal property. The Federal Government retains the right to direct that on severance of the grant relationship the assets purchased with grant funds shall continue to be used for the original purpose for which they were granted.

(Pub. L. 97–35, title VI, §619, Aug. 13, 1981, 95 Stat. 493.)

PART B—SPECIAL RURAL PROGRAMS

§9809. Statement of purpose

It is the purpose of this part to meet the special economic needs of rural communities or areas with concentrations or substantial numbers of low-income persons by providing support to self-help programs which promote economic development and independence, as a supplement to existing similar programs conducted by other departments and agencies of the Federal Government. Such programs should encourage low-income families to pool their talents and resources so as to create and expand rural economic enterprise.

(Pub. L. 97–35, title VI, §620, Aug. 13, 1981, 95 Stat. 493.)

§9810. Financial assistance to low-income families, local cooperative associations, and local public or private nonprofit organizations or entities; amount, purposes, etc.

(a) The Secretary is authorized to provide financial assistance, including loans having a maximum maturity of fifteen years and in amounts not resulting in an aggregate principal indebtedness of more than $3,500 at any one time, to any low-income rural family where, in the judgment of the Secretary, such financial assistance has a reasonable possibility of effecting a permanent increase in the income of such families, or will contribute to the improvement of their living or housing conditions, by assisting or permitting them to—

(1) acquire or improve real estate or reduce encumbrances or erect improvements thereon;

(2) operate or improve the operation of farms not larger than family sized, including but not limited to the purchase of feed, seed, fertilizer, livestock, poultry, and equipment; or

(3) participate in cooperative associations, or finance nonagricultral [1] enterprises which will enable such families to supplement their income.

(b) The Secretary is authorized to provide financial assistance to local cooperative associations or local public and private nonprofit organizations or agencies in rural areas containing concentrations or substantial numbers of low-income persons for the purpose of defraying all or part of the costs of

establishing and operating cooperative programs for farming, purchasing, marketing, processing, and to improve their income as producers and their purchasing power as consumers, and to provide such essentials as credit and health services. Costs which may be defrayed shall include—

(1) administrative costs of staff and overhead;

(2) costs of planning and developing new enterprises;

(3) costs of acquiring technical assistance; and

(4) initial capital where it is determined by the Secretary that the poverty of the families participating in the program and the social conditions of the rural area require such assistance.

(Pub. L. 97–35, title VI, §621, Aug. 13, 1981, 95 Stat. 493.)

[1] *So in original. Probably should be "nonagricultural".*

§9811. Limitation on assistance

No financial assistance shall be provided under this part unless the Secretary determines that—

(1) any cooperative association receiving assistance has a minimum of fifteen active members, a majority of which are low-income rural persons;

(2) adequate technical assistance is made available and committed to the programs being supported;

(3) such financial assistance will materially further the purposes of this part; and

(4) the applicant is fulfilling or will fulfill a need for services, supplies, or facilities which is otherwise not being met.

(Pub. L. 97–35, title VI, §622, Aug. 13, 1981, 95 Stat. 494.)

PART C—DEVELOPMENT LOANS TO COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

§9812. Development loan fund

(a) Authorities, scope, and purposes; conditions; interest rate; repayment

The Secretary is authorized to make or guarantee loans (either directly or in cooperation with banks or other organizations through agreements to participate on an immediate or deferred basis) to community development corporations, to families and local cooperatives and the designated supportive organizations of cooperatives eligible for financial assistance under this subchapter, to private nonprofit organizations receiving assistance under chapter 106 of this title, or to public and private nonprofit organizations or agencies, for business facilities and community development projects, including community development credit unions, which the Secretary determines will carry out the purposes of this part. No loans, guarantees, or other financial assistance shall be provided under this section unless the Secretary determines that—

(1) there is reasonable assurance of repayment of the loan;

(2) the loan is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs; and

(3) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made.

Loans made by the Secretary pursuant to this section shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus such additional charge, if any, toward covering other costs of the program as the Secretary of Health and Human Services may determine

to be consistent with its purposes, except that, for the 5 years following the date in which funds are initially available to the borrower, the rate of interest shall be set at a rate considered appropriate by the Secretary in light of the particular needs of the borrower, which rate shall not be lower than 1 percent. All such loans shall be repayable within a period of not more than 30 years.

(b) Adjustment of interest rates, moratorium on principal and interest, etc.

The Secretary is authorized to adjust interest rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by the Secretary, and to take such other actions in respect to such loans as the Secretary shall determine to be necessary or appropriate, consistent with the purposes of this section.

(c) Establishment, funding, etc.

(1) To carry out the lending and guaranty functions authorized under this part, there shall be established a Development Loan Fund consisting of two separate accounts, one of which shall be a revolving fund called the Rural Development Loan Fund and the other of which shall be a revolving fund called the Community Development Loan Fund. The capital of each such revolving fund shall remain available until expended.

(2) The Rural Development Loan Fund shall consist of the remaining funds provided for in part A of title III of the Economic Opportunity Act of 1964 [42 U.S.C. 2841 et seq.], as in effect on September 19, 1972, and such amounts as may be deposited in such fund by the Secretary out of funds made available from appropriations for purposes of carrying out this part. The Secretary shall utilize the services of the Farmers Home Administration,[1] or the Rural Development Administration in administering such fund.

(3) The Community Development Loan Fund shall consist of such amounts as may be deposited in such fund by the Secretary out of funds made available from appropriations for purposes of carrying out this subchapter. The Secretary may make deposits in the Community Development Loan Fund in any fiscal year in which the Secretary has made available for grants to community development corporations under this subchapter not less than $60,000,000 out of funds made available from appropriations for purposes of carrying out this subchapter.

(Pub. L. 97–35, title VI, §623, Aug. 13, 1981, 95 Stat. 494; Pub. L. 101–624, title XXIII, §2303(f)(1), Nov. 28, 1990, 104 Stat. 3981.)

EDITORIAL NOTES

REFERENCES IN TEXT

Chapter 106 of this title, referred to in subsec. (a), was in the original "subtitle B of this title", meaning subtitle B (§671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, known as the Community Services Block Grant Act, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (c)(2), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508. Part A of title III of the Economic Opportunity Act of 1964 was classified generally to part A (§2841 et seq.) of subchapter III of chapter 34 of this title prior to repeal by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1990—Subsec. (c)(2). Pub. L. 101–624 inserted ", or the Rural Development Administration" after "Farmers Home Administration".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Functions relating to administration of Community Development Credit Union Revolving Loan Fund transferred from Secretary of Health and Human Services to National Credit Union Administration Board by Pub. L. 99–609, set out as a note under section 9822 of this title.

[1] *So in original. The comma probably should not appear.*

§9812a. Interest rates payable on certain rural development loans; assignment of loan contracts

(a) Modification of interest rates

Notwithstanding any other provision of law—

(1) any outstanding loan made after December 31, 1982, by the Secretary of Health and Human Services; or

(2) any loan made after September 30, 1986;

with moneys from the Rural Development Loan Fund established by section 9812(c)(1) of this title or with funds available (before October 27, 1998) under section 9910(a) of this title (as in effect before October 27, 1998) to an intermediary borrower shall bear interest at a fixed rate equal to the rate of interest that was in effect on the date of issuance for loans made in 1980 with such moneys or such funds if the weighted average rate of interest for all loans made after December 31, 1982, by such intermediary borrower with such moneys or such funds does not exceed the sum of 6 percent and the rate of interest payable under this subsection by such intermediary borrower.

(b) Assignment of certain loan contracts

Any contract for a loan made during the period beginning on December 31, 1982, and ending on September 30, 1986, with—

(1) moneys from the Rural Development Loan Fund established by section 9812(c)(1) of this title; or

(2) funds available (before October 27, 1998) under section 9910(a) of this title (as in effect before October 27, 1998);

to an intermediary borrower that is a county government may be assigned by such borrower to an entity to which such loan could have been made for the purpose for which such contract was made. Any entity to which such contract is so assigned shall be substituted as a party to such contract and shall be obligated to carry out such contract and the purpose for which such contract was made.

(Pub. L. 99–425, title IV, §407(a), (b), Sept. 30, 1986, 100 Stat. 971; Pub. L. 105–285, title II, §202(c), Oct. 27, 1998, 112 Stat. 2755.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 9910 of this title, referred to in subsecs. (a) and (b)(2), was in the original a reference to section 681 of Pub. L. 97–35. Section 681 of Pub. L. 97–35 was omitted, and a new section 681 enacted, in the general amendment of chapter 106 of this title by Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2728. The new section 681 is classified to section 9922 of this title.

CODIFICATION

Section was enacted as part of the Human Services Reauthorization Act of 1986, and not as part of the Community Economic Development Act of 1981 which comprises this subchapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–285, §202(c)(1), in concluding provisions, inserted "(before October 27, 1998)" after "funds available" and "(as in effect before October 27, 1998)" after "9910(a) of this title".

Subsec. (b)(2). Pub. L. 105–285, §202(c)(2), inserted "(before October 27, 1998)" after "funds available" and "(as in effect before October 27, 1998)" after "9910(a) of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

TRANSFER OF LOAN BY UTAH OR OHIO LOCAL PUBLIC BODY TO NONPROFIT CORPORATION

Pub. L. 99–500, §101(a) [title VI, §640], Oct. 18, 1986, 100 Stat. 1783, 1783–35, and Pub. L. 99–591, §101(a) [title VI, §640], Oct. 30, 1986, 100 Stat. 3341, 3341–35, purported to amend section 623B(b)(2) of the Community Economic Development Act of 1981, a nonexistent section of that Act (Pub. L. 99–35, title VI, §611 et seq.), by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, any Utah or Ohio local public body to which a loan was made after December 31, 1982, from the Rural Development Loan Fund may, at the discretion of such local public body and with the approval of the Secretary of Health and Human Services, transfer such loan to a nonprofit corporation designated by such body to serve as an intermediate borrower and to carry out the purposes of the loan."

§9813. Model Community Economic Development Finance Corporation; establishment; functions

To the extent he deems appropriate, the Secretary shall utilize funds available under this part to prepare a plan of action for the establishment of a Model Community Economic Development Finance Corporation to provide a user-controlled independent and professionally operated long-term financing vehicle with the principal purpose of providing financial support for community economic development corporations, cooperatives, other affiliated and supportive agencies and organizations associated with community economic development corporations, and other entities eligible for assistance under this subchapter.

(Pub. L. 97–35, title VI, §624, Aug. 13, 1981, 95 Stat. 495.)

PART D—SUPPORTIVE PROGRAMS AND ACTIVITIES

§9814. Training and technical assistance

(a) Grants, contracts, and other arrangements; preconditions

The Secretary shall provide, directly or through grants, contracts, or other arrangements, such technical assistance and training of personnel as may be required to effectively implement the purposes of this subchapter. No financial assistance shall be provided to any public or private organization under this section unless the Secretary provides the beneficiaries of these services with opportunity to participate in the selection of and to review the quality and utility of the services furnished them by such organization.

(b) Technical assistance to community development corporations and urban and rural cooperatives

Technical assistance to community development corporations and both urban and rural cooperatives may include planning, management, legal assistance or support, preparation of feasibility studies, product development, marketing, and the provision of stipends to encourage skilled professionals to engage in full-time activities under the direction of a community organization financially assisted under this subchapter.

(c) Training for employees of community development corporations and employees and members of urban and rural cooperatives

Training for employees of community development corporations and for employees and members

of urban and rural cooperatives shall include on-the-job training, classroom instruction, and scholarships to assist them in development, managerial, entrepreneurial, planning, and other technical and organizational skills which will contribute to the effectiveness of programs assisted under this subchapter.

(Pub. L. 97–35, title VI, §625, Aug. 13, 1981, 95 Stat. 496.)

§9815. Small Business Administration and Department of Commerce economic development programs; regulations

(a)(1) Funds granted under this subchapter which are invested directly or indirectly, in a small investment company, local development company, limited small business investment company, or small business investment company licensee under section 681(d) [1] of title 15 shall be included as "private paid-in capital and paid-in surplus", "combined paid-in capital and paid-in surplus", and "paid-in capital" for purposes of sections 682, 683, and 696, respectively, of title 15.

(2) Not later than 90 days after August 13, 1981, the Administrator of the Small Business Administration, after consultation with the Secretary, shall promulgate regulations to ensure the availability to community development corporations of such programs as shall further the purposes of this subchapter, including programs under section 637(a) of title 15.

(b)(1) Areas selected for assistance under this subchapter shall be deemed "redevelopment areas" within the meaning of section 401 of the Publc [2] Works and Economic Development Act of 1965,[1] shall qualify for assistance under the provisions of title I and title II of such Act, and shall be deemed to have met the overall economic development program requirements of section 202(b)(10) of such Act.

(2) Not later than 90 days after August 13, 1981, the Secretary of Commerce shall prescribe regulations which will ensure that community development corporations and cooperatives shall qualify for assistance and shall be eligible to receive such assistance under all such programs of the Economic Development Administration as shall further the purposes of this subchapter.

(Pub. L. 97–35, title VI, §626, Aug. 13, 1981, 95 Stat. 496.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 681(d) of title 15, referred to in subsec. (a)(1), was repealed by Pub. L. 104–208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

The Public Works and Economic Development Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552. Titles I to VI of the Act of 1965 were repealed and new titles I to VI were enacted by Pub. L. 105–393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3597. As so enacted, section 401 of the Act no longer defines "redevelopment areas" and section 202 of the Act no longer contains a subsec. (b). For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

[1] See References in Text note below.

[2] So in original. Probably should be "Public".

§9816. Department of Housing and Urban Development programs

The Secretary of Housing and Urban Development, after consultation with the Secretary, shall take all necessary steps to assist community development corporations and local cooperative associations to qualify for and receive (1) such assistance in connection with technical assistance, counseling to tenants and homeowners, and loans to sponsors of low-income and moderate-income

housing under section 106 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701x], as amended by section 811 of the Housing and Community Development Act of 1974; (2) such land for housing and business location and expansion under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.]; and (3) such funds for comprehensive planning under section 701 of the Housing Act of 1954,[1] as amended by section 401 of the Housing and Community Development Act of 1974, as shall further the purposes of this subchapter.

(Pub. L. 97–35, title VI, §627, Aug. 13, 1981, 95 Stat. 497.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 811 of the Housing and Community Development Act of 1974, referred to in text, is section 811 of Pub. L. 93–383, title VIII, Aug. 22, 1974, 88 Stat. 735, which amended section 1701x of Title 12, Banks and Banking.

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 701 of the Housing Act of 1954, referred to in text, is section 701 of act Aug. 2, 1954, ch. 649, 68 Stat. 640, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, 313(b), Aug. 13, 1981, 95 Stat. 398.

Section 401 of the Housing and Community Development Act of 1974, referred to in text, is section 401 of Pub. L. 93–383, title IV, Aug. 22, 1974, 88 Stat. 686, subsecs. (a) and (b) of which amended section 461 of former Title 40, Public Buildings, Property, and Works, prior to its repeal by Pub. L. 97–35, and subsec. (c) of which amended section 460 of former Title 40.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CAPACITY BUILDING FOR COMMUNITY DEVELOPMENT AND AFFORDABLE HOUSING

Pub. L. 103–120, §4, Oct. 27, 1993, 107 Stat. 1148, as amended by Pub. L. 105–18, title II, §10004, June 12, 1997, 111 Stat. 201, provided that:

"(a) IN GENERAL.—The Secretary is authorized to provide assistance through the National Community Development Initiative, Local Initiatives Support Corporation, The Enterprise Foundation, Habitat for Humanity, and Youthbuild USA to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs.

"(b) FORM OF ASSISTANCE.—Assistance under this section may be used for—

"(1) training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations and community housing development organizations;

"(2) loans, grants, or predevelopment assistance to community development corporations and community housing development organizations to carry out community development and affordable housing activities that benefit low-income families; and

"(3) such other activities as may be determined by the National Community Development Initiative, Local Initiatives Support Corporation, The Enterprise Foundation, Habitat for Humanity, and Youthbuild USA in consultation with the Secretary.

"(c) MATCHING REQUIREMENT.—Assistance provided under this section shall be matched from private sources in an amount equal to 3 times the amount made available under this section.

"(d) IMPLEMENTATION.—The Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this section. The notice shall take effect upon issuance.

"(e) AUTHORIZATION.—There are authorized to be appropriated $25,000,000 for fiscal year 1994 to carry out this section."

[1] *See References in Text note below.*

§9817. Department of Agriculture; Rural Development Administration programs

The Secretary of Agriculture or, where appropriate, the Administrator of the Farmers Home Administration, or of the Rural Development Administration, after consultation with the Secretary of Health and Human Services, shall take all necessary steps to ensure that community development corporations and local cooperative associations shall qualify for and shall receive—

(1) such assistance in connection with housing development under the Housing Act of 1949, as amended [42 U.S.C. 1441 et seq.];

(2) such assistance in connection with housing, business, industrial, and community development under the Consolidated Farmers Home Administration Act of 1961 [7 U.S.C. 1921 et seq.] and the Rural Development Act of 1972; and

(3) such further assistance under all such programs of the United States Department of Agriculture; as shall further the purposes of this subchapter.

(Pub. L. 97–35, title VI, §628, Aug. 13, 1981, 95 Stat. 497; Pub. L. 101–624, title XXIII, §2303(f)(2), Nov. 28, 1990, 104 Stat. 3981.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Housing Act of 1949, referred to in par. (1), is act July 15, 1949, ch. 338, 63 Stat. 413, which is classified principally to chapter 8A (§1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Consolidated Farmers Home Administration Act of 1961, referred to in par. (2), is title III of Pub. L. 87–128, Aug. 8, 1961, 75 Stat. 307, which was redesignated the Consolidated Farm and Rural Development Act by Pub. L. 92–419, §101, Aug. 30, 1972, 86 Stat. 657, and is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Rural Development Act of 1972, referred to in par. (2), is Pub. L. 92–419, Aug. 30, 1972, 86 Stat. 657. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1921 of Title 7.

AMENDMENTS

1990—Pub. L. 101–624 substituted "Department of Agriculture; Rural Development Administration programs" for "Department of Agriculture and Farmers Home Administration programs" in section catchline and inserted ", or of the Rural Development Administration" after "of the Farmers Home Administration" in text.

§9818. Coordination and eligibility

(a) The Secretary shall take all necessary and appropriate steps to encourage Federal departments and agencies and State and local governments to make grants, provide technical assistance, enter into contracts, and generally support and cooperate with community development corporations and local cooperative associations.

(b) Eligibility for assistance under other Federal programs shall not be denied to any applicant on the ground that it is a community development corporation or any other entity assisted under this subchapter.

(Pub. L. 97–35, title VI, §629, Aug. 13, 1981, 95 Stat. 497.)

§9819. Evaluation of programs; implementation and funding, etc.; research and demonstration projects; implementation and purposes

(a) Each program for which grants are made under this subchapter shall provide for a thorough evaluation of the effectiveness of the program in achieving its purposes, which evaluation shall be

conducted by such public or private organizations as the Secretary in consultation with existing grantees familiar with programs carried out under the Community Services Block Grant Act [42 U.S.C. 9901 et seq.] may designate, and all or part of the costs of evaluation may be paid from funds appropriated to carry out this part. In evaluating the performance of any community development corporation funded under part A, the criteria for evaluation shall be based upon such program objectives, goals, and priorities as are consistent with the purposes of this subchapter and were set forth by such community development corporation in its proposal for funding as approved and agreed upon by or as subsequently modified from time to time by mutual agreement between the Secretary and such community development corporation.

(b) The Secretary shall conduct, either directly or through grants or other arrangements, research and demonstration projects designed to suggest new programs and policies to achieve the purposes of this subchapter in such ways as to provide opportunities for employment, ownership, and a better quality of life for low-income residents.

(Pub. L. 97–35, title VI, §630, Aug. 13, 1981, 95 Stat. 497.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Community Services Block Grant Act, referred to in subsec. (a), is subtitle B (§671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

§9820. Grants to plan economic development and cooperative programs

In order to facilitate the purposes of this subchapter, the Secretary is authorized to provide financial assistance to any public or private nonprofit agency or organization for planning of community economic development programs and cooperative programs under this subchapter.

(Pub. L. 97–35, title VI, §631, Aug. 13, 1981, 95 Stat. 498.)

§9821. Nondiscrimination provisions

(a) The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 2000d–1 of this title. Section 2000d–2 of this title shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if such person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program, project, or activity receiving assistance under this subchapter.

(Pub. L. 97–35, title VI, §632, Aug. 13, 1981, 95 Stat. 498.)

§9822. Availability of certain appropriated funds

Funds appropriated to the Rural Development Loan Fund under title VII of the Economic Opportunity Act of 1964 [42 U.S.C. 2981 et seq.] (as in effect on August 12, 1981), and interest

accumulated in such fund, shall be deposited in the Rural Development Loan Fund established under section 9812(c)(1) of this title and shall continue to be available to carry out the purposes of such fund. Funds appropriated to the Community Development Credit Union Revolving Loan Fund under title VII of the Economic Opportunity Act of 1964 (as in effect on August 12, 1981), and interest accumulated in such fund, shall continue to be available to carry out the purposes of such fund.

(Pub. L. 97–35, title VI, §633, Aug. 13, 1981, 95 Stat. 498.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508. Title VII of the Economic Opportunity Act of 1964 was classified generally to subchapter VII (§2981 et seq.) of chapter 34 of this title, prior to repeal by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

CODIFICATION

"August 12, 1981" substituted in text for "the day before the date of the enactment of this Act".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND

Pub. L. 99–609, Nov. 6, 1986, 100 Stat. 3475, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Community Development Credit Union Revolving Loan Fund Transfer Act'.

"SEC. 2. TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND.

"(a) ADMINISTRATION OF FUND BY NCUA.—

"(1) IN GENERAL.—Beginning on the date of the enactment of this Act [Nov. 6, 1986], the National Credit Union Administration Board shall administer the Community Development Credit Union Revolving Loan Fund.

"(2) TRANSFER OF AUTHORITY.—All authority to carry out the purposes of the Fund and to prescribe regulations in connection with the administration of the Fund which, on the day before the date of the enactment of this Act, was vested in the Secretary of Health and Human Services shall vest on such date in the Board. Except as provided in subsection (c), the Secretary shall have no further responsibility with respect to the Fund.

"(b) CONTINUED AVAILABILITY OF APPROPRIATED FUNDS.—All funds appropriated to the Fund and interest accumulated in the Fund which continue to be available under section 633 of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9822] shall continue to be available to the Board to carry out the purposes of the Fund.

"(c) TRANSFER OF ASSETS; ETC.—The Secretary shall transfer to the National Credit Union Administration all assets, liabilities, grants, contracts, property, records, and funds held, used, arising from, or available to the Secretary in connection with the administration of the Fund before the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 6, 1986].

"(d) SAVINGS PROVISIONS.—

"(1) REGULATIONS.—Any regulations prescribed by the Secretary in connection with the administration of the Fund shall continue in effect until superseded by regulations prescribed by the Board.

"(2) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not be construed as affecting the validity of any right, duty, or obligation of the United States or any other person arising under or pursuant to any contract, loan, or other instrument or agreement which was in effect on the day before the date of the enactment of this Act [Nov. 6, 1986].

"(3) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Secretary in connection with the administration of the Fund shall abate by reason of the enactment of this Act, except that the Board shall be substituted for the Secretary as a party to any such action or proceeding.

"(e) DEFINITIONS.—For purposes of this section—

"(1) BOARD.—The term 'Board' means the National Credit Union Administration Board.

"(2) FUND.—The term 'Fund' means the Community Development Credit Union Revolving Loan

Fund established under title VII of the Economic Opportunity Act of 1964 [see References in Text note above] (as in effect before the date of the enactment of the Omnibus Budget Reconciliation Act of 1981 [Aug. 13, 1981]).

"(3) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services."

SUBCHAPTER II—HEAD START PROGRAMS

EDITORIAL NOTES

CODIFICATION

Subchapter is based on subchapter B of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended.

§9831. Statement of purpose

It is the purpose of this subchapter to promote the school readiness of low-income children by enhancing their cognitive, social, and emotional development—

(1) in a learning environment that supports children's growth in language, literacy, mathematics, science, social and emotional functioning, creative arts, physical skills, and approaches to learning; and

(2) through the provision to low-income children and their families of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.

(Pub. L. 97–35, title VI, §636, Aug. 13, 1981, 95 Stat. 499; Pub. L. 101–501, title I, §102, Nov. 3, 1990, 104 Stat. 1224; Pub. L. 105–285, title I, §102, Oct. 27, 1998, 112 Stat. 2703; Pub. L. 110–134, §2, Dec. 12, 2007, 121 Stat. 1363.)

EDITORIAL NOTES

AMENDMENTS

2007—Pub. L. 110–134 amended section generally. Prior to amendment, text read as follows: "It is the purpose of this subchapter to promote school readiness by enhancing the social and cognitive development of low-income children through the provision, to low-income children and their families, of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary."

1998—Pub. L. 105–285 amended section catchline and text generally. Prior to amendment, text read as follows:

"(a) In recognition of the role which Project Head Start has played in the effective delivery of comprehensive health, educational, nutritional, social, and other services to economically disadvantaged children and their families, it is the purpose of this subchapter to extend the authority for the appropriation of funds for such program.

"(b) In carrying out the provisions of this subchapter, the Secretary of Health and Human Services shall continue the administrative arrangement responsible for meeting the needs of migrant, non-English language background, and Indian children and shall assure that appropriate funding is provided to meet such needs."

1990—Subsec. (b). Pub. L. 101–501 inserted ", non-English language background," after "migrant".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

SHORT TITLE

For short title of this subchapter as the "Head Start Act", see section 635 of Pub. L. 97–35, set out as a note under section 9801 of this title.

PRESCHOOL DEVELOPMENT GRANTS

Pub. L. 114–95, title IX, §9212, Dec. 10, 2015, 129 Stat. 2152, provided that:

"(a) PURPOSES.—The purposes of this section are—

"(1) to assist States to develop, update, or implement a strategic plan that facilitates collaboration and coordination among existing programs of early childhood care and education in a mixed delivery system across the State designed to prepare low-income and disadvantaged children to enter kindergarten and to improve transitions from such system into the local educational agency or elementary school that enrolls such children, by—

"(A) more efficiently using existing Federal, State, local, and non-governmental resources to align and strengthen the delivery of existing programs;

"(B) coordinating the delivery models and funding streams existing in the State's mixed delivery system; and

"(C) developing recommendations to better use existing resources in order to improve—

"(i) the overall participation of children in a mixed delivery system of Federal, State, and local early childhood education programs;

"(ii) program quality while maintaining availability of services;

"(iii) parental choice among existing programs; and

"(iv) school readiness for children from low-income and disadvantaged families, including during such children's transition into elementary school;

"(2) to encourage partnerships among Head Start providers, State and local governments, Indian tribes and tribal organizations, private entities (including faith- and community-based entities), and local educational agencies, to improve coordination, program quality, and delivery of services; and

"(3) to maximize parental choice among a mixed delivery system of early childhood education program providers.

"(b) DEFINITIONS.—In this section:

"(1) ESEA DEFINITIONS.—The terms 'elementary school', 'local educational agency', and 'State' have the meanings given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801].

"(2) CENTER OF EXCELLENCE IN EARLY CHILDHOOD.—The term 'Center of Excellence in Early Childhood' means a Center of Excellence in Early Childhood designated under section 657B(b) of the Head Start Act (42 U.S.C. 9852b(b)).

"(3) EARLY CHILDHOOD EDUCATION PROGRAM.—The term 'early childhood education program' has the meaning given the term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

"(4) EXISTING PROGRAM.—The term 'existing program' means a Federal, State, local, or privately-funded early childhood education program that—

"(A) was operating in the State on the day before the date of enactment of this Act [Dec. 10, 2015]; or

"(B) began operating in the State at any time on or after the date of enactment of this Act through funds that were not provided by a grant under this section.

"(5) MIXED DELIVERY SYSTEM.—The term 'mixed delivery system' means a system—

"(A) of early childhood education services that are delivered through a combination of programs, providers, and settings (such as Head Start, licensed family and center-based child care programs, public schools, and community-based organizations); and

"(B) that is supported with a combination of public funds and private funds.

"(6) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

"(7) STATE ADVISORY COUNCIL.—The term 'State Advisory Council' means a State Advisory Council on Early Childhood Education and Care designated or established under section 642B(b)(1)(A) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)).

"(c) GRANTS AUTHORIZED.—

"(1) IN GENERAL.—From amounts made available under subsection (k), the Secretary, jointly with the Secretary of Education, shall award grants to States to enable the States to carry out the activities described in subsection (f).

"(2) AWARD BASIS.—Grants under this subsection shall be awarded—

"(A) on a competitive basis; and

"(B) with priority for States that meet the requirements of subsection (e)(3).

"(3) DURATION OF GRANTS.—A grant awarded under paragraph (1) shall be for a period of not more than 1 year and may be renewed by the Secretary, jointly with the Secretary of Education, under subsection (g).

"(4) MATCHING REQUIREMENT.—Each State that receives a grant under this section shall provide funds from non-Federal sources (which may be provided in cash or in kind) to carry out the activities supported by the grant, in an amount equal to not less than 30 percent of the amount of such grant.

"(d) INITIAL APPLICATION.—A State desiring a grant under subsection (c)(1) shall submit an application at such time and in such manner as the Secretary may reasonably require. The application shall contain—

"(1) an identification of the State entity that the Governor of the State has appointed to be responsible for duties under this section;

"(2) a description of how such State entity proposes to accomplish the activities described in subsection (f) and meet the purposes of this section described in subsection (a), including—

"(A) a timeline for strategic planning activities; and

"(B) a description of how the strategic planning activities and the proposed activities described in subsection (f) will increase participation of children from low-income and disadvantaged families in high-quality early childhood education and preschool programs as a result of the grant;

"(3) a description of the Federal, State, and local existing programs in the State for which such State entity proposes to facilitate activities described in subsection (f), including—

"(A) programs carried out under the Head Start Act (42 U.S.C. 9801 et seq.) [42 U.S.C. 9831 et seq.], including the Early Head Start programs carried out under such Act;

"(B) child care programs carried out under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) [42 U.S.C. 9857 et seq.] or section 418 of the Social Security Act (42 U.S.C. 618); and

"(C) other Federal, State, and local programs of early learning and development, early childhood education, and child care, operating in the State (including programs operated by Indian tribes and tribal organizations and private entities, including faith- and community-based entities), as of the date of the application for the grant;

"(4) a description of how the State entity, in collaboration with Centers of Excellence in Early Childhood, if appropriate, will provide technical assistance and disseminate best practices;

"(5) a description of how the State plans to sustain the activities described in, and carried out in accordance with, subsection (f) with non-Federal sources after grant funds under this section are no longer available, if the State plans to continue such activities after such time; and

"(6) a description of how the State entity will work with the State Advisory Council and Head Start collaboration offices.

"(e) REVIEW PROCESS.—The Secretary shall review the applications submitted under subsection (d) to—

"(1) determine which applications satisfy the requirements of such subsection;

"(2) confirm that each State submitting an application has, as of the date of the application, a mixed delivery system in place; and

"(3) determine if a priority is merited in accordance with subsection (c)(2)(B) because the State has never received—

"(A) a grant under subsection (c); or

"(B) a preschool development grant for development or expansion under such program as it existed on the day before the date of enactment of this Act.

"(f) USE OF FUNDS.—A State, acting through the State entity appointed under subsection (d)(1), that receives a grant under subsection (c)(1) shall use the grant funds for all of the following activities:

"(1) Conducting a periodic statewide needs assessment of—

"(A) the availability and quality of existing programs in the State, including such programs serving the most vulnerable or underserved populations and children in rural areas;

"(B) to the extent practicable, the unduplicated number of children being served in existing programs; and

"(C) to the extent practicable, the unduplicated number of children awaiting service in such programs.

"(2) Developing a strategic plan that recommends collaboration, coordination, and quality improvement activities (including activities to improve children's transition from early childhood education

programs into elementary schools) among existing programs in the State and local educational agencies. Such plan shall include information that—

"(A) identifies opportunities for, and barriers to, collaboration and coordination among existing programs in the State, including among State, local, and tribal (if applicable) agencies responsible for administering such programs;

"(B) recommends partnership opportunities among Head Start providers, local educational agencies, State and local governments, Indian tribes and tribal organizations, and private entities (including faith- and community-based entities) that would improve coordination, program quality, and delivery of services;

"(C) builds on existing plans and goals with respect to early childhood education programs, including improving coordination and collaboration among such programs, of the State Advisory Council while incorporating new or updated Federal, State, and local statutory requirements, including—

"(i) the requirements of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) [42 U.S.C. 9857 et seq.]; and

"(ii) when appropriate, information found in the report required under section 13 of the Child Care and Development Block Grant Act of 2014 (Public Law 113–186; 128 Stat. 2002); and

"(D) describes how accomplishing the activities described in subparagraphs (A) through (C) will better serve children and families in existing programs and how such activities will increase the overall participation of children in the State.

"(3) Maximizing parental choice and knowledge about the State's mixed delivery system of existing programs and providers by—

"(A) ensuring that parents are provided information about the variety of early childhood education programs for children from birth to kindergarten entry in the State's mixed delivery system; and

"(B) promoting and increasing involvement by parents and family members, including families of low-income and disadvantaged children, in the development of their children and the transition of such children from an early childhood education program into an elementary school.

"(4) Sharing best practices among early childhood education program providers in the State to increase collaboration and efficiency of services, including to improve transitions from such programs to elementary school.

"(5) After activities described in paragraphs (1) and (2) have been completed, improving the overall quality of early childhood education programs in the State, including by developing and implementing evidence-based practices that meet the requirements of section 8101(21)(A)(i) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801(21)(A)(i)], to improve professional development for early childhood education providers and educational opportunities for children.

"(g) RENEWAL GRANTS.—

"(1) IN GENERAL.—The Secretary, jointly with the Secretary of Education, may use funds available under subsection (k) to award renewal grants to States described in paragraph (2) to enable such States to continue activities described in subsection (f) and to carry out additional activities described in paragraph (6).

"(2) ELIGIBLE STATES.—A State shall be eligible for a grant under paragraph (1) if—

"(A) the State has received a grant under subsection (c)(1) and the grant period has concluded; or

"(B)(i) the State has received a preschool development grant for development or expansion under such program as it existed on the day before the date of enactment of this Act, and the grant period for such grant has concluded; and

"(ii) the Secretary allows such State to apply directly for a renewal grant under this subsection, rather than an initial grant under subsection (c)(1), and the State submits with its application the needs assessment completed under the preschool development grant (updated as necessary to reflect the needs of the State as of the time of the application) in place of the activity described in subsection (f)(1).

"(3) DURATION OF GRANTS.—A grant awarded under this subsection shall be for a period of not more than 3 years and shall not be renewed.

"(4) MATCHING REQUIREMENT.—Each State that receives a grant under this subsection shall provide funds from non-Federal sources (which may be provided in cash or in kind) to carry out the activities supported by the grant, in an amount equal to not less than 30 percent of the amount of the grant.

"(5) APPLICATION.—A State described in paragraph (2) that desires a grant under this subsection shall submit an application for renewal at such time and in such manner as the Secretary may reasonably require. The application shall contain—

"(A) applicable information required in the application described in subsection (d), and in the case of a State described in paragraph (2)(A), updated as the State determines necessary;

"(B) in the case of a State described in paragraph (2)(A), a description of how funds were used for the activities described in subsection (f) in the initial grant period and the extent to which such activities will continue to be supported in the renewal period;

"(C) in the case of a State described in paragraph (2)(B), how a needs assessment completed prior to the date of the application, such as the needs assessment completed under the preschool development grant program (as such program existed prior to the date of enactment of this Act), and updated as necessary in accordance with paragraph (2)(B)(ii), will be sufficient information to inform the use of funds under this subsection, and a copy of such needs assessment;

"(D) a description of how funds will be used for the activities described in paragraph (6) during the renewal grant period, if the State proposes to use grant funds for such activities; and

"(E) in the case of a State that proposes to carry out activities described in paragraph (6) and to continue such activities after grant funds under this subsection are no longer available, a description of how such activities will be sustained with non-Federal sources after such time.

"(6) ADDITIONAL ACTIVITIES.—

"(A) IN GENERAL.—Each State that receives a grant under this subsection may use grant funds to award subgrants to programs in a mixed delivery system across the State designed to benefit low-income and disadvantaged children prior to entering kindergarten, to—

"(i)(I) enable programs to implement activities addressing areas in need of improvement as determined by the State, through the use of funds for the activities described in paragraph (5)(C) or subsection (f), as applicable; and

"(II) as determined through the activities described in paragraph (5)(C) or subsection (f), as applicable, expand access to such existing programs; or

"(ii) develop new programs to address the needs of children and families eligible for, but not served by, such programs, if the State ensures that—

"(I) the distribution of subgrants under this subparagraph supports a mixed delivery system; and

"(II) funds made available under this subparagraph will be used to supplement, and not supplant, any other Federal, State, or local funds that would otherwise be available to carry out the activities assisted under this section.

"(B) PRIORITY.—In awarding subgrants under subparagraph (A), a State shall prioritize activities to improve areas in which there are State-identified needs that would improve services for low-income and disadvantaged children living in rural areas.

"(C) SPECIAL RULE.—A State receiving a renewal grant under this subsection that elects to award subgrants under subparagraph (A) shall not—

"(i) for the first year of the renewal grant, use more than 60 percent of the grant funds available for such year to award such subgrants; and

"(ii) for each of the second and third years of the renewal grant, use more than 75 percent of the grant funds available for such year to award such subgrants.

"(h) STATE REPORTING.—

"(1) INITIAL GRANTS.—A State that receives an initial grant under subsection (c)(1) shall submit a final report to the Secretary not later than 6 months after the end of the grant period. The report shall include a description of—

"(A) how, and to what extent, the grant funds were utilized for activities described in subsection (f), and any other activities through which funds were used to meet the purposes of this section, as described in subsection (a);

"(B) strategies undertaken at the State level and, if applicable, local or program level, to implement recommendations in the strategic plan developed under subsection (f)(2);

"(C)(i) any new partnerships among Head Start providers, State and local governments, Indian tribes and tribal organizations, and private entities (including faith- and community-based entities); and

"(ii) how these partnerships improve coordination and delivery of services;

"(D) if applicable, the degree to which the State used information from the report required under section 13 of the Child Care and Development Block Grant Act of 2014 to inform activities under this section, and how this information was useful in coordinating, and collaborating among, programs and funding sources;

"(E) the extent to which activities funded by the initial grant led to the blending or braiding of other public and private funding;

"(F) how information about available existing programs for children from birth to kindergarten entry was disseminated to parents and families, and how involvement by parents and family was improved; and

"(G) other State-determined and voluntarily provided information to share best practices regarding early childhood education programs and the coordination of such programs.

"(2) RENEWAL GRANTS.—A State receiving a renewal grant under subsection (g) shall submit a follow-up report to the Secretary not later than 6 months after the end of the grant period that includes—

"(A) information described in subparagraphs (A) through (G) of paragraph (1), as applicable and updated for the period covered by the renewal grant; and

"(B) if applicable, information on how the State was better able to serve children through the distribution of funds in accordance with subsection (g)(5), through—

"(i) a description of the activities conducted through the use of subgrant funds, including, where appropriate, measurable areas of program improvement and better use of existing resources; and

"(ii) best practices from the use of subgrant funds, including how to better serve the most vulnerable, underserved, and rural populations.

"(i) RULES OF CONSTRUCTION.—

"(1) LIMITATIONS ON FEDERAL INTERFERENCE.—Nothing in this section shall be construed to authorize the Secretary or the Secretary of Education to establish any criterion for grants made under this section that specifies, defines, or prescribes—

"(A) early learning and development guidelines, standards, or specific assessments, including the standards or measures that States use to develop, implement, or improve such guidelines, standards, or assessments;

"(B) specific measures or indicators of quality early learning and care, including—

"(i) the systems that States use to assess the quality of early childhood education programs and providers, school readiness, and achievement; and

"(ii) the term 'high-quality' as it relates to early learning, development, or care;

"(C) early learning or preschool curriculum, programs of instruction, or instructional content;

"(D) teacher and staff qualifications and salaries;

"(E) class sizes and ratios of children to instructional staff;

"(F) any new requirement that an early childhood education program is required to meet that is not explicitly authorized in this section;

"(G) the scope of programs, including length of program day and length of program year; and

"(H) any aspect or parameter of a teacher, principal, other school leader, or staff evaluation system within a State, local educational agency, or early childhood education program.

"(2) LIMITATION ON GOVERNMENTAL REQUIREMENTS.—Nothing in this section shall be construed to authorize the Secretary, Secretary of Education, the State, or any other governmental agency to alter requirements for existing programs for which coordination and alignment activities are recommended under this section, or to force programs to adhere to any recommendations developed through this program. The Secretary, Secretary of Education, State, or other governmental agency may only take an action described in the preceding sentence as otherwise authorized under Federal, State, or local law.

"(3) SECRETARY OF EDUCATION.—Nothing in this section shall be construed to authorize the Secretary of Education to have sole decision-making or regulatory authority in carrying out the program authorized under this section.

"(j) PLANNING AND TRANSITION.—

"(1) IN GENERAL.—The recipient of an award for a preschool development grant for development or expansion under such program as it existed on the day before the date of enactment of this Act may continue to receive funds in accordance with the terms of such existing award.

"(2) TRANSITION.—The Secretary, jointly with the Secretary of Education, shall take such steps as are necessary to ensure an orderly transition to, and implementation of, the program under this section from the preschool development grants for development or expansion program as such program was operating prior to the date of enactment of this Act, in accordance with subsection (k).

"(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Health and Human Services to carry out this section $250,000,000 for each of fiscal years 2017 through 2020."

REVIEW OF FEDERAL EARLY CHILDHOOD EDUCATION PROGRAMS

Pub. L. 114–95, title IX, §9213, Dec. 10, 2015, 129 Stat. 2160, provided that:

"(a) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the heads of all Federal agencies that administer Federal early childhood education programs, shall conduct an interdepartmental review of all early childhood education programs for children less than 6 years of age in order to—

"(1) develop a plan for the elimination of overlapping programs, as identified by the Government Accountability Office's 2012 annual report (GAO–12–342SP);

"(2) determine if the activities conducted by States using grant funds from preschool development grants under section 9212 [set out above] have led to better utilization of resources; and

"(3) make recommendations to Congress for streamlining all such programs.

"(b) REPORT AND UPDATES.—The Secretary of Health and Human Services, in consultation with the heads of all Federal agencies that administer Federal early childhood education programs, shall—

"(1) not later than 2 years after the date of enactment of this Act [Dec. 10, 2015], prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives a detailed report that—

"(A) outlines the efficiencies that can be achieved by, and specific recommendations for, eliminating overlap and fragmentation among all Federal early childhood education programs;

"(B) explains how the use by States of preschool development grant funds under section 9212 has led to the better utilization of resources; and

"(C) builds upon the review of Federal early learning and care programs required under section 13 of the Child Care and Development Block Grant Act of 2014 (Public Law 113–186; 128 Stat. 2002); and

"(2) annually prepare and submit to such Committees a detailed update of the report described in paragraph (1)."

§9832. Definitions

For purposes of this subchapter:

(1) The term "child with a disability" means—

(A) a child with a disability, as defined in section 1401(3) of title 20; and

(B) an infant or toddler with a disability, as defined in section 1432(5) of title 20.

(2) The term "deficiency" means—

(A) a systemic or substantial material failure of an agency in an area of performance that the Secretary determines involves—

(i) a threat to the health, safety, or civil rights of children or staff;

(ii) a denial to parents of the exercise of their full roles and responsibilities related to program operations;

(iii) a failure to comply with standards related to early childhood development and health services, family and community partnerships, or program design and management;

(iv) the misuse of funds received under this subchapter;

(v) loss of legal status (as determined by the Secretary) or financial viability, loss of permits, debarment from receiving Federal grants or contracts, or the improper use of Federal funds; or

(vi) failure to meet any other Federal or State requirement that the agency has shown an unwillingness or inability to correct, after notice from the Secretary, within the period specified;

(B) systemic or material failure of the governing body of an agency to fully exercise its legal and fiduciary responsibilities; or

(C) an unresolved area of noncompliance.

(3) The term "delegate agency" means a public, private nonprofit (including a community-based organization, as defined in section 8101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]), or for-profit organization or agency to which a grantee has delegated all or part of the responsibility of the grantee for operating a Head Start program.

(4) The term "family literacy services" means services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

(A) Interactive literacy activities between parents and their children.

(B) Training for parents regarding how to be the primary teacher for their children and full partners in the education of their children.

(C) Parent literacy training that leads to economic self-sufficiency, and financial literacy..[1]

(D) An age-appropriate education to prepare children for success in school and life experiences.

(5) The term "financial assistance" includes assistance provided by grant, agreement, or contract, and payments may be made in installments and in advance or by way of reimbursement with necessary adjustments on account of overpayments or underpayments.

(6) The term "full calendar year" means all days of the year other than Saturday, Sunday, and a legal public holiday.

(7) The term "full-working-day" means not less than 10 hours per day. Nothing in this paragraph shall be construed to require an agency to provide services to a child who has not reached the age of compulsory school attendance for more than the number of hours per day permitted by State law (including regulation) for the provision of services to such a child.

(8) The term "Head Start classroom" means a group of children supervised and taught by two paid staff members (a teacher and a teacher's aide or two teachers) and, where possible, a volunteer.

(9) The term "Head Start family day care" means Head Start services provided in a private residence other than the residence of the child receiving such services.

(10) The term "home-based Head Start program" means a Head Start program that provides Head Start services in the private residence of the child receiving such services.

(11) The term "homeless children" has the meaning given the term "homeless children and youths" in section 11434a(2) of this title.

(12) The term "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(13) The term "institution of higher education" has the meaning given the term in section 1001(a) of title 20.

(14) The term "interrater reliability" means the extent to which 2 or more independent raters or observers consistently obtain the same result when using the same assessment tool.

(15) The term "limited English proficient", used with respect to a child, means a child—

(A)(i) who was not born in the United States or whose native language is a language other than English;

(ii)(I) who is a Native American (as defined in section 8101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]), an Alaska Native, or a native resident of an outlying area (as defined in such section 8101); and

(II) who comes from an environment where a language other than English has had a significant impact on the child's level of English language proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(B) whose difficulties in speaking or understanding the English language may be sufficient to deny such child—

(i) the ability to successfully achieve in a classroom in which the language of instruction is English; or

(ii) the opportunity to participate fully in society.

(16) The term "local educational agency" has the meaning given such term in the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(17) The term "migrant or seasonal Head Start program" means—

(A) with respect to services for migrant farmworkers, a Head Start program that serves

families who are engaged in agricultural labor and who have changed their residence from one geographic location to another in the preceding 2-year period; and

(B) with respect to services for seasonal farmworkers, a Head Start program that serves families who are engaged primarily in seasonal agricultural labor and who have not changed their residence to another geographic location in the preceding 2-year period.

(18) The term "mobile Head Start program" means the provision of Head Start services utilizing transportable equipment set up in various community-based locations on a routine, weekly schedule, operating in conjunction with home-based Head Start programs, or as a Head Start classroom.

(19) The term "poverty line" means the official poverty line (as defined by the Office of Management and Budget)—

(A) adjusted to reflect the percentage change in the Consumer Price Index For [2] All Urban Consumers, issued by the Bureau of Labor Statistics, occurring in the 1-year period or other interval immediately preceding the date such adjustment is made; and

(B) adjusted for family size.

(20) The term "principles of scientific research" means principles of research that—

(A) applies rigorous, systematic, and objective methodology to obtain reliable and valid knowledge relevant to education activities and programs;

(B) presents findings and makes claims that are appropriate to and supported by methods that have been employed; and

(C) includes, as appropriate to the research being conducted—

(i) use of systematic, empirical methods that draw on observation or experiment;

(ii) use of data analyses that are adequate to support the general findings;

(iii) reliance on measurements or observational methods that provide reliable and generalizable findings;

(iv) strong claims of causal relationships, only with research designs that eliminate plausible competing explanations for observed results, such as, but not limited to, random assignment experiments;

(v) presentation of studies and methods in sufficient detail and clarity to allow for replication or, at a minimum, to offer the opportunity to build systematically on the findings of the research;

(vi) acceptance by a peer-reviewed journal or critique by a panel of independent experts through a comparably rigorous, objective, and scientific review; and

(vii) consistency of findings across multiple studies or sites to support the generality of results and conclusions.

(21) The term "professional development" means high-quality activities that will improve the knowledge and skills of Head Start teachers and staff, as relevant to their roles and functions, in program administration and the provision of services and instruction, as appropriate, in a manner that improves service delivery to enrolled children and their families, including activities that—

(A) are part of a sustained effort to improve overall program quality and outcomes for enrolled children and their families;

(B) are developed or selected with extensive participation of administrators and teachers from Head Start programs;

(C) are developmentally appropriate for the children being served;

(D) include instruction in ways that Head Start teachers and staff may work more effectively with parents, as appropriate;

(E) are designed to give Head Start teachers and staff the knowledge and skills to provide instruction and appropriate support services to children of diverse backgrounds, as appropriate;

(F) may include a 1-day or short-term workshop or conference, if the workshop or conference is consistent with the goals in the professional development plan described in section 9843a(f)

of this title and will be delivered by an institution of higher education or other entity, with expertise in delivering training in early childhood development, training in family support, and other assistance designed to improve the delivery of Head Start services; and

(G) in the case of teachers, assist teachers with—

(i) the acquisition of the content knowledge and teaching strategies needed to provide effective instruction and other school readiness services regarding early language and literacy, early mathematics, early science, cognitive skills, approaches to learning, creative arts, physical health and development, and social and emotional development linked to school readiness;

(ii) meeting the requirements in paragraphs (1) and (2) of section 9843a(a) of this title, as appropriate;

(iii) improving classroom management skills, as appropriate;

(iv) advancing their understanding of effective instructional strategies that are—

(I) based on scientifically valid research; and

(II) aligned with—

(aa) the Head Start Child Outcomes Framework developed by the Secretary and, as appropriate, State early learning standards; and

(bb) curricula, ongoing assessments, and other instruction and services, designed to help meet the standards described in section 9836a(a)(1) of this title;

(v) acquiring the knowledge and skills to provide instruction and appropriate language and support services to increase the English language skills of limited English proficient children, as appropriate; or

(vi) methods of teaching children with disabilities, as appropriate.

(22) The term "scientifically based reading research"—

(A) means the application of rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties; and

(B) shall include research that—

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and

(iv) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(23) The term "scientifically valid research" includes applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with principles of scientific research.

(24) The term "Secretary" means the Secretary of Health and Human Services.

(25) The term "State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. The term "State" includes the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(26) The term "unresolved area of noncompliance" means failure to correct a noncompliance item within 120 days, or within such additional time (if any) as is authorized by the Secretary, after receiving from the Secretary notice of such noncompliance item, pursuant to section 9836a(c) of this title.

(Pub. L. 97–35, title VI, §637, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98–558, title I, §101, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 101–501, title I, §§104(b), 116(b), 117(b), 121(b), 123(a), Nov. 3, 1990, 104 Stat. 1228, 1232, 1233, 1237; Pub. L. 103–252, title I, §102, May 18, 1994, 108 Stat. 624; Pub. L. 105–285, title I, §103, Oct. 27, 1998, 112 Stat. 2703; Pub. L. 110–134, §3, Dec. 12, 2007, 121

Stat. 1364; Pub. L. 114–95, title IX, §9215(nn)(1), Dec. 10, 2015, 129 Stat. 2176; Pub. L. 118–42, div. G, title II, §209(b)(6)(A), Mar. 9, 2024, 138 Stat. 443.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (12), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in par. (16), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, which is classified generally to chapter 70 (§6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

2024—Par. (25). Pub. L. 118–42 substituted "The term 'State' includes the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau." for "The term includes the Republic of Palau for fiscal years 2008 and 2009, and (if the legislation described in section 9835(a)(2)(B)(v) of this title has not been enacted by September 30, 2009) for fiscal years 2010 through 2012."

2015—Par. (3). Pub. L. 114–95, §9215(nn)(1)(A), substituted "section 8101 of the Elementary and Secondary Education Act of 1965" for "section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)".

Par. (15)(A)(ii)(I). Pub. L. 114–95, §9215(nn)(1)(B), substituted "(as defined in section 8101 of the Elementary and Secondary Education Act of 1965), an Alaska Native, or a native resident of an outlying area (as defined in such section 8101);" for "(as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)), an Alaska Native, or a native resident of an outlying area (as defined in such section 9101);".

2007—Pub. L. 110–134, §3(b)(2), rearranged pars. into numerical order.

Pub. L. 110–134, §3(b)(1), which directed amendment of this section by redesignating pars. (1) to (23) as (1), (3), (4), (5), (6), (7), (8), (9), (10), (12), (16), (17), (18), (19), (22), (24), (25), (2), (11), (13), (14), (15), (20), (21), (23), and (26), respectively, was executed by redesignating pars. (1) to (26) as (1), (3), (4), (5), (6), (7), (8), (9), (10), (12), (16), (17), (18), (19), (22), (24), (25), (2), (11), (13), (14), (15), (20), (21), (23), and (26), respectively, to reflect the probable intent of Congress.

Par. (2). Pub. L. 110–134, §3(a)(1), inserted "(including a community-based organization, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801))" after "nonprofit".

Par. (3)(C). Pub. L. 110–134, §3(a)(2), inserted ", and financial literacy." after "self-sufficiency".

Par. (12). Pub. L. 110–134, §3(a)(3), substituted "migrant or seasonal Head Start program" for "migrant and seasonal Head Start program".

Par. (17). Pub. L. 110–134, §3(a)(4), added par. (17) and struck out former par. (17) which read as follows: "The term 'State' means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, but for fiscal years ending before October 1, 2001 (and fiscal year 2002, if the legislation described in section 9835(a)(2)(B)(iii) of this title has not been enacted before September 30, 2001), also means the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau."

Pars. (18) to (26). Pub. L. 110–134, §3(a)(5), added pars. (18) to (26).

1998—Pars. (1), (2). Pub. L. 105–285, §103(2), added pars. (1) and (2). Former pars. (1) and (2) redesignated (16) and (17), respectively.

Pars. (3), (4). Pub. L. 105–285, §103(3)–(5), added par. (3), redesignated former par. (3) as (4), and struck out former par. (4) which read as follows: "The term 'family literacy services' means services and activities that include interactive literacy activities between parents and their children, training for parents on techniques for being the primary teacher of their children and full partners in the education of their children, parent literacy training (including training in English as a second language), and early childhood education."

Par. (6). Pub. L. 105–285, §103(6), inserted at end "Nothing in this paragraph shall be construed to require an agency to provide services to a child who has not reached the age of compulsory school attendance for more than the number of hours per day permitted by State law (including regulation) for the provision of services to such a child."

Par. (12). Pub. L. 105–285, §103(7), added par. (12) and struck out former par. (12) which read as follows: "The term 'migrant Head Start program' means a Head Start program that serves families who are engaged in

agricultural work and who have changed their residence from one geographical location to another in the preceding 2-year period."

Par. (15). Pub. L. 105–285, §103(8), added par. (15).

Par. (16). Pub. L. 105–285, §103(1), redesignated par. (1) as (16) and transferred it to appear after par. (15).

Par. (17). Pub. L. 105–285, §103(9)(B), (C), substituted "Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, but for fiscal years ending before October 1, 2001 (and fiscal year 2002, if the legislation described in section 9835(a)(2)(B)(iii) of this title has not been enacted before September 30, 2001), also means" for "Virgin Islands," and "and the Republic of Palau" for "Palau, and the Commonwealth of the Northern Mariana Islands".

Pub. L. 105–285, §103(9)(A), which directed substitution of "term" for "Term", could not be executed because "Term" does not appear in par. (17).

Pub. L. 105–285, §103(1), redesignated par. (2) as (17) and transferred it to appear after par. (16).

1994—Par. (4). Pub. L. 103–252, §102(1), (4), (5)(A), redesignated par. (12) as (4) and struck out former par. (4) which defined "adjusted appropriation".

Par. (5). Pub. L. 103–252, §102(1), (4), (5)(B), redesignated par. (10) as (5) and struck out former par. (5) which defined "quality improvement funds".

Par. (6). Pub. L. 103–252, §102(4), (5)(B), redesignated par. (11) as (6). Former par. (6) redesignated (7).

Pars. (7), (8). Pub. L. 103–252, §102(4), redesignated pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (9).

Par. (9). Pub. L. 103–252, §102(4), redesignated par. (8) as (9). Former par. (9) redesignated (14).

Pub. L. 103–252, §102(2), added par. (9) and struck out former par. (9) which defined "poverty line".

Par. (10). Pub. L. 103–252, §102(4), (5)(C), redesignated par. (13) as (10). Former par. (10) redesignated (5).

Par. (11). Pub. L. 103–252, §102(5)(D), added par. (11). Former par. (11) redesignated (6).

Par. (12). Pub. L. 103–252, §102(5)(D), added par. (12). Former par. (12) redesignated (4).

Pub. L. 103–252, §102(3), (4), added par. (12) and redesignated it as (4).

Par. (13). Pub. L. 103–252, §102(5)(D), added par. (13). Former par. (13) redesignated (10).

Pub. L. 103–252, §102(3), (4), added par. (13) and redesignated it as (10).

Par. (14). Pub. L. 103–252, §102(4), redesignated par. (9) as (14).

1990—Par. (2). Pub. L. 101–501, §104(b)(1), substituted "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau" for "the Trust Territory of the Pacific Islands".

Pars. (4), (5). Pub. L. 101–501, §104(b)(2), added pars. (4) and (5).

Par. (6). Pub. L. 101–501, §116(b), added par. (6).

Pars. (7), (8). Pub. L. 101–501, §117(b), added pars. (7) and (8).

Par. (9). Pub. L. 101–501, §121(b), added par. (9).

Pars. (10), (11). Pub. L. 101–501, §123(a), added pars. (10) and (11).

1984—Par. (2). Pub. L. 98–558 inserted "the Commonwealth of" before "the Northern Mariana Islands".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–252, title I, §127, May 18, 1994, 108 Stat. 651, provided that:

"(a) EFFECTIVE DATE.—This title [see Short Title of 1994 Amendment note set out under section 9801 of this title], and the amendments made by this title, shall take effect on the date of enactment of this title [May 18, 1994].

"(b) APPLICATION.—The requirements of this title and the amendments made by this title shall not apply to Head Start agencies and other recipients of financial assistance under the Head Start Act [42 U.S.C. 9831 et seq.] until October 1, 1994."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

[1] *So in original.*

[2] *So in original. Probably should not be capitalized.*

§9833. Financial assistance for Head Start programs

The Secretary may, upon application by an agency which is eligible for designation as a Head Start agency pursuant to section 9836 of this title, provide financial assistance to such agency for a period of 5 years for the planning, conduct, administration, and evaluation of a Head Start program focused primarily upon children from low-income families who have not reached the age of compulsory school attendance which (1) will provide such comprehensive health, education, parental involvement, nutritional, social, and other services as will enable the children to attain their full potential and attain school readiness; and (2) will provide for direct participation of the parents of such children in the development, conduct, and overall program direction at the local level.

(Pub. L. 97–35, title VI, §638, Aug. 13, 1981, 95 Stat. 499; Pub. L. 100–297, title II, §2504, Apr. 28, 1988, 102 Stat. 330; Pub. L. 103–252, title I, §§103, 112(c), May 18, 1994, 108 Stat. 625, 641; Pub. L. 105–285, title I, §104, Oct. 27, 1998, 112 Stat. 2705; Pub. L. 110–134, §4, Dec. 12, 2007, 121 Stat. 1367.)

EDITORIAL NOTES

AMENDMENTS

2007—Pub. L. 110–134 inserted "for a period of 5 years" after "provide financial assistance to such agency".

1998—Cl. (1). Pub. L. 105–285 substituted "enable the children" for "aid the children" and inserted "and attain school readiness" before the semicolon.

1994—Pub. L. 103–252 struck out subsec. (a) designation, in cl. (1), substituted "health, education, parental involvement, nutritional, social, and other services" for "health, nutritional, educational, social, and other services", and struck out subsec. (b) which read as follows: "For purposes of providing financial assistance under subsection (a) of this section to agencies, the Secretary may not take into consideration whether such agency applies for or receives funds under subchapter V of this chapter."

1988—Pub. L. 100–297 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

§9834. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter (other than section 9852b of this title) $7,350,000,000 for fiscal year 2008, $7,650,000,000 for fiscal year 2009, $7,995,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 and 2012.

(Pub. L. 97–35, title VI, §639, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98–558, title I, §102, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99–425, title I, §101, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–120, §2, Oct. 23, 1989, 103 Stat. 700; Pub. L. 101–501, title I, §§103, 120(b), 140, Nov. 3, 1990, 104 Stat.

1224, 1236, 1242; Pub. L. 103–252, title I, §104, May 18, 1994, 108 Stat. 625; Pub. L. 105–285, title I, §105, Oct. 27, 1998, 112 Stat. 2705; Pub. L. 110–134, §5, Dec. 12, 2007, 121 Stat. 1367.)

EDITORIAL NOTES

AMENDMENTS

2007—Pub. L. 110–134 amended section generally. Prior to amendment, section related to authorization of appropriations to carry out this subchapter for fiscal years 1999 through 2003 and availability of amount appropriated.

1998—Subsec. (a). Pub. L. 105–285, §105(1), substituted "1999 through 2003" for "1995 through 1998".

Subsec. (b)(1) to (3). Pub. L. 105–285, §105(2), added pars. (1) to (3) and struck out former pars. (1) and (2) which read as follows:

"(1) $35,000,000 for each of the fiscal years 1995 through 1998 to—

"(A) carry out the Head Start Transition Project Act; and

"(B) carry out activities authorized under section 9837(d) of this title; and

"(2) not more than $3,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998, to carry out longitudinal research under section 9844(e) of this title."

1994—Subsec. (a). Pub. L. 103–252, §104(1), substituted "such sums as may be necessary for fiscal years 1995 through 1998" for "(other than section 9846a of this title) $1,552,000,000 for fiscal year 1990, $2,386,000,000 for fiscal year 1991, $4,273,000,000 for fiscal year 1992, $5,924,000,000 for fiscal year 1993, and $7,660,000,000 for fiscal year 1994".

Subsecs. (b), (c). Pub. L. 103–252, §104(2), added subsec. (b) and struck out former subsecs. (b) and (c) which read as follows:

"(b) There are authorized to be appropriated to carry out section 9846a of this title, such sums as may be necessary for fiscal years 1991 through 1996.

"(c)(1) If the amount appropriated under subsection (a) of this section for fiscal year 1991 exceeds the adjusted appropriation, the Secretary shall make available not less than $20,000,000 to carry out the Head Start Transition Project Act.

"(2) The Secretary shall make available not less than $20,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the Head Start Transition Project Act."

1990—Pub. L. 101–501, §140, added subsec. (c).

Pub. L. 101–501, §120(b), designated existing provisions as subsec. (a), inserted "(other than section 9846a of this title)" after "of this subchapter", and added subsec. (b).

Pub. L. 101–501, §103, struck out "$1,198,000,000 for fiscal year 1987, $1,263,000,000 for fiscal year 1988, $1,332,000,000 for fiscal year 1989, and" after "of this subchapter" and inserted ", $2,386,000,000 for fiscal year 1991, $4,273,000,000 for fiscal year 1992, $5,924,000,000 for fiscal year 1993, and $7,660,000,000 for fiscal year 1994" after "1990".

1989—Pub. L. 101–120 substituted "$1,552,000,000" for "$1,405,000,000".

1986—Pub. L. 99–425 amended section generally, substituting "$1,198,000,000 for fiscal year 1987, $1,263,000,000 for fiscal year 1988, $1,332,000,000 for fiscal year 1989, and $1,405,000,000 for fiscal year 1990" for "$1,093,030,000 for fiscal year 1985, and $1,221,000,000 for fiscal year 1986".

1984—Pub. L. 98–558 substituted "$1,093,030,000 for fiscal year 1985, and $1,221,000,000 for fiscal year 1986" for "$950,000,000 for fiscal year 1982, $1,007,000,000 for fiscal year 1983, and $1,058,357,000 for fiscal year 1984".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

§9835. Allotment of funds

(a) Distribution of appropriations; priorities, etc.

(1) Using the sums appropriated pursuant to section 9834 of this title for a fiscal year, the Secretary shall allocate such sums in accordance with paragraphs (2) through (5).

(2)(A) The Secretary shall determine an amount for each fiscal year for each State that is equal to the amount received through base grants for the prior fiscal year by the Head Start agencies (including Early Head Start agencies) in the State that are not described in clause (ii) or (iii) of subparagraph (B).

(B) The Secretary shall reserve for each fiscal year such sums as are necessary—

(i) to provide each amount determined for a State under subparagraph (A) to the Head Start agencies (including Early Head Start agencies) in the State that are not described in clause (ii) or (iii), by allotting to each agency described in this clause an amount equal to that agency's base grant for the prior fiscal year;

(ii) to provide an amount for the Indian Head Start programs that is equal to the amount provided for base grants for such programs under this subchapter for the prior fiscal year, by allotting to each Head Start agency (including each Early Head Start agency) administering an Indian Head Start program an amount equal to that agency's base grant for the prior fiscal year;

(iii) to provide an amount for the migrant and seasonal Head Start programs, on a nationwide basis, that is equal to the amount provided nationwide for base grants for such programs under this subchapter for the prior fiscal year, by allotting to each Head Start agency administering a migrant or seasonal Head Start program an amount equal to that agency's base grant for the prior fiscal year;

(iv) to provide an amount for each of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the Virgin Islands of the United States (for Head Start agencies (including Early Head Start agencies) in the jurisdiction) that is equal to the amount provided for base grants for such jurisdiction under this subchapter for the prior fiscal year, by allotting to each agency described in this clause an amount equal to that agency's base grant for the prior fiscal year;

(v) if a base grant has been established through appropriations for the Federated States of Micronesia or the Republic of the Marshall Islands, to provide an amount for that jurisdiction (for Head Start agencies (including Early Head Start agencies) in the jurisdiction) that is equal to the amount provided for base grants for such jurisdiction under this subchapter for the prior fiscal year, by allotting to each agency described in this clause an amount equal to that agency's base grant for the prior fiscal year; and

(vi) to provide an amount for a collaboration grant under section 9837b(a) of this title for each State, for the Indian Head Start programs, and for the migrant and seasonal Head Start programs, in the same amount as the corresponding collaboration grant provided under this subchapter for fiscal year 2007.

(C)(i) The Secretary shall reserve for each fiscal year an amount that is not less than 2.5 percent and not more than 3 percent of the sums appropriated pursuant to section 9834 of this title for that fiscal year, to fund training and technical assistance activities, from which reserved amount—

(I) the Secretary shall set aside a portion, but not less than 20 percent, to be used to fund training and technical assistance activities for Early Head Start programs, in accordance with section 9840a(g)(2) of this title; and

(II) the Secretary shall set aside a portion, equal to the rest of the reserved amount, to fund training and technical assistance activities for other Head Start programs, in accordance with section 9843 of this title, of which portion—

(aa) not less than 50 percent shall be made available to Head Start agencies to use directly,

which may include at their discretion the establishment of local or regional agreements with community experts, institutions of higher education, or private consultants, to make program improvements identified by such agencies, by carrying out the training and technical assistance activities described in section 9843(d) of this title;

(bb) not less than 25 percent shall be available to the Secretary to support a State-based training and technical assistance system, or a national system, described in section 9843(e) of this title for supporting program quality; and

(cc) the remainder of the portion set aside under this subclause shall be available to the Secretary to assist Head Start agencies in meeting and exceeding the standards described in section 9836a(a)(1) of this title by carrying out activities described in subsections (a), (b), (c), (f), and (g) of section 9843 of this title, including helping Head Start programs address weaknesses identified by monitoring activities conducted by the Secretary under section 9836a(c) of this title, except that not less than $3,000,000 of the remainder shall be made available to carry out activities described in section 9843(a)(3)(B)(ii) of this title.

(ii) In determining the portion set aside under clause (i)(I) and the amount reserved under this subparagraph, the Secretary shall consider the number of Early Head Start programs newly funded for that fiscal year.

(D) The Secretary shall reserve not more than $20,000,000 to fund research, demonstration, and evaluation activities under section 9844 of this title, of which not more than $7,000,000 for each of fiscal years 2008 through 2012 shall be available to carry out impact studies under section 9844(g) of this title.

(E) The Secretary shall reserve not more than $42,000,000 for discretionary payments by the Secretary, including payments for all costs (other than compensation of Federal employees) for activities carried out under subsection (c) or (e) of section 9836a of this title.

(F) If the sums appropriated under section 9834 of this title are not sufficient to provide the amounts required to be reserved under subparagraphs (B) through (E), the amounts shall be reduced proportionately.

(G) Nothing in this section shall be construed to deny the Secretary the authority, consistent with sections 9836, 9836a, and 9841 of this title to terminate, suspend, or reduce funding to a Head Start agency.

(3)(A) From any amount remaining for a fiscal year after the Secretary carries out paragraph (2) (referred to in this paragraph as the "remaining amount"), the Secretary shall—

(i) subject to clause (ii)—

(I) provide a cost of living increase for each Head Start agency (including each Early Head Start agency) funded under this subchapter for that fiscal year, to maintain the level of services provided during the prior year; and

(II) subject to subparagraph (B), provide $10,000,000 for Indian Head Start programs (including Early Head Start programs), and $10,000,000 for migrant and seasonal Head Start programs, to increase enrollment in the programs involved;

(ii) subject to clause (iii), if the remaining amount is not sufficient to carry out clause (i)—

(I) for each of fiscal years 2008, 2009, and 2010—

(aa) subject to subparagraph (B), provide 5 percent of that amount for Indian Head Start programs (including Early Head Start programs), and 5 percent of that amount for migrant and seasonal Head Start programs, to increase enrollment in the programs involved; and

(bb) use 90 percent of that amount to provide, for each Head Start agency (including each Early Head Start agency) funded as described in clause (i)(I), the same percentage (but not less than 50 percent) of the cost of living increase described in clause (i); and

(II) for fiscal year 2011 and each subsequent fiscal year—

(aa) provide, for each Head Start agency (including each Early Head Start agency) funded as described in clause (i)(I), the cost of living increase described in clause (i); and

(bb) subject to subparagraph (B), with any portion of the remaining amount that is not used under item (aa), provide equal amounts for Indian Head Start programs (including Early Head Start programs), and for migrant and seasonal Head Start programs, to increase enrollment in the programs involved; and

(iii) if the remaining amount is not sufficient to carry out clause (ii) for the fiscal year involved, use that amount to provide, for each Head Start agency (including each Early Head Start agency) funded as described in clause (i)(I), the same percentage of the cost of living increase described in clause (i).

(B)(i) Notwithstanding any other provision of this paragraph, the Indian Head Start programs shall not receive more than a total cumulative amount of $50,000,000 for all fiscal years, and the migrant and seasonal Head Start programs shall not receive more than a total cumulative amount of $50,000,000 for all fiscal years, under clause (i)(II), and subclauses (I)(aa) and (II)(bb) of clause (ii), of subparagraph (A) (referred to in this subsection as the "special expansion provisions"), to increase enrollment in the programs involved.

(ii)(I) Funds that are appropriated under section 9834 of this title for a fiscal year, and made available to Indian Head Start programs or migrant or seasonal Head Start programs under the special expansion provisions, shall remain available until the end of the following fiscal year.

(II) For purposes of subclause (I)—

(aa) if no portion is reallocated under clause (iii), those funds shall remain available to the programs involved; or

(bb) if a portion is reallocated under clause (iii), the portion shall remain available to the recipients of the portion.

(iii) Of the funds made available as described in clause (ii), the Secretary shall reallocate the portion that the Secretary determines is unobligated 18 months after the funds are made available. The Secretary shall add that portion to the balance described in paragraph (4), and reallocate the portion in accordance with paragraph (4), for the following fiscal year referred to in clause (ii).

(4)(A) Except as provided in subparagraph (B), from any amount remaining for a fiscal year after the Secretary carries out paragraphs (2) and (3) (referred to in this paragraph as the "balance"), the Secretary shall—

(i) reserve 40 percent to carry out subparagraph (C) and paragraph (5);

(ii) reserve 45 percent to carry out subparagraph (D); and

(iii) reserve 15 percent (which shall remain available through the end of fiscal year 2012) to provide funds for carrying out section 9837b(b)(2) of this title.

(B)(i) Under the circumstances described in clause (ii), from the balance, the Secretary shall—

(I) reserve 45 percent to carry out subparagraph (C) and paragraph (5); and

(II) reserve 55 percent to carry out subparagraph (D).

(ii) The Secretary shall make the reservations described in clause (i) for a fiscal year if—

(I) the total cumulative amount reserved under subparagraph (A)(iii) for all preceding fiscal years equals $100,000,000; or

(II) in the 2-year period preceding such fiscal year, funds were reserved under subparagraph (A)(iii) in an amount that totals not less than $15,000,000 and the Secretary received no approvable applications for such funds.

(iii) The total cumulative amount reserved under subparagraph (A)(iii) for all fiscal years may not be greater than $100,000,000.

(C) The Secretary shall fund the quality improvement activities described in paragraph (5) using the amount reserved under subparagraph (A)(i) or subparagraph (B)(i)(I), as appropriate, of which—

(i) a portion that is less than 10 percent may be reserved by the Secretary to provide funding to

Head Start agencies (including Early Head Start agencies) that demonstrate the greatest need for additional funding for such activities, as determined by the Secretary; and

(ii) a portion that is not less than 90 percent shall be reserved by the Secretary to allot, to each Head Start agency (including each Early Head Start agency), an amount that bears the same ratio to such portion as the number of enrolled children served by the agency involved bears to the number of enrolled children served by all the Head Start agencies (including Early Head Start agencies), except that the Secretary shall account for the additional costs of serving children in Early Head Start programs and may consider whether an agency is providing a full-day program or whether an agency is providing a full-year program.

(D) The Secretary shall fund expansion of Head Start programs (including Early Head Start programs) using the amount reserved under subparagraph (A)(ii) or subparagraph (B)(i)(II), as appropriate, of which the Secretary shall—

(i) use 0.2 percent for Head Start programs funded under clause (iv) or (v) of paragraph (2)(B) (other than Early Head Start programs);

(ii) for any fiscal year after the last fiscal year for which Indian Head Start programs receive funds under the special expansion provisions, use 3 percent for Head Start programs funded under paragraph (2)(B)(ii) (other than Early Head Start programs), except that the Secretary may increase that percentage if the Secretary determines that the results of the study conducted under section 9844(k) of this title indicate that the percentage should be increased;

(iii) for any fiscal year after the last fiscal year for which migrant or seasonal Head Start programs receive funds under the special expansion provisions, use 4.5 percent for Head Start programs funded under paragraph (2)(B)(iii) (other than Early Head Start programs), except that the Secretary may increase that percentage if the Secretary determines that the results of the study conducted under section 9844(l) of this title indicate that the percentage should be increased; and

(iv) from the remainder of the reserved amount—

(I) use 50 percent for Head Start programs funded under paragraph (2)(B)(i) (other than Early Head Start programs), of which—

(aa) the covered percentage shall be allocated among the States serving less than 60 percent (as determined by the Secretary) of children who are 3 or 4 years of age from families whose income is below the poverty line, by allocating to each of those States an amount that bears the same relationship to that covered percentage as the number of children who are less than 5 years of age from families whose income is below the poverty line (referred to in this subclause as "young low-income children") in that State bears to the number of young low-income children in all those States; and

(bb) the remainder shall be allocated proportionately among the States on the basis of the number of young low-income children; and

(II) use 50 percent for Early Head Start programs.

(E) In this paragraph, the term "covered percentage" means—

(i) for fiscal year 2008, 30 percent;

(ii) for fiscal year 2009, 40 percent;

(iii) for fiscal year 2010, 50 percent;

(iv) for fiscal year 2011, 55 percent; and

(v) for fiscal year 2012, 55 percent.

(5)(A) Not less than 50 percent of the amount reserved under subparagraph (A)(i) or subparagraph (B)(i)(I), as appropriate, of paragraph (4) to carry out quality improvement activities under paragraph (4)(C) and this paragraph shall be used to improve the compensation (including benefits) of educational personnel, family service workers, and child counselors, as described in sections 9839(a) and 9848 of this title, in the manner determined by the Head Start agencies (including Early Head Start agencies) involved, to—

(i) ensure that compensation is adequate to attract and retain qualified staff for the programs involved in order to enhance program quality;

(ii) improve staff qualifications and assist with the implementation of career development programs for staff that support ongoing improvement of their skills and expertise; and

(iii) provide education and professional development to enable teachers to be fully competent to meet the professional standards established under section 9843a(a)(1) of this title, including—

(I) providing assistance to complete postsecondary course work;

(II) improving the qualifications and skills of educational personnel to become certified and licensed as bilingual education teachers, or as teachers of English as a second language; and

(III) improving the qualifications and skills of educational personnel to teach and provide services to children with disabilities.

(B) Any remaining funds from the reserved amount described in subparagraph (A) shall be used to carry out any of the following activities:

(i) Supporting staff training, child counseling, and other services, necessary to address the challenges of children from immigrant, refugee, and asylee families, homeless children, children in foster care, limited English proficient children, children of migrant or seasonal farmworker families, children from families in crisis, children referred to Head Start programs (including Early Head Start programs) by child welfare agencies, and children who are exposed to chronic violence or substance abuse.

(ii) Ensuring that the physical environments of Head Start programs are conducive to providing effective program services to children and families, and are accessible to children with disabilities and other individuals with disabilities.

(iii) Employing additional qualified classroom staff to reduce the child-to-teacher ratio in the classroom and additional qualified family service workers to reduce the family-to-staff ratio for those workers.

(iv) Ensuring that Head Start programs have qualified staff that promote the language skills and literacy growth of children and that provide children with a variety of skills that have been identified, through scientifically based reading research, as predictive of later reading achievement.

(v) Increasing hours of program operation, including—

(I) conversion of part-day programs to full-working-day programs; and

(II) increasing the number of weeks of operation in a calendar year.

(vi) Improving communitywide strategic planning and needs assessments for Head Start programs and collaboration efforts for such programs, including outreach to children described in clause (i).

(vii) Transporting children in Head Start programs safely, except that not more than 10 percent of funds made available to carry out this paragraph may be used for such purposes.

(viii) Improving the compensation and benefits of staff of Head Start agencies, in order to improve the quality of Head Start programs.

(6) No sums appropriated under this subchapter may be combined with funds appropriated under any provision other than this subchapter if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such sums appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter.

(7) In this subsection:

(A) The term "base grant", used with respect to a fiscal year, means the amount of permanent ongoing funding (other than funding described in sections 9840a(g)(2)(A)(i) of this title and paragraph (2)(C)(i)(II)(aa)) provided to a Head Start agency (including an Early Head Start agency) under this subchapter for that fiscal year.

(B) The term "cost-of-living increase", used with respect to an agency for a fiscal year, means

an increase in the funding for that agency, based on the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) for the prior fiscal year, calculated on the amount of the base grant for that agency for the prior fiscal year.

(C) For the purposes of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(b) Federal share

Financial assistance extended under this subchapter for a Head Start program shall not exceed 80 percent of the approved costs of the assisted program or activities, except that the Secretary may approve assistance in excess of such percentage if the Secretary determines that such action is required in furtherance of the purposes of this subchapter. For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—

(1) the lack of resources available in the community that may prevent the Head Start agency from providing all or a portion of the non-Federal contribution that may be required under this subsection;

(2) the impact of the cost the Head Start agency may incur in initial years it carries out such program;

(3) the impact of an unanticipated increase in the cost the Head Start agency may incur to carry out such program;

(4) whether the Head Start agency is located in a community adversely affected by a major disaster; and

(5) the impact on the community that would result if the Head Start agency ceased to carry out such program.

Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. The Secretary shall not require non-Federal contributions in excess of 20 percent of the approved costs of programs or activities assisted under this subchapter.

(c) Services covered

No programs shall be approved for assistance under this subchapter unless the Secretary is satisfied that the services to be provided under such program will be in addition to, and not in substitution for, comparable services previously provided without Federal assistance. The requirement imposed by the preceding sentence shall be subject to such regulations as the Secretary may prescribe.

(d) Enrollment of children with disabilities and provision of services

(1) The Secretary shall establish policies and procedures to assure that, for fiscal year 2009 and thereafter, not less than 10 percent of the total number of children actually enrolled by each Head Start agency and each delegate agency will be children with disabilities who are determined to be eligible for special education and related services, or early intervention services, as appropriate, as determined under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), by the State or local agency providing services under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.).

(2) Such policies and procedures shall ensure the provision of early intervening services, such as educational and behavioral services and supports, to meet the needs of children with disabilities, prior to an eligibility determination under the Individuals with Disabilities Education Act.

(3) Such policies and procedures shall require Head Start agencies to provide timely referral to and collaborate with the State or local agency providing services under section 619 or part C of the Individuals with Disabilities Education Act to ensure the provision of special education and related services and early intervention services, and the coordination of programmatic efforts, to meet the special needs of such children.

(4) The Secretary shall establish policies and procedures to provide Head Start agencies with waivers of the requirements of paragraph (1) for not more than 3 years. Such policies and procedures shall require Head Start agencies, in order to receive such waivers, to provide evidence demonstrating that the Head Start agencies are making reasonable efforts on an annual basis to comply with the requirements of that paragraph.

(5) Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under the Individuals with Disabilities Education Act.

(e) Distribution of benefits between residents of rural and urban areas

The Secretary shall adopt appropriate administrative measures to assure that the benefits of this subchapter will be distributed equitably between residents of rural and urban areas.

(f) Guidelines for local service delivery models

(1) Not later than 1 year after December 12, 2007, the Secretary shall establish procedures to enable Head Start agencies to develop locally designed or specialized service delivery models to address local community needs, including models that leverage the capacity and capabilities of the delivery system of early childhood education and development services or programs.

(2) In establishing the procedures the Secretary shall establish procedures to provide for—

(A) the conversion of part-day programs to full-working-day programs or part-day slots to full-working-day slots; and

(B) serving additional infants and toddlers pursuant to section 9840(a)(5) of this title.

(g) Maintenance of current services; expansion of Head Start programs

(1) For the purpose of expanding Head Start programs [1] the Secretary shall take into consideration—

(A) the quality of the applicant's programs (including Head Start and other child care or child development programs) in existence on the date of the allocation, including, in the case of Head Start programs in existence on the date of the allocation, the extent to which such programs meet or exceed standards described in section 9836a(a)(1) of this title and other requirements under this subchapter, and the performance history of the applicant in providing services under other Federal programs (other than the program carried out under this subchapter);

(B) the applicant's capacity to expand services (including, in the case of Head Start programs in existence on the date of the allocation, whether the applicant accomplished any prior expansions in an effective and timely manner);

(C) the extent to which the applicant has undertaken a communitywide strategic planning and needs assessment involving other entities, including community organizations, and Federal, State, and local public agencies (including the local educational agency liaison designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii))), that provide services to children and families, such as—

(i) family support services;

(ii) child abuse prevention services;

(iii) protective services;

(iv) foster care;

(v) services for families in whose homes English is not the language customarily spoken;

(vi) services for children with disabilities; and

(vii) services for homeless children;

(D) the extent to which the family needs assessment and communitywide strategic planning and needs assessment of the applicant reflect a need to provide full-working-day or full calendar year services and the extent to which, and manner in which, the applicant demonstrates the ability to collaborate and participate with the State and local community providers of child care or preschool services to provide full-working-day full calendar year services;

(E) the number of eligible children, as described in clause (i) or (ii) of section 9840(a)(1)(B) of this title, in each community who are not participating in a Head Start program or any other

publicly funded early childhood education and development program;

(F) the concentration of low-income families in each community;

(G) the extent to which the applicant proposes to foster partnerships with other service providers in a manner that will leverage the existing delivery systems of such services and enhance the resource capacity of the applicant; and

(H) the extent to which the applicant, in providing services, successfully coordinated activities with the local educational agency serving the community involved (including the local educational agency liaison designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii))), and with schools in which children participating in such applicant's program will enroll following such program, with respect to such services and the education services provided by such local educational agency.

(2) Notwithstanding paragraph (1), in using funds made available for expansion under subsection (a)(4)(D), the Secretary shall first allocate the funds to qualified applicants proposing to use such funds to serve children from families with incomes below the poverty line. Agencies that receive such funds are subject to the eligibility and enrollment requirements under section 9840(a)(1) of this title.

(3)(A) In the event that the amount appropriated to carry out the program under this subchapter for a fiscal year does not exceed the amount appropriated for the prior fiscal year, or is not sufficient to maintain services comparable to the services provided under this subchapter during the prior fiscal year, a Head Start agency may negotiate with the Secretary a reduced funded enrollment level without a reduction in the amount of the grant received by the agency under this subchapter, if such agency can reasonably demonstrate that such reduced funded enrollment level is necessary to maintain the quality of services.

(B) In accordance with this paragraph, the Secretary shall set up a process for Head Start agencies to negotiate the reduced funded enrollment levels referred to in subparagraph (A) for the fiscal year involved.

(C) In the event described in subparagraph (A), the Secretary shall be required to notify Head Start agencies of their ability to negotiate the reduced funded enrollment levels if such an agency can reasonably demonstrate that such reduced funded enrollment level is necessary to maintain the quality of services.

(h) Full-working-day services

Financial assistance provided under this subchapter may be used by each Head Start program to provide full-working-day Head Start services to any eligible child throughout the full calendar year.

(i) Vehicle safety regulations

The Secretary shall issue regulations establishing requirements for the safety features, and the safe operation, of vehicles used by Head Start agencies to transport children participating in Head Start programs. The regulations shall also establish requirements to ensure the appropriate supervision of, and appropriate background checks for, individuals with whom the agencies contract to transport those children.

(j) Compensation of staff

Any agency that receives financial assistance under this subchapter to improve the compensation of staff who provide services under this subchapter [2] shall use the financial assistance to improve the compensation of such staff, regardless of whether the agency has the ability to improve the compensation of staff employed by the agency who do not provide Head Start services.

(k) Flexibility in hours of service requirement

(1) The Secretary shall allow center-based Head Start programs the flexibility to satisfy the total number of hours of service required by the regulations in effect on May 18, 1994, to be provided to children in Head Start programs so long as such agencies do not—

(A) provide less than 3 hours of service per day;

(B) reduce the number of days of service per week; or

(C) reduce the number of days of service per year.

(2) The provisions of this subsection shall not be construed to restrict the authority of the Secretary to fund alternative program variations authorized under section 1306.35 of title 45 of the Code of Federal Regulations in effect on May 18, 1994.

(l) Frequent relocation of migrant families

(1) With funds made available under this subchapter to expand migrant and seasonal Head Start programs, the Secretary shall give priority to migrant and seasonal Head Start programs that serve eligible children of migrant or seasonal farmworker families whose work requires them to relocate most frequently.

(2) In determining the need and demand for migrant and seasonal Head Start programs (and services provided through such programs), the Secretary shall consult with appropriate entities, including providers of services for migrant and seasonal Head Start programs. The Secretary shall, after taking into consideration the need and demand for migrant and seasonal Head Start programs (and such services), ensure that there is an adequate level of such services for eligible children of migrant farmworker families before approving an increase in the allocation of funds provided under this subchapter for unserved eligible children of seasonal farmworker families. In serving the eligible children of seasonal farmworker families, the Secretary shall ensure that services provided by migrant and seasonal Head Start programs do not duplicate or overlap with other Head Start services available to eligible children of such farmworker families.

(3) In carrying out this subchapter, the Secretary shall continue the administrative arrangement at the national level for meeting the needs of Indian children and children of migrant and seasonal farmworker families and shall ensure—

(A) the provision of training and technical assistance by staff with knowledge of and experience in working with such populations; and

(B) the appointment of a national Indian Head Start collaboration director and a national migrant and seasonal Head Start collaboration director.

(4)(A) For the purposes of paragraph (3), the Secretary shall conduct an annual consultation in each affected Head Start region, with tribal governments operating Head Start (including Early Head Start) programs.

(B) The consultations shall be for the purpose of better meeting the needs of Indian, including Alaska Native, children and their families, in accordance with this subchapter, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations.

(C) The Secretary shall publish a notification of the consultations in the Federal Register before conducting the consultations.

(D) The Secretary shall ensure that a detailed report of each consultation shall be prepared and made available, within 90 days after the consultation, to all tribal governments receiving funds under this subchapter.

(m) Enrollment and participation of homeless children

The Secretary shall issue rules to establish policies and procedures to remove barriers to the enrollment and participation of homeless children in Head Start programs. Such rules shall require Head Start agencies—

(1) to implement policies and procedures to ensure that homeless children are identified and prioritized for enrollment;

(2) to allow families of homeless children to apply to, enroll in, and attend Head Start programs while required documents, such as proof of residency, immunization and other medical records, birth certificates, and other documents, are obtained within a reasonable time frame; and

(3) to coordinate individual Head Start programs with efforts to implement subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).

(n) Construction of prerequisites to participation in program

Nothing in this subchapter shall be construed to require a State to establish a publicly funded program of early childhood education and development, or to require any child to participate in such a publicly funded program, including a State-funded preschool program, or to participate in any initial screening before participating in a publicly funded program of early childhood education and development, except as provided under sections 612(a)(3) and 635(a)(5) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(3), 1435(a)(5)).

(o) Curricula

All curricula funded under this subchapter shall be based on scientifically valid research, and be age and developmentally appropriate. The curricula shall reflect all areas of child development and learning and be aligned with the Head Start Child Outcomes Framework. Parents shall have the opportunity to examine any such curricula or instructional materials funded under this subchapter.

(Pub. L. 97–35, title VI, §640, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98–558, title I, §103, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99–425, title I, §102, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–476, title IX, §901(d), Oct. 30, 1990, 104 Stat. 1151; Pub. L. 101–501, title I, §§104(a), 105, 123(b), Nov. 3, 1990, 104 Stat. 1224, 1228, 1237; Pub. L. 102–119, §26(g), Oct. 7, 1991, 105 Stat. 607; Pub. L. 102–401, §2(a)–(d), (k)(1), Oct. 7, 1992, 106 Stat. 1956, 1958; Pub. L. 103–252, title I, §105, May 18, 1994, 108 Stat. 626; Pub. L. 104–193, title I, §110(t), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 105–285, title I, §106(a)–(d), Oct. 27, 1998, 112 Stat. 2705–2711; Pub. L. 108–446, title III, §305(l)(1), (2), Dec. 3, 2004, 118 Stat. 2806; Pub. L. 110–134, §6, Dec. 12, 2007, 121 Stat. 1367; Pub. L. 118–42, div. G, title II, §209(b)(6)(B), Mar. 9, 2024, 138 Stat. 443.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (d), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (m)(3), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Subtitle B of title VII of the Act is classified generally to part B (§11431 et seq.) of subchapter VI of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

This subchapter, referred to in subsec. (j), was in the original "this Act" and was translated as reading "this subchapter", meaning subchapter B (§§635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, known as the Head Start Act, which is classified generally to this subchapter, to reflect the probable intent of Congress.

AMENDMENTS

2024—Subsec. (a)(2)(B)(iv). Pub. L. 118–42, §209(b)(6)(B)(i), inserted "the Republic of Palau," before "and the Virgin Islands".

Subsec. (a)(2)(B)(v). Pub. L. 118–42, §209(b)(6)(B)(ii), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: "to provide an amount for the Republic of Palau (for Head Start agencies (including Early Head Start agencies) in the jurisdiction) for each of fiscal years 2008 and 2009, and (if legislation approving a new agreement regarding United States assistance for the Republic of Palau has not been enacted by September 30, 2009) for each of fiscal years 2010 through 2012, that is equal to the amount provided for base grants for such jurisdiction under this subchapter for the prior fiscal year, by allotting to each agency described in this clause an amount equal to that agency's base grant for the prior fiscal year; and".

2007—Subsec. (a). Pub. L. 110–134, §6(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to distribution of appropriations, allotment requirements, and priorities for Head Start funds.

Subsec. (d). Pub. L. 110–134, §6(b), amended subsec. (d) generally. Prior to amendment, text read as follows: "The Secretary shall establish policies and procedures designed to assure that for fiscal year 1999 and thereafter no less than 10 percent of the total number of enrollment opportunities in Head Start programs in each State shall be available for children with disabilities and that services shall be provided to meet their special needs. Such policies and procedures shall require Head Start agencies to coordinate programmatic

efforts with efforts to implement part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431–1444, 1419)."

Subsec. (f). Pub. L. 110–134, §6(c), designated existing provisions as par. (1), substituted "Not later than 1 year after December 12, 2007, the" for "The" and "needs, including models that leverage the capacity and capabilities of the delivery system of early childhood education and development services or programs." for "needs.", and added par (2).

Subsec. (g)(1). Pub. L. 110–134, §6(d)(1), (3), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "If in any fiscal year, the amounts appropriated to carry out the program under this subchapter exceed the amount appropriated in the prior fiscal year, the Secretary shall, prior to using such additional funds to serve an increased number of children, allocate such funds in a manner that makes available the funds necessary to maintain the level of services provided during the prior year, taking into consideration the percentage change in the Consumer Price Index For All Urban Consumers, as published by the Bureau of Labor Statistics."

Subsec. (g)(2). Pub. L. 110–134, §6(d)(3), (4), added par. (2) and redesignated former par. (2) as (1).

Pub. L. 110–134, §6(d)(2)(A), struck out ", in allocating funds to an applicant within a State, from amounts allotted to a State pursuant to subsection (a)(4) of this section," after "Head Start programs" in introductory provisions.

Subsec. (g)(2)(A). Pub. L. 110–134, §6(d)(2)(B), substituted "standards described in section 9836a(a)(1) of this title" for "performance standards".

Subsec. (g)(2)(C). Pub. L. 110–134, §6(d)(2)(C), added subpar. (C) and struck out former subpar. (C) which read as follows: "the extent to which the applicant has undertaken community-wide strategic planning and needs assessments involving other community organizations and public agencies serving children and families (including organizations serving families in whose homes English is not the language customarily spoken), and organizations and public entities serving children with disabilities;".

Subsec. (g)(2)(D). Pub. L. 110–134, §6(d)(2)(D), substituted "family needs assessment and communitywide strategic planning and needs assessment" for "family and community needs assessment", "reflect" for "reflects", and "the State and local" for "other local".

Subsec. (g)(2)(E). Pub. L. 110–134, §6(d)(2)(E), added subpar. (E) and struck out former subpar. (E) which read as follows: "the numbers of eligible children in each community who are not participating in a Head Start program or any other early childhood program;".

Subsec. (g)(2)(G), (H). Pub. L. 110–134, §6(d)(2)(F), added subpars. (G) and (H) and struck out former subpars. (G) and (H) which read as follows:

"(G) the extent to which the applicant proposes to foster partnerships with other service providers in a manner that will enhance the resource capacity of the applicant; and

"(H) the extent to which the applicant, in providing services, plans to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, regarding such services and the education services provided by such local educational agency."

Subsec. (g)(3), (4). Pub. L. 110–134, §6(d)(1), (4), added par. (3) and struck out former pars. (3) and (4) which read as follows:

"(3) In determining the amount of funds reserved pursuant to subparagraph (A) or (B) of subsection (a)(2) of this section to be used for expanding Head Start programs under this subchapter, the Secretary shall take into consideration, to the extent appropriate, the factors specified in paragraph (2).

"(4) Notwithstanding subsection (a)(2) of this section, after taking into account paragraph (1), the Secretary may allocate a portion of the remaining additional funds under subsection (a)(2)(A) of this section for the purpose of increasing funds available for activities described in such subsection."

Subsec. (i). Pub. L. 110–134, §6(e), inserted at end "The regulations shall also establish requirements to ensure the appropriate supervision of, and appropriate background checks for, individuals with whom the agencies contract to transport those children."

Subsec. (l)(1). Pub. L. 110–134, §6(f)(1), substituted "With funds made available under this subchapter to expand migrant and seasonal Head Start programs," for "With funds made available under subsection (a)(2) of this section to migrant and seasonal Head Start programs," and "children of migrant or seasonal farmworker families" for "children of migrant and seasonal farmworker families".

Subsec. (l)(2). Pub. L. 110–134, §6(f)(2), substituted "In determining" for "For purposes of subsection (a)(2)(A) of this section, in determining", "children of migrant farmworker families" for "children of migrant farmworkers", "under this subchapter" for "under such subsection", "children of seasonal farmworker families" for "children of seasonal farmworkers" in two places, and "children of such farmworker families" for "children of such farmworkers".

Subsec. (l)(3), (4). Pub. L. 110–134, §6(f)(3), added pars. (3) and (4) and struck out former par. (3) which read as follows: "In carrying out this subchapter, the Secretary shall continue the administrative arrangement responsible for meeting the needs of children of migrant and seasonal farmworkers and Indian children and shall ensure that appropriate funding is provided to meet such needs."

Subsecs. (m) to (o). Pub. L. 110–134, §6(g), added subsecs. (m) to (o).

2004—Subsec. (a)(5)(C)(iv). Pub. L. 108–446, §305(l)(1), substituted "1431–1444" for "1431–1445".

Subsec. (d). Pub. L. 108–446, §305(l)(2), substituted "U.S.C." for "U.S.C" and "1431–1444" for "1431–1445".

1998—Subsec. (a)(2). Pub. L. 105–285, §106(a)(1)(F), inserted at end of concluding provisions "No Freely Associated State may receive financial assistance under this subchapter after fiscal year 2002."

Subsec. (a)(2)(A). Pub. L. 105–285, §106(a)(1)(A), substituted "Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs" for "and migrant Head Start programs and services for handicapped children", "Head Start programs and by migrant and seasonal" for "and migrant" before "Head Start programs" in two places, and "1998" for "1994".

Subsec. (a)(2)(B). Pub. L. 105–285, §106(a)(1)(B), substituted "(B) payments, subject to paragraph (7)—", cls. (i) to (iii), and "according" for "(B) payments to Guam, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands according".

Subsec. (a)(2)(C). Pub. L. 105–285, §106(a)(1)(C), substituted ", of which not less than $3,000,000 of the amount appropriated for such fiscal year shall be made available to carry out activities described in section 9843(c)(4) of this title;" for "; and".

Subsec. (a)(2)(D). Pub. L. 105–285, §106(a)(1)(D), which directed substitution of "carried out under paragraph (1), (2), or (3) of section 9836a(d) of this title related to correcting deficiencies and conducting proceedings to terminate the designation of Head Start agencies; and" for "related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title.", was executed by making the substitution for "related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title)."

Subsec. (a)(2)(E). Pub. L. 105–285, §106(a)(1)(E), added subpar. (E).

Subsec. (a)(3)(A)(i)(I). Pub. L. 105–285, §106(a)(2)(A), substituted "60 percent of such excess amount for fiscal year 1999, 50 percent of such excess amount for fiscal year 2000, 47.5 percent of such excess amount for fiscal year 2001, 35 percent of such excess amount for fiscal year 2002, and 25 percent of such excess amount for fiscal year 2003;" for "25 percent of such excess amount;".

Subsec. (a)(3)(B)(ii). Pub. L. 105–285, §106(a)(2)(B)(i), substituted "adequate numbers of qualified staff" for "adequate qualified staff" and inserted "and children with disabilities" before ", when appropriate".

Subsec. (a)(3)(B)(iv). Pub. L. 105–285, §106(a)(2)(B)(ii), inserted before period at end ", and to encourage the staff to continually improve their skills and expertise by informing the staff of the availability of Federal and State incentive and loan forgiveness programs for professional development".

Subsec. (a)(3)(B)(v). Pub. L. 105–285, §106(a)(2)(B)(iii), inserted "and collaboration efforts for such programs" before period at end.

Subsec. (a)(3)(B)(vi). Pub. L. 105–285, §106(a)(2)(B)(iv), inserted before period at end ", and are accessible to children with disabilities and their parents".

Subsec. (a)(3)(B)(vii), (viii). Pub. L. 105–285, §106(a)(2)(B)(v), (vi), added cl. (vii) and redesignated former cl. (vii) as (viii).

Subsec. (a)(3)(C)(i)(I). Pub. L. 105–285, §106(a)(2)(C)(i)(I), substituted "this paragraph" for "this subparagraph", "of classroom teachers and other staff" for "of staff", and "qualified staff, including recruitment and retention pursuant to achieving the requirements set forth in section 9843a(a) of this title" for "such staff", and inserted at end "Preferences in awarding salary increases, in excess of cost-of-living allowances, with such funds shall be granted to classroom teachers and staff who obtain additional training or education related to their responsibilities as employees of a Head Start program."

Subsec. (a)(3)(C)(i)(II). Pub. L. 105–285, §106(a)(2)(C)(i)(II), substituted "this subparagraph" for "the subparagraph".

Subsec. (a)(3)(C)(i)(III). Pub. L. 105–285, §106(a)(2)(C)(i)(III), added subcl. (III).

Subsec. (a)(3)(C)(ii). Pub. L. 105–285, §106(a)(2)(C)(ii), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "To pay transportation costs incurred by Head Start agencies to enable eligible children to participate in a Head Start program."

Subsec. (a)(3)(C)(v) to (vii). Pub. L. 105–285, §106(a)(2)(C)(iii), (iv), redesignated cls. (vi) and (vii) as (v) and (vi), respectively, and struck out former cl. (v) which read as follows: "To make nonstructural and minor structural changes, and to acquire and install equipment, for the purpose of improving facilities necessary to

expand the availability, or enhance the quality, of Head Start programs."

Subsec. (a)(3)(D)(i)(II). Pub. L. 105–285, §106(a)(2)(D), substituted "Head Start programs and migrant and seasonal" for "and migrant".

Subsec. (a)(4). Pub. L. 105–285, §106(a)(3)(C), inserted concluding provisions.

Subsec. (a)(4)(A). Pub. L. 105–285, §106(a)(3)(A), substituted "1998" for "1981".

Subsec. (a)(4)(B). Pub. L. 105–285, §106(a)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

"(B)(i) 331/3 percent of any amount available after all allotments have been made under subparagraph (A) for such fiscal year shall be distributed on the basis of the relative number of children from birth through 18 years of age, on whose behalf payments are made under the State program of assistance funded under part A of title IV of the Social Security Act in each State as compared to all States; and

"(ii) 662/3 percent of such amount shall be distributed on the basis of the relative number of children from birth through 5 years of age living with families with incomes below the poverty line in each State as compared to all States."

Subsec. (a)(5)(A). Pub. L. 105–285, §106(a)(4)(A), substituted "subparagraphs (B) and (D)" for "subparagraph (B)".

Subsec. (a)(5)(B). Pub. L. 105–285, §106(a)(4)(B), inserted before period at end "and to encourage Head Start agencies to collaborate with entities involved in State and local planning processes (including the State lead agency administering the financial assistance received under subchapter II–B of this chapter and the entities providing resource and referral services in the State) in order to better meet the needs of low-income children and families".

Subsec. (a)(5)(C)(i)(I). Pub. L. 105–285, §106(a)(4)(C)(i), inserted "the appropriate regional office of the Administration for Children and Families and" before "agencies".

Subsec. (a)(5)(C)(iii). Pub. L. 105–285, §106(a)(4)(C)(ii), struck out "and" at end.

Subsec. (a)(5)(C)(iv). Pub. L. 105–285, §106(a)(4)(C)(iii), substituted "education, and community service activities," for "education, and national service activities,", "activities" for "and activities" before "relating to children with disabilities", and "(including coordination of services with those State officials who are responsible for administering part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431–1445, 1419)), and services for homeless children;" for period at end.

Subsec. (a)(5)(C)(v), (vi). Pub. L. 105–285, §106(a)(4)(C)(iv), added cls. (v) and (vi).

Subsec. (a)(5)(D) to (F). Pub. L. 105–285, §106(a)(4)(D), (E), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (a)(6). Pub. L. 105–285, §106(a)(5), designated existing provisions as subpar. (A), substituted "7.5 percent for fiscal year 1999, 8 percent for fiscal year 2000, 9 percent for fiscal year 2001, 10 percent for fiscal year 2002, and 10 percent for fiscal year 2003, of the amount appropriated pursuant to section 9834(a) of this title, except as provided in subparagraph (B)." for "3 percent for fiscal year 1995, 4 percent for each of fiscal years 1996 and 1997, and 5 percent for fiscal year 1998, of the amount appropriated pursuant to section 9834(a) of this title.", and added subpars. (B) and (C).

Subsec. (d). Pub. L. 105–285, §106(b)(2), which directed striking out "(as defined in section 1401(a) of title 20)", was executed by striking out "(as defined in section 1401(a)(1) of title 20)" after "children with disabilities" to reflect the probable intent of Congress.

Pub. L. 105–285, §106(b)(1), (3), substituted "1999" for "1982" and inserted at end "Such policies and procedures shall require Head Start agencies to coordinate programmatic efforts with efforts to implement part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C 1431–1445, 1419)."

Subsec. (g)(2)(A). Pub. L. 105–285, §106(c)(1)(A), inserted before semicolon at end ", and the performance history of the applicant in providing services under other Federal programs (other than the program carried out under this subchapter)".

Subsec. (g)(2)(C). Pub. L. 105–285, §106(c)(1)(B), inserted ", and organizations and public entities serving children with disabilities" before semicolon at end.

Subsec. (g)(2)(D). Pub. L. 105–285, §106(c)(1)(C), inserted before semicolon at end "and the extent to which, and manner in which, the applicant demonstrates the ability to collaborate and participate with other local community providers of child care or preschool services to provide full-working-day full calendar year services".

Subsec. (g)(2)(E). Pub. L. 105–285, §106(c)(1)(D), substituted "program or any other early childhood program;" for "program; and".

Subsec. (g)(2)(G), (H). Pub. L. 105–285, §106(c)(1)(E), (F), added subpars. (G) and (H).

Subsec. (g)(4). Pub. L. 105–285, §106(c)(2), added par. (4).

Subsec. (l). Pub. L. 105–285, §106(d), designated existing provisions as par. (1), substituted "migrant and

seasonal Head Start programs" for "migrant Head Start programs" in two places and "migrant and seasonal farmworker families" for "migrant families", and added pars. (2) and (3).

1996—Subsec. (a)(4)(B)(i). Pub. L. 104–193 substituted "State program of assistance funded" for "program of aid to families with dependent children under a State plan approved".

1994—Subsec. (a)(1). Pub. L. 103–252, §105(b)(1), substituted "through (4), and subject to paragraphs (5) and (6)" for "through (5)".

Subsec. (a)(2)(A). Pub. L. 103–252, §105(b)(2)(A), substituted "1994" for "1990".

Subsec. (a)(2)(D). Pub. L. 103–252, §105(b)(2)(B), inserted "(including payments for all costs (other than compensation of Federal employees) of reviews of Head Start agencies and programs under section 9836a(c) of this title, and of activities related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title)" after "Secretary".

Subsec. (a)(3)(A), (B). Pub. L. 103–252, §105(a)(2), added subpars. (A) and (B). Former subpars. (A) and (B) redesignated subpars. (C) and (D), respectively.

Subsec. (a)(3)(C). Pub. L. 103–252, §105(a)(1)–(3), redesignated subpar. (A) as (C), substituted in introductory provisions "Quality improvement funds shall be used to carry out any or all of the following activities:" for "For any fiscal year for which the amount appropriated under section 9834(a) of this title exceeds the adjusted appropriation, the Secretary shall reserve the quality improvement funds for such fiscal year, for one or more of the following quality improvement activities:", and added cl. (vii).

Subsec. (a)(3)(D). Pub. L. 103–252, §105(a)(1), redesignated subpar. (B) as (D).

Subsec. (a)(3)(D)(i). Pub. L. 103–252, §105(a)(4)(A), (b)(3), struck out "for the first, second, and third fiscal years for which funds are so reserved" after "subparagraph (A)" in introductory provisions, substituted "paragraph (4)" for "paragraph (5)" in subcl. (I), and inserted "geographical areas specified in subsection (a)(2)(B) of this section and Indian and migrant Head Start programs," after "States," in subcl. (II).

Subsec. (a)(3)(D)(ii). Pub. L. 103–252, §105(b)(3), substituted "paragraph (4)" for "paragraph (5)".

Pub. L. 103–252, §105(a)(4)(B), (E), redesignated cl. (iv) as (ii) and struck out former cl. (ii) which read as follows: "Funds reserved under subparagraph (A) for any fiscal year subsequent to the third fiscal year for which funds are so reserved shall be allotted by the Secretary among the States in the same proportion as the Secretary allots funds among the States under paragraph (5) for the respective subsequent fiscal year."

Subsec. (a)(3)(D)(iii). Pub. L. 103–252, §105(a)(4)(B), (E), redesignated cl. (vi) as (iii) and struck out former cl. (iii) which read as follows: "To be expended for the activities specified in subparagraph (A) in the first fiscal, second, and third fiscal years for which funds are required by such subparagraph to be reserved, funds allotted under clause (i)(I) shall be used by the Secretary to make a grant to each Head Start agency that receives a grant from funds allotted under paragraph (5) for such fiscal year, in the amount that bears the same ratio to the amount allotted under clause (i)(I) for such fiscal year for the State in which such agency is located as the number of children participating in the Head Start program of such agency in such fiscal year bears to the number of children participating in all Head Start programs in such State in such fiscal year."

Subsec. (a)(3)(D)(iv). Pub. L. 103–252, §105(a)(4)(E), redesignated cl. (iv) as (ii).

Pub. L. 103–252, §105(a)(4)(C), substituted "Funds" for "To be expended for the activities specified in subparagraph (A) in each subsequent fiscal year for which funds are required by such subparagraph to be reserved, funds" and "clause (i)" for "clause (ii)", inserted ", for expenditure for activities specified in subparagraph (C)", and struck out at end "The aggregate amount of grants made under this clause to Head Start agencies in a State for a fiscal year may not exceed the amount allotted under clause (ii) for such State for such fiscal year."

Subsec. (a)(3)(D)(v). Pub. L. 103–252, §105(a)(4)(E), struck out cl. (v) which read as follows: "If a Head Start agency certifies for such fiscal year to the Secretary that it does not need any funds under subparagraph (A), or does not need part of such funds it would otherwise receive under clause (iii) or (iv), then unneeded funds shall be used by the Secretary to make grants under this subparagraph without regard to such agency."

Subsec. (a)(3)(D)(vi). Pub. L. 103–252, §105(a)(4)(E), redesignated cl. (vi) as (iii).

Pub. L. 103–252, §105(a)(4)(D), substituted "paragraph (2) or (4)" for "paragraphs (2), (4), and (5)".

Subsec. (a)(4). Pub. L. 103–252, §105(b)(4), (5), redesignated par. (5) as (4), substituted "Subject to section 9834(b) of this title, the Secretary" for "The Secretary", and struck out former par. (4), which related to Secretary reserving sums for grants to carry out early childhood intervention programs, known as "Parent-Child Centers".

Subsec. (a)(5), (6). Pub. L. 103–252, §105(b)(6), added pars. (5) and (6). Former pars. (5) and (6) redesignated (4) and (7), respectively.

Subsec. (a)(7). Pub. L. 103–252, §105(b)(4), redesignated par. (6) as (7).

Subsec. (g). Pub. L. 103–252, §105(c), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (h). Pub. L. 103–252, §105(d), substituted "Financial assistance provided under this subchapter may be used by each Head Start program to" for "Each Head Start program may".

Subsecs. (j) to (l). Pub. L. 103–252, §105(e), added subsecs. (j) to (l).

1992—Subsec. (a)(2)(A). Pub. L. 102–401, §2(k)(1)(A)(i)(I), inserted "children" after "handicapped".

Subsec. (a)(2)(B). Pub. L. 102–401, §2(k)(1)(A)(i)(II), substituted "Commonwealth of" for "Commonwealth of,".

Subsec. (a)(2)(C). Pub. L. 102–401, §2(k)(1)(A)(i)(III), substituted "such fiscal year" for "any such fiscal year".

Subsec. (a)(3)(A)(vi). Pub. L. 102–401, §2(k)(1)(A)(ii), substituted "paragraph (2)(C)" for "subsection (a)(2)(C) of this section".

Subsec. (a)(3)(B)(i). Pub. L. 102–401, §2(a)(1), substituted ", second, and third" for "and second".

Subsec. (a)(3)(B)(ii). Pub. L. 102–401, §2(a)(2), substituted "third" for "second".

Subsec. (a)(3)(B)(iii). Pub. L. 102–401, §2(a)(1), substituted ", second, and third" for "and second".

Subsec. (a)(4)(B)(i)(II). Pub. L. 102–401, §2(b), inserted ", literacy," after "skills".

Subsec. (a)(5)(B)(i). Pub. L. 102–401, §2(k)(1)(A)(iii), substituted "subparagraph (A)" for "clause (A)".

Subsec. (b). Pub. L. 102–401, §2(c), struck out ", in accordance with regulations establishing objective criteria," after "if the Secretary determines" and inserted after first sentence "For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—" and cls. (1) to (5).

Subsec. (g). Pub. L. 102–401, §2(k)(1)(B), substituted "Price Index For All" for "Price Index for all".

Subsec. (i). Pub. L. 102–401, §2(d), added subsec. (i).

1991—Subsec. (d). Pub. L. 102–119 substituted "section 1401(a)(1) of title 20" for "paragraph (1) of section 1401 of title 20". The references to section 1401 of title 20 include the substitution of "Individuals with Disabilities Education Act" for "Education of the Handicapped Act" in the original.

1990—Subsec. (a)(1). Pub. L. 101–501, §104(a)(1), substituted "through (5)" for "and (3)".

Subsec. (a)(2). Pub. L. 101–501, §104(a)(2)(D), (E), struck out before last sentence "The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984." and inserted "or paragraph (3)" after "under this paragraph" in last sentence.

Subsec. (a)(2)(A). Pub. L. 101–501, §104(a)(2)(A), substituted ", except that there shall be made available for each fiscal year for use by Indian and migrant Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian and migrant Head Start programs for fiscal year 1990" for "children, except that there shall be made available for use by Indian and migrant Head Start programs, on a nationwide basis, no less funds for fiscal year 1987 and each subsequent fiscal year than were obligated for use by Indian and migrant Head Start programs for fiscal year 1985".

Subsec. (a)(2)(B). Pub. L. 101–501, §104(a)(2)(B), substituted "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, the Commonwealth of" for "the Trust Territory of the Pacific Islands".

Subsec. (a)(2)(C). Pub. L. 101–501, §104(a)(2)(C), substituted "2 percent of the amount appropriated for any such fiscal year" for "the amount expended for training and technical assistance activities under this clause for fiscal year 1982".

Subsec. (a)(3), (4). Pub. L. 101–501, §104(a)(5), added pars. (3) and (4). Former pars. (3) and (4) redesignated (5) and (6), respectively.

Subsec. (a)(5). Pub. L. 101–501, §104(a)(3), (4), redesignated par. (3) as (5) and struck out "87 percent of the" after "allot the remaining".

Subsec. (a)(6). Pub. L. 101–501, §104(a)(4), (6), redesignated par. (4) as (6), inserted "the Commonwealth of" before "the Northern Mariana", and substituted "the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau" for "or the Trust Territory of the Pacific Islands".

Subsec. (d). Pub. L. 101–501, §105(1), struck out sentence at end requiring Secretary to report to Congress at least annually on status of children with disabilities in Head Start programs.

Pub. L. 101–476, §901(d), substituted "children with disabilities" for "handicapped children" in two places and substituted "disabling" for "handicapping".

Subsecs. (f), (g). Pub. L. 101–501, §105(2), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 101–501, §123(b), added subsec. (h).

1986—Subsec. (a)(2)(A). Pub. L. 99–425, in amending cl. (A) generally, designated existing subcl. (i) as all of cl. (A), substituted "1987" for "1982" and "1985" for "1981", and struck out subcl. (ii) relating to cost-of-living adjustments.

1984—Subsec. (a)(2). Pub. L. 98–558 inserted "as described in section 9843 of this title, in an amount for

each fiscal year which is not less than the amount expended for training and technical assistance activities under this clause for fiscal year 1982" in cl. (C), and inserted at end "The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984. No funds reserved under this paragraph may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–401, §4, Oct. 7, 1992, 106 Stat. 1959, provided that:

"(a) EFFECTIVE DATES.—(1) Except as provided in paragraph (2) and subsection (b), this Act [amending this section and sections 9835a to 9839, 9846, 9846a, and 9858n of this title and enacting provisions set out as a note under section 9836 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Oct. 7, 1992].

"(2) The amendment made by section 2(e)(1) [amending section 9836 of this title] shall take effect on July 30, 1992.

"(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act, other than the amendment made by section 2(e)(1), shall not apply with respect to fiscal years beginning before October 1, 1992."

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

Amendment by Pub. L. 101–476 effective Oct. 1, 1990, see section 1001 of Pub. L. 101–476, set out as a note under section 1087ee of Title 20, Education.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

[1] So in original. Probably should be followed by a comma.

[2] See References in Text note below.

§9835a. Repealed. Pub. L. 103–252, title I, §106, May 18, 1994, 108 Stat. 629

Section, Pub. L. 97–35, title VI, §640A, as added Pub. L. 101–501, title I, §106, Nov. 3, 1990, 104 Stat. 1229; amended Pub. L. 102–401, §2(k)(2), Oct. 7, 1992, 106 Stat. 1958, directed Secretary to prepare both

interim and final comprehensive reports to Congress on administration, funding, and demographics of Head Start programs.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§9836. Designation of Head Start agencies

(a) Authority to designate

(1) In general

The Secretary is authorized to designate as a Head Start agency any local public or private nonprofit agency, including community-based and faith-based organizations, or for-profit agency, within a community, pursuant to the requirements of this section.

(2) Interim policy

Notwithstanding paragraph (1), until such time as the Secretary develops and implements the system for designation renewal under this section, the Secretary is authorized to designate as a Head Start agency, any local public or private nonprofit agency, including community-based and faith-based organizations, or for-profit agency, within a community, in the manner and process utilized by the Secretary prior to December 12, 2007.

(b) Application for designation renewal

To be considered for designation renewal, an entity shall submit an application to the Secretary, at such time and in such manner as the Secretary may require.

(c) System for designation renewal

(1) In general

The Secretary shall develop a system for designation renewal that integrates the recommendations of the expert panel convened under paragraph (2) to determine if a Head Start agency is delivering a high-quality and comprehensive Head Start program that meets the educational, health, nutritional, and social needs of the children and families it serves, and meets program and financial management requirements and standards described in section 9836a(a)(1) of this title, based on—

(A) annual budget and fiscal management data;
(B) program reviews conducted under section 9836a(c) of this title;
(C) annual audits required under section 9842 of this title;
(D) classroom quality as measured under section 9836a(c)(2)(F) of this title; and
(E) Program Information Reports.

(2) Expert panel

Not later than 3 months after December 12, 2007, the Secretary shall convene an expert panel of 7 members to make recommendations to the Secretary on the development of a transparent, reliable, and valid system for designation renewal.

(3) Composition of expert panel

The Secretary, in convening such panel, shall appoint the following:

(A)(i) One member, who has demonstrated competency, as evidenced by training, expertise, and experience, in early childhood program accreditation.

(ii) One member, who has demonstrated competency (as so evidenced) in research on early childhood development.

(iii) One member, who has demonstrated competency (as so evidenced) in governance and finance of nonprofit organizations.

(iv) One member, who has demonstrated competency (as so evidenced) in delivery of services to populations of children with special needs and their families.

(v) One member, who has demonstrated competency (as so evidenced) in assessment and evaluation of programs serving young children.

(B) An employee from the Office of Head Start.

(C) An executive director of a Head Start agency.

(4) Expert panel report

Within 9 months after being convened by the Secretary, the expert panel shall issue a report to the Secretary that provides recommendations on a proposed system for designation renewal that takes into account the criteria in subparagraphs (A) through (E) of paragraph (1) to evaluate whether a Head Start agency is fulfilling its mission to deliver a high-quality and comprehensive Head Start program, including adequately meeting its governance, legal, and financial management requirements.

(5) Public comment and consideration

Not later than 3 months after receiving the report described in paragraph (4), the Secretary shall publish a notice describing a proposed system for designation renewal in the Federal Register, including a proposal for the transition to such system, providing at least 90 days for public comment. The Secretary shall review and consider public comments prior to finalizing the system for designation renewal described in this subsection.

(6) Designation renewal system

Not later than 12 months after publishing a notice describing the proposed system under paragraph (5), the Secretary shall implement the system for designation renewal and use that system to determine—

(A) whether a Head Start grantee is successfully delivering a high-quality and comprehensive Head Start program; and

(B) whether the grantee has any unresolved deficiencies found during the last triennial review under section 9836a(c) of this title.

(7) Implementation of the designation renewal system

(A) In general

A grantee who is determined under such system—

(i) to be delivering a high-quality and comprehensive Head Start program shall be designated (consistent with section 9838 of this title) as a Head Start agency for the period of 5 years described in section 9833 of this title;

(ii) to not be delivering a high-quality and comprehensive Head Start program shall be subject to an open competition as described in subsection (d); and

(iii) in the case of an Indian Head Start agency, to not be delivering a high-quality and comprehensive Head Start program shall (notwithstanding clause (ii)) be subject to the requirements of subparagraph (B).

(B) Tribal government consultation and reevaluation

On making a determination described in subparagraph (A)(iii), the Secretary shall engage in government-to-government consultation with the appropriate tribal government or governments for the purpose of establishing a plan to improve the quality of Head Start programs operated by the Indian Head Start agency. Such plan shall be established and implemented within 6 months after the Secretary's determination. Not more than 6 months after the implementation of that plan, the Secretary shall reevaluate the performance of the Indian Head Start agency. If the Indian Head Start agency is still not delivering a high-quality and comprehensive Head Start program, the Secretary shall conduct an open competition as described in subsection (d), subject to the limitations described in subsection (e).

(8) Transparency, reliability, and validity

The Secretary shall ensure the system for designation renewal is fair, consistent, and transparent and is applied in a manner that renews designations, in a timely manner, grantees as Head Start agencies for periods of 5 years if such grantees are delivering high-quality and comprehensive Head Start programs. The Secretary shall periodically evaluate whether the criteria of the system are being applied in a manner that is transparent, reliable, and valid.

(9) Transition

(A) In general

Each Head Start agency shall be reviewed under the system for designation renewal described in paragraph (6), not later than 3 years after the implementation of such system.

(B) Limitation

A Head Start agency shall not be subject to the requirements of the system for designation renewal prior to 18 months after December 12, 2007.

(C) Schedule

The Secretary shall establish and implement a schedule for reviewing each Head Start agency under the system for designation renewal described in paragraph (6), consistent with subparagraphs (A) and (B).

(10) Reports to Congress

The Secretary shall—

(A) make available to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate the report described in paragraph (4);

(B) concurrently with publishing a notice in the Federal Register as described in paragraph (5), provide a report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate that provides a detailed description of the proposed system described in paragraph (5), including a clear rationale for any differences between the proposed system and the recommendations of the expert panel, if any such differences exist; and

(C) prior to implementing the system for designation renewal, provide a report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate—

(i) summarizing the public comment on the proposed system and the Secretary's response to such comment; and

(ii) describing the final system for designation renewal and the plans for implementation of such system.

(d) Designation when no entity is renewed

(1) In general

If no entity in a community is determined to be successfully delivering a high-quality and comprehensive Head Start program, as specified in subsection (c), the Secretary shall, after conducting an open competition, designate for a 5-year period a Head Start agency from among qualified applicants in such community.

(2) Considerations for designation

In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall consider the effectiveness of each such applicant to provide Head Start services, based on—

(A) any past performance of such applicant in providing services comparable to Head Start services, including how effectively such applicant provided such comparable services;

(B) the plan of such applicant to provide comprehensive health, educational, nutritional, social, and other services needed to aid participating children in attaining their full potential,

and to prepare children to succeed in school;

(C) the plan of such applicant to attract and retain qualified staff capable of delivering, including implementing, a high-quality and comprehensive program, including the ability to carry out a research based curriculum aligned with the Head Start Child Outcomes Framework and, as appropriate, State early learning standards;

(D) the ability of such applicant to maintain child-to-teacher ratios and family service worker caseloads that reflect best practices and are tied to high-quality service delivery;

(E) the capacity of such applicant to serve eligible children with—

(i) curricula that are based on scientifically valid research, that are developmentally appropriate, and that promote the school readiness of children participating in the program involved; and

(ii) teaching practices that are based, as appropriate, on scientifically valid research, that are developmentally appropriate, and that promote the school readiness of children participating in the program involved;

(F) the plan of such applicant to meet standards described in section 9836a(a)(1) of this title, with particular attention to the standards described in subparagraphs (A) and (B) of such section;

(G) the proposed budget of the applicant and plan of such applicant to maintain strong fiscal controls and cost-effective fiscal management;

(H) the plan of such applicant to coordinate and collaborate with other public or private entities providing early childhood education and development programs and services for young children in the community involved, including—

(i) preschool programs under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

(ii) programs under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.);

(iii) State prekindergarten programs;

(iv) child care programs;

(v) the educational programs that the children in the Head Start program involved will enter at the age of compulsory school attendance; and

(vi) local entities, such as a public or school library, for—

(I) conducting reading readiness programs;

(II) developing innovative programs to excite children about the world of books, including providing fresh books in the Head Start classroom;

(III) assisting in literacy training for Head Start teachers; or

(IV) supporting parents and other caregivers in literacy efforts;

(I) the plan of such applicant to coordinate the Head Start program that the applicant proposes to carry out, with public and private entities that are willing to commit resources to assist the Head Start program in meeting its program needs;

(J) the plan of such applicant—

(i) to facilitate the involvement of parents (including grandparents and kinship caregivers, as appropriate) of children participating in the proposed Head Start program, in activities (at home and, if practicable, at the location of the Head Start program) designed to help such parents become full partners in the education of their children;

(ii) to afford such parents the opportunity to participate in the development and overall conduct of the program at the local level, including transportation assistance, as appropriate;

(iii) to offer (directly or through referral to local entities, public and school libraries, and entities carrying out family support programs) to such parents—

(I) family literacy services; and

(II) parenting skills training;

(iv) to offer to parents of participating children substance abuse counseling (either directly or through referral to local entities), if needed, including information on the effect of drug exposure on infants and fetal alcohol syndrome;

(v) at the option of such applicant, to offer (directly or through referral to local entities) to such parents—

(I) training in basic child development (including cognitive, social, and emotional development);

(II) assistance in developing literacy and communication skills;

(III) opportunities to share experiences with other parents (including parent-mentor relationships);

(IV) regular in-home visitation;

(V) health services, including information on maternal depression; or

(VI) any other activity designed to help such parents become full partners in the education of their children;

(vi) to provide, with respect to each participating family, a family needs assessment that includes consultation with such parents (including foster parents, grandparents, and kinship caregivers, where applicable), in a manner and language that such parents can understand, to the extent practicable, about the benefits of parent involvement and about the activities described in this subparagraph in which such parents may choose to become involved (taking into consideration their specific family needs, work schedules, and other responsibilities); and

(vii) to extend outreach to fathers (including father figures), in appropriate cases, in order to strengthen the role of those fathers in families, in the education of young children, and in the Head Start program, by working directly with the fathers through activities such as—

(I) in appropriate cases, including the fathers in home visits and providing opportunities for direct father-child interactions; and

(II) targeting increased male participation in the conduct of the program;

(K) the plan of such applicant to meet the needs of limited English proficient children and their families, including procedures to identify such children, plans to provide trained personnel, and plans to provide services to assist the children in making progress toward the acquisition of the English language, while making meaningful progress in attaining the knowledge, skills, abilities, and development described in section 9836a(a)(1)(B) of this title;

(L) the plan of such applicant to meet the diverse needs of the population served;

(M) the plan of such applicant who chooses to assist younger siblings of children who will participate in the Head Start program to obtain health services from other sources;

(N) the plan of such applicant to meet the needs of children with disabilities, including procedures to identify such children, procedures for referral of such children for evaluation to State or local agencies providing services under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.), and plans for collaboration with those State or local agencies;

(O) the plan of such applicant to meet the needs of homeless children, including transportation needs, and the needs of children in foster care; and

(P) other factors related to the requirements of this subchapter.

(3) Priority

In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall give priority to applicants that have demonstrated capacity in providing effective, comprehensive, and well-coordinated early childhood education and development services and programs to children and their families.

(e) Prohibition against non-Indian Head Start agency receiving a grant for an Indian Head Start program

(1) In general

Notwithstanding any other provision of law, except as provided in paragraph (2), under no condition may a non-Indian Head Start agency receive a grant to carry out an Indian Head Start program.

(2) Exception

In a community in which there is no Indian Head Start agency available for designation to carry out an Indian Head Start program, a non-Indian Head Start agency may receive a grant to carry out an Indian Head Start program but only until such time as an Indian Head Start agency in such community becomes available and is designated pursuant to this section.

(f) Interim provider

If no agency in a community is designated under subsection (d), and there is no qualified applicant in the community, the Secretary shall designate a qualified agency to carry out the Head Start program in the community on an interim basis until a qualified applicant from the community is designated under subsection (d).

(g) Parent and community participation

The Secretary shall require that the practice of significantly involving parents and community residents in the area affected by the program involved, in the selection of Head Start agencies, be continued.

(h) Community

For purposes of this subchapter, a community may be a city, county, or multicity or multicounty unit within a State, an Indian reservation (including Indians in any off-reservation area designated by an appropriate tribal government in consultation with the Secretary), or a neighborhood or other area (irrespective of boundaries or political subdivisions) that provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

(Pub. L. 97–35, title VI, §641, Aug. 13, 1981, 95 Stat. 501; Pub. L. 98–558, title I, §104, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 101–501, title I, §§107, 108, Nov. 3, 1990, 104 Stat. 1229, 1230; Pub. L. 102–401, §2(e)(1), (f)–(h), Oct. 7, 1992, 106 Stat. 1957; Pub. L. 103–252, title I, §107, May 18, 1994, 108 Stat. 629; Pub. L. 105–285, title I, §107, Oct. 27, 1998, 112 Stat. 2712; Pub. L. 108–446, title III, §305(l)(3), Dec. 3, 2004, 118 Stat. 2806; Pub. L. 110–134, §7, Dec. 12, 2007, 121 Stat. 1378; Pub. L. 114–95, title IX, §9215(nn)(2), Dec. 10, 2015, 129 Stat. 2176.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(2)(H)(i), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (d)(2)(H)(ii), (N), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

Subsec. (d)(2)(H)(i). Pub. L. 114–95, §9215(nn)(2)(A), redesignated cl. (ii) as (i), struck out "other" before "preschool programs" and substituted "the Elementary and Secondary Education Act of 1965" for "that Act", and struck out former cl. (i) which read as follows: "programs implementing grant agreements under the Early Reading First and Even Start programs under subparts 2 and 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6371 et seq., 6381 et seq.);".

Subsec. (d)(2)(H)(ii) to (vii). Pub. L. 114–95, §9215(nn)(2)(A)(ii), redesignated cls. (iii) to (vii) as (ii) to (vi), respectively. Former cl. (ii) redesignated (i).

Subsec. (d)(2)(J)(iii). Pub. L. 114–95, §9215(nn)(2)(B), struck out ", such as entities carrying out Even Start programs under subpart 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20

U.S.C. 6381 et seq.)" after "local entities" in introductory provisions.

2007—Pub. L. 110–134 amended section generally. Prior to amendment, section related to authorization of and prerequisites for designation of Head Start agencies in subsec. (a), definition of community in subsec. (b), priority in administration of section provisions in subsec. (c), designation in community without entity entitled to priority and qualified applicants in subsec. (d), designation on interim basis in subsec. (e), involvement of parents and area residents in selection of agencies in subsec. (f), and priority for nonprofit agencies and applicants with demonstrated capacity in subsec. (g).

2004—Subsec. (d)(3). Pub. L. 108–446 substituted "U.S.C. 1431–1444" for "U.S.C 1431–1445".

1998—Subsec. (a). Pub. L. 105–285, §107(1), inserted "or for-profit" after "nonprofit" and "(in consultation with the chief executive officer of the State involved, if such State expends non-Federal funds to carry out Head Start programs)" after "Secretary" in cl. (2).

Subsec. (b). Pub. L. 105–285, §107(2), substituted "off-reservation area designated by an appropriate tribal government in consultation with the Secretary" for "area designated by the Bureau of Indian Affairs as near-reservation".

Subsec. (c)(1). Pub. L. 105–285, §107(3)(A), inserted ", in consultation with the chief executive officer of the State involved if such State expends non-Federal funds to carry out Head Start programs," after "Secretary shall" and "or for-profit" after "nonprofit" and substituted "determines that the agency involved fails to meet program and financial management requirements, performance standards described in section 9836a(a)(1) of this title, results-based performance measures developed by the Secretary under section 9836a(b) of this title, or other requirements established by the Secretary" for "makes a finding that the agency involved fails to meet program, financial management, and other requirements established by the Secretary".

Subsec. (c)(2). Pub. L. 105–285, §107(3)(B), (C), inserted ", in consultation with the chief executive officer of the State if such State expends non-Federal funds to carry out Head Start programs," after "Secretary shall" and realigned margins.

Subsec. (c)(3). Pub. L. 105–285, §107(3)(C), realigned margins.

Subsec. (d). Pub. L. 105–285, §107(4)(A), inserted in introductory provisions "In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall give priority to any qualified agency that functioned as a Head Start delegate agency in the community and carried out a Head Start program that the Secretary determines met or exceeded such performance standards and such results-based performance measures."

Subsec. (d)(3). Pub. L. 105–285, §107(4)(B), inserted "and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C 1431–1445, 1419)" after "(20 U.S.C. 2741 et seq.)".

Subsec. (d)(4)(A). Pub. L. 105–285, §107(4)(C)(i), inserted "(at home and in the center involved where practicable)" after "activities".

Subsec. (d)(4)(D). Pub. L. 105–285, §107(4)(C)(v), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (d)(4)(D)(iii). Pub. L. 105–285, §107(4)(C)(ii)(I), inserted "or" at end.

Subsec. (d)(4)(D)(iv), (v). Pub. L. 105–285, §107(4)(C)(ii)(II), (III), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "substance abuse counseling; or".

Subsec. (d)(4)(E). Pub. L. 105–285, §107(4)(C)(iv), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Pub. L. 105–285, §107(4)(C)(iii), substituted ", (D), and (E)" for "and (D)".

Subsec. (d)(4)(F). Pub. L. 105–285, §107(4)(C)(iv), redesignated subpar. (E) as (F).

Subsec. (d)(7). Pub. L. 105–285, §107(4)(D), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "the plan of such applicant to meet the needs of non-English language background children and their families in the community; and".

Subsec. (d)(8) to (10). Pub. L. 105–285, §107(4)(E)–(G), added pars. (8) and (10) and redesignated former par. (8) as (9).

Subsec. (e). Pub. L. 105–285, §107(5), added subsec. (e) and struck out former subsec. (e) which read as follows: "If, in a community served by a Head Start program, there is no applicant qualified for designation as a Head Start agency to carry out such program, the Secretary may appoint an interim grantee to carry out such program until a qualified applicant is so designated."

Subsec. (g). Pub. L. 105–285, §107(6), added subsec. (g).

1994—Subsec. (b). Pub. L. 103–252, §107(a), inserted "(including Indians in any area designated by the Bureau of Indian Affairs as near-reservation)" after "Indian reservation".

Subsec. (c)(1). Pub. L. 103–252, §107(b)(2), (3), (5), inserted "(subject to paragraph (2))" after "the provisions of this section", struck out subpar. (A), inserted "the Secretary makes a finding that the agency involved fails to meet program, financial management, and other requirements established by the Secretary."

after "unless", and redesignated subpar. (B) as par. (2) and concluding provisions as par. (3).

Subsec. (c)(2). Pub. L. 103–252, §107(b)(1), (3), (4), (6), redesignated par. (1)(B) as (2) and realigned margins, substituted "If" for "except that, if" and "paragraph (1)" for "subparagraph (A)", and struck out former par. (2) which read as follows:

"(2)(A) The Secretary shall conduct a full review of each designated Head Start agency at least once during each 3-year period, and shall determine whether each agency meets program and fiscal requirements established by the Secretary.

"(B) The Secretary shall conduct a review of each newly designated Head Start agency immediately after the completion of the first year such agency carries out a Head Start program.

"(C) The Secretary shall conduct followup reviews of Head Start agencies when appropriate."

Subsec. (c)(3). Pub. L. 103–252, §107(b)(1), (5), redesignated concluding provisions of par. (1) as (3), substituted "this subsection" for "this paragraph", and struck out former par. (3) which read as follows: "In carrying out a review of each Head Start agency under paragraph (2), the Secretary shall—

"(A) to the maximum extent practicable, carry out such review by using employees of the Department of Health and Human Services who are knowledgeable about Head Start programs;

"(B) ensure that an employee of the Department of Health and Human Services who is knowledgeable about Head Start programs supervises such review at the site of such agency;

"(C) measure the compliance of the programs of such agency with the performance standards in effect under section 9846(b) of this title; and

"(D) identify the types and conditions of facilities in which such programs are located."

Subsec. (c)(4). Pub. L. 103–252, §107(b)(1), struck out par. (4) which read as follows: "The results of a review conducted under this subsection shall not be sufficient alone for the purpose of determining whether to continue, or to discontinue, providing funds to a particular Head Start agency."

Subsec. (d). Pub. L. 103–252, §107(c)(1)–(3)(A), in introductory provisions substituted "If no entity in a community is entitled to the priority specified in subsection (c) of this section," for "If there is no Head Start agency as described in subsection (c)(2) of this section, and no existing Head Start program serving a community," and struck out "Any such designation shall be governed by the program and fiscal requirements, criteria, and standards applicable on September 1, 1983, to then existing Head Start agencies." after first sentence and "subject to the preceding sentence" after "as a Head Start agency".

Subsec. (d)(3). Pub. L. 103–252, §107(c)(3)(B), inserted ", including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.)," after "preschool programs".

Subsec. (d)(4). Pub. L. 103–252, §107(c)(3)(C), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "the plan of such applicant to involve parents of children who will participate in the proposed Head Start program in appropriate educational services (in accordance with the performance standards in effect under section 9846(b) of this title or through referral of such parents to educational services available in the community) in order to aid their children to attain their full potential;".

Subsec. (d)(7). Pub. L. 103–252, §107(c)(4), substituted "non-English language background children and their families" for "non-English language children" and inserted "and" after semicolon.

Subsec. (d)(8), (9). Pub. L. 103–252, §107(c)(5), (6), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: "the plan of such applicant to provide (directly or through referral to educational services available in the community) parents of children who will participate in the proposed Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and".

Subsecs. (f), (g). Pub. L. 103–252, §107(d), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: "The provisions of subsections (c), (d), and (e) of this section shall be applied by the Secretary in the distribution of any additional appropriations made available under this subchapter during any fiscal year as well as to initial designations of Head Start agencies."

1992—Subsec. (c)(1). Pub. L. 102–401, §2(e)(1), inserted at end "Notwithstanding any other provision of this paragraph, the Secretary shall not give such priority to any agency with respect to which financial assistance has been terminated, or an application for refunding has been denied, under this subchapter by the Secretary after affording such agency reasonable notice and opportunity for a full and fair hearing in accordance with section 9841(a)(3) of this title."

Subsec. (c)(2). Pub. L. 102–401, §2(f), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (d)(8), (9). Pub. L. 102–401, §2(g), added pars. (8) and (9).

Subsec. (e). Pub. L. 102–401, §2(h)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 102–401, §2(h)(1), substituted "(c), (d), and (e)" for "(c) and (d)".

Subsecs. (f), (g). Pub. L. 102–401, §2(h)(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

1990—Subsec. (c). Pub. L. 101–501, §107, designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A), added subpar. (B) and pars. (2) to (4), and struck out former par. (2) and last sentence which read as follows:

"(2) except that if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Secretary shall give priority in the designation of Head Start agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds in the fiscal year preceding the fiscal year for which the determination is made.

The provisions of clause (2) shall apply only to agencies actually operating Head Start programs."

Subsec. (d). Pub. L. 101–501, §108, inserted at end "In selecting from among qualified applicants for designation as a Head Start agency and subject to the preceding sentence, the Secretary shall consider the effectiveness of each such applicant to provide Head Start services, based on—" and pars. (1) to (7).

1984—Subsec. (a). Pub. L. 98–558, §104(a), inserted ", within a community," after "private nonprofit agency".

Subsec. (c). Pub. L. 98–558, §104(b)(1), substituted "unless" for ", except that" in provisions preceding cl. (1).

Subsec. (c)(1). Pub. L. 98–558, §104(b)(2), (3), substituted "makes a finding" for "shall, before giving such priority, determine" and "fails to meet" for "meet".

Subsec. (c)(2). Pub. L. 98–558, §104(b)(4), inserted "except that" before "if".

Subsecs. (d) to (f). Pub. L. 98–558, §104(c), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–401, §2(e)(2), Oct. 7, 1992, 106 Stat. 1957, provided that: "The amendment made by paragraph (1) [amending this section] shall apply only with respect to terminations of financial assistance, and denials of refunding, occurring after July 29, 1992."

Amendment by section 2(f)–(h) of Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, and amendment by section 2(e)(1) of Pub. L. 102–401 effective July 30, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

HEAD START DESIGNATION RENEWAL SYSTEM

Pub. L. 116–159, div. D, title IV, §4401, Oct. 1, 2020, 134 Stat. 743, provided that:

"Notwithstanding section 638 of the Head Start Act (42 U.S.C. 9833), if the Secretary of Health and Human Services—

"(1) is required to make a determination under paragraph (6) of section 641(c) of such Act (42 U.S.C. 9836a(c) [sic, probably should be "42 U.S.C. 9836(c)"]) whether to renew the designation of a Head Start

agency for which such determination under the schedule developed pursuant to paragraph (9)(C) of such section 641(c) is required to be made before December 31, 2020; and

"(2) cannot make such determination in accordance with such schedule because the Secretary lacks any information described in any of subparagraphs (A) through (E) of section 641(c)(1) of such Act required for the purpose of making such determination;

then before December 31, 2020, the Secretary shall extend for not more than 2 years the 5-year period otherwise applicable to the designation of such Head Start agency under such Act [42 U.S.C. 9831 et seq.]."

§9836a. Standards; monitoring of Head Start agencies and programs

(a) Standards

(1) Content of standards

The Secretary shall modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs under this subchapter, including—

(A) performance standards with respect to services required to be provided, including health, parental involvement, nutritional, and social services, transition activities described in section 9837a of this title, and other services;

(B) scientifically based and developmentally appropriate education performance standards related to school readiness that are based on the Head Start Child Outcomes Framework to ensure that the children participating in the program, at a minimum, develop and demonstrate—

(i) language knowledge and skills, including oral language and listening comprehension;

(ii) literacy knowledge and skills, including phonological awareness, print awareness and skills, and alphabetic knowledge;

(iii) mathematics knowledge and skills;

(iv) science knowledge and skills;

(v) cognitive abilities related to academic achievement and child development;

(vi) approaches to learning related to child development and early learning;

(vii) social and emotional development related to early learning, school success, and social problemsolving;

(viii) abilities in creative arts;

(ix) physical development; and

(x) in the case of limited English proficient children, progress toward acquisition of the English language while making meaningful progress in attaining the knowledge, skills, abilities, and development described in clauses (i) through (ix), including progress made through the use of culturally and linguistically appropriate instructional services;

(C) administrative and financial management standards;

(D) standards relating to the condition and location of facilities (including indoor air quality assessment standards, where appropriate) for such agencies, and programs, including regulations that require that the facilities used by Head Start agencies (including Early Head Start agencies and any delegate agencies) for regularly scheduled center-based and combination program option classroom activities—

(i) shall meet or exceed State and local requirements concerning licensing for such facilities; and

(ii) shall be accessible by State and local authorities for purposes of monitoring and ensuring compliance, unless State or local laws prohibit such access; and

(E) such other standards as the Secretary finds to be appropriate.

(2) Considerations regarding standards

In developing any modifications to standards required under paragraph (1), the Secretary shall—

(A) consult with experts in the fields of child development, early childhood education, child

health care, family services (including linguistically and culturally appropriate services to non-English speaking children and their families), administration, and financial management, and with persons with experience in the operation of Head Start programs;

(B) take into consideration—

(i) past experience with use of the standards in effect under this subchapter on December 12, 2007;

(ii) changes over the period since October 27, 1998, in the circumstances and problems typically facing children and families served by Head Start agencies;

(iii) recommendations from the study on Developmental Outcomes and Assessments for Young Children by the National Academy of Sciences, consistent with section 9844(j) of this title;

(iv) developments concerning research-based practices with respect to early childhood education and development, children with disabilities, homeless children, children in foster care, and family services, and best practices with respect to program administration and financial management;

(v) projected needs of an expanding Head Start program;

(vi) guidelines and standards that promote child health services and physical development, including participation in outdoor activity that supports children's motor development and overall health and nutrition;

(vii) changes in the characteristics of the population of children who are eligible to participate in Head Start programs, including country of origin, language background, and family structure of such children, and changes in the population and number of such children who are in foster care or are homeless children;

(viii) mechanisms to ensure that children participating in Head Start programs make a successful transition to the schools that the children will be attending;

(ix) the need for Head Start agencies to maintain regular communications with parents, including conducting periodic meetings to discuss the progress of individual children in Head Start programs; and

(x) the unique challenges faced by individual programs, including those programs that are seasonal or short term and those programs that serve rural populations;

(C)(i) review and revise as necessary the standards in effect under this subsection; and

(ii) ensure that any such revisions in the standards will not result in the elimination of or any reduction in quality, scope, or types of health, educational, parental involvement, nutritional, social, or other services required to be provided under such standards as in effect on December 12, 2007; and

(D) consult with Indian tribes, including Alaska Natives, experts in Indian, including Alaska Native, early childhood education and development, linguists, and the National Indian Head Start Directors Association on the review and promulgation of standards under paragraph (1) (including standards for language acquisition and school readiness).

(3) Standards relating to obligations to delegate agencies

In developing any modifications to standards under paragraph (1), the Secretary shall describe the obligations of a Head Start agency to a delegate agency to which the Head Start agency has delegated responsibility for providing services under this subchapter.

(b) Measures

(1) In general

The Secretary, in consultation with representatives of Head Start agencies and with experts in the fields of early childhood education and development, family services, and program management, shall use the study on Developmental Outcomes and Assessments for Young Children by the National Academy of Sciences and other relevant research to inform, revise, and provide guidance to Head Start agencies for utilizing, scientifically based measures that support, as appropriate—

(A) classroom instructional practices;
(B) identification of children with special needs;
(C) program evaluation; and
(D) administrative and financial management practices.

(2) Characteristics of measures

The measures under this subsection shall—

(A) be developmentally, linguistically, and culturally appropriate for the population served;

(B) be reviewed periodically, based on advances in the science of early childhood development;

(C) be consistent with relevant, nationally recognized professional and technical standards related to the assessment of young children;

(D) be valid and reliable in the language in which they are administered;

(E) be administered by staff with appropriate training for such administration;

(F) provide for appropriate accommodations for children with disabilities and children who are limited English proficient;

(G) be high-quality research-based measures that have been demonstrated to assist with the purposes for which they were devised; and

(H) be adaptable, as appropriate, for use in the self-assessment of Head Start agencies, including in the evaluation of administrative and financial management practices.

(3) Use of measures; limitations on use

(A) Use

The measures shall be designed, as appropriate, for the purpose of—

(i) helping to develop the skills, knowledge, abilities, and development described in subsection (a)(1)(B) of children participating in Head Start programs, with an emphasis on measuring skills that scientifically valid research has demonstrated are related to children's school readiness and later success in school;

(ii) improving classroom practices, including reviewing children's strengths and weaknesses and individualizing instruction to better meet the needs of the children involved;

(iii) identifying the special needs of children; and

(iv) improving overall program performance in order to help programs identify problem areas that may require additional training and technical assistance resources.

(B) Limitations

Such measures shall not be used to exclude children from Head Start programs.

(4) Confidentiality

(A) In general

The Secretary, through regulation, shall ensure the confidentiality of any personally identifiable data, information, and records collected or maintained under this subchapter by the Secretary and any Head Start agency. Such regulations shall provide the policies, protections, and rights equivalent to those provided to a parent, student, or educational agency or institution under section 1232g of title 20.

(B) Prohibition on nationwide database

Nothing in this subsection shall be construed to authorize the development of a nationwide database of personally identifiable data, information, or records on children resulting from the use of measures under this subsection.

(5) Special rule

(A) Prohibition

The use of assessment items and data on any assessment authorized under this subchapter by any agent of the Federal Government is prohibited for the purposes of—

(i) ranking, comparing, or otherwise evaluating individual children for purposes other than research, training, or technical assistance; and

(ii) providing rewards or sanctions for individual children or teachers.

(B) Results

The Secretary shall not use the results of a single assessment as the sole method for assessing program effectiveness or making agency funding determinations at the national, regional, or local level under this subchapter.

(c) Monitoring of local agencies and programs

(1) In general

To determine whether Head Start agencies meet standards described in subsection (a)(1) established under this subchapter with respect to program, administrative, financial management, and other requirements, and in order to help the programs identify areas for improvement and areas of strength as part of their ongoing self-assessment process, the Secretary shall conduct the following reviews of Head Start agencies, including the Head Start programs operated by such agencies:

(A) A full review, including the use of a risk-based assessment approach, of each such agency at least once during each 3-year period.

(B) A review of each newly designated Head Start agency immediately after the completion of the first year such agency carries out a Head Start program.

(C) Followup reviews, including—

(i) return visits to Head Start agencies with 1 or more findings of deficiencies, not later than 6 months after the Secretary provides notification of such findings, or not later than 12 months after such notification if the Secretary determines that additional time is necessary for an agency to address such a deficiency prior to the review; and

(ii) a review of Head Start agencies with significant areas of noncompliance.

(D) Other reviews, including unannounced site inspections of Head Start centers, as appropriate.

(2) Conduct of reviews

The Secretary shall ensure that reviews described in subparagraphs (A) through (C) of paragraph (1)—

(A) are conducted by review teams that—

(i) include individuals who are knowledgeable about Head Start programs and, to the maximum extent practicable, individuals who are knowledgeable about—

(I) other early childhood education and development programs, personnel management, financial accountability, and systems development and monitoring; and

(II) the diverse (including linguistic and cultural) needs of eligible children (including children with disabilities, homeless children, children in foster care, and limited English proficient children) and their families;

(ii) include, to the maximum extent practicable, current or former employees of the Department of Health and Human Services who are knowledgeable about Head Start programs; and

(iii) shall receive periodic training to ensure quality and consistency across reviews;

(B) include as part of the reviews, a review and assessment of program strengths and areas in need of improvement;

(C) include as part of the reviews, a review and assessment of whether programs have adequately addressed population and community needs (including those of limited English proficient children and children of migrant or seasonal farmworker families);

(D) include as part of the reviews, an assessment of the extent to which the programs address

the communitywide strategic planning and needs assessment described in section 9835(g)(1)(C) of this title;

(E) include information on the innovative and effective efforts of the Head Start agencies to collaborate with the entities providing early childhood and development services or programs in the community and any barriers to such collaboration that the agencies encounter;

(F) include as part of the reviews, a valid and reliable research-based observational instrument, implemented by qualified individuals with demonstrated reliability, that assesses classroom quality, including assessing multiple dimensions of teacher-child interactions that are linked to positive child development and later achievement;

(G) are conducted in a manner that evaluates program performance, quality, and overall operations with consistency and objectivity, are based on a transparent and reliable system of review, and are conducted in a manner that includes periodic interrater reliability checks, to ensure quality and consistency, across and within regions, of the reviews and of noncompliance and deficiency determinations;

(H) in the case of reviews of Early Head Start agencies and programs, are conducted by a review team that includes individuals who are knowledgeable about the development of infants and toddlers;

(I) include as part of the reviews a protocol for fiscal management that shall be used to assess compliance with program requirements for—

(i) using Federal funds appropriately;

(ii) using Federal funds specifically to purchase property (consistent with section 9839(f) of this title) and to compensate personnel;

(iii) securing and using qualified financial officer support; and

(iv) reporting financial information and implementing appropriate internal controls to safeguard Federal funds;

(J) include as part of the reviews of the programs, a review and assessment of whether the programs are in conformity with the eligibility requirements under section 9840(a)(1) of this title, including regulations promulgated under such section and whether the programs have met the requirements for the outreach and enrollment policies and procedures, and selection criteria, in such section, for the participation of children in programs assisted under this subchapter;

(K) include as part of the reviews, a review and assessment of whether agencies have adequately addressed the needs of children with disabilities, including whether the agencies involved have met the 10 percent minimum enrollment requirement specified in section 9835(d) of this title and whether the agencies have made sufficient efforts to collaborate with State and local agencies providing services under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.); and

(L) include as part of the reviews, a review and assessment of child outcomes and performance as they relate to agency-determined school readiness goals described in subsection (g)(2), consistent with subsection (b)(5).

(3) Standards relating to obligations to delegate agencies

In conducting a review described in paragraph (1)(A) of a Head Start agency, the Secretary shall determine whether the agency complies with the obligations described in subsection (a)(3). The Secretary shall consider such compliance in determining whether to renew financial assistance to the Head Start agency under this subchapter.

(4) Use of review findings

The findings of a review described in paragraph (1) of a Head Start agency shall, at a minimum—

(A) be presented to the agency in a timely, transparent, and uniform manner that conveys information of program strengths and weaknesses and assists with program improvement; and

(B) be used by the agency to inform the development and implementation of its plan for training and technical assistance.

(d) Evaluations and corrective action for delegate agencies

(1) Procedures

Each Head Start agency shall establish, subject to paragraph (4), procedures relating to its delegate agencies, including—

(A) procedures for evaluating delegate agencies;

(B) procedures for defunding delegate agencies; and

(C) procedures for a delegate agency to appeal a defunding decision.

(2) Evaluation

Each Head Start agency—

(A) shall evaluate its delegate agencies using the procedures established under this subsection; and

(B) shall inform the delegate agencies of the deficiencies identified through the evaluation that are required to be corrected.

(3) Remedies to ensure corrective actions

In the event that the Head Start agency identifies a deficiency for a delegate agency through the evaluation, the Head Start agency shall take action, which may include—

(A) initiating procedures to terminate the designation of the agency unless the agency corrects the deficiency;

(B) conducting monthly monitoring visits to such delegate agency until all deficiencies are corrected or the Head Start agency decides to defund such delegate agency; and

(C) releasing funds to such delegate agency—

(i) only as reimbursements except that, upon receiving a request from the delegate agency accompanied by assurances satisfactory to the Head Start agency that the funds will be appropriately safeguarded, the Head Start agency shall provide to the delegate agency a working capital advance in an amount sufficient to cover the estimated expenses involved during an agreed upon disbursing cycle; and

(ii) only if there is continuity of services.

(4) Termination

The Head Start agency may not terminate a delegate agency's contract or reduce a delegate agency's service area without showing cause or demonstrating the cost-effectiveness of such a decision.

(5) Rule of construction

Nothing in this subsection shall be construed to limit the powers, duties, or functions of the Secretary with respect to Head Start agencies or delegate agencies that receive financial assistance under this subchapter.

(e) Corrective action for Head Start agencies

(1) Determination

If the Secretary determines, on the basis of a review pursuant to subsection (c), that a Head Start agency designated pursuant to this subchapter fails to meet the standards described in subsection (a)(1) or fails to address the communitywide strategic planning and needs assessment, the Secretary shall—

(A) inform the agency of the deficiencies that shall be corrected and identify the assistance to be provided consistent with paragraph (3);

(B) with respect to each identified deficiency, require the agency—

(i) to correct the deficiency immediately, if the Secretary finds that the deficiency threatens the health or safety of staff or program participants or poses a threat to the integrity of Federal funds;

(ii) to correct the deficiency not later than 90 days after the identification of the deficiency if the Secretary finds, in the discretion of the Secretary, that such a 90-day period is

reasonable, in light of the nature and magnitude of the deficiency; or

(iii) in the discretion of the Secretary (taking into consideration the seriousness of the deficiency and the time reasonably required to correct the deficiency), to comply with the requirements of paragraph (2) concerning a quality improvement plan; and

(C) initiate proceedings to terminate the designation of the agency unless the agency corrects the deficiency.

(2) Quality improvement plan

(A) Agency and program responsibilities

To retain a designation as a Head Start agency under this subchapter, or in the case of a Head Start program to continue to receive funds from such agency, a Head Start agency that is the subject of a determination described in paragraph (1), or a Head Start program that is determined to have a deficiency under subsection (d)(2) (excluding an agency required to correct a deficiency immediately or during a 90-day period under clause (i) or (ii) of paragraph (1)(B)) shall—

(i) develop in a timely manner, a quality improvement plan that shall be subject to the approval of the Secretary, or in the case of a program, the sponsoring agency, and that shall specify—

(I) the deficiencies to be corrected;

(II) the actions to be taken to correct such deficiencies; and

(III) the timetable for accomplishment of the corrective actions specified; and

(ii) correct each deficiency identified, not later than the date for correction of such deficiency specified in such plan (which shall not be later than 1 year after the date the agency or Head Start program that is determined to have a deficiency received notice of the determination and of the specific deficiency to be corrected).

(B) Secretarial responsibility

Not later than 30 days after receiving from a Head Start agency a proposed quality improvement plan pursuant to subparagraph (A), the Secretary shall either approve such proposed plan or specify the reasons why the proposed plan cannot be approved.

(C) Agency responsibility

Not later than 30 days after receiving from a Head Start program a proposed quality improvement plan pursuant to subparagraph (A), the Head Start agency involved shall either approve such proposed plan or specify the reasons why the proposed plan cannot be approved.

(3) Training and technical assistance

The Secretary shall provide training and technical assistance to Head Start agencies and programs with respect to the development or implementation of such quality improvement plans to the extent the Secretary finds such provision to be feasible and appropriate given available funding and other statutory responsibilities.

(f) Summaries of monitoring outcomes

(1) In general

Not later than 120 days after the end of each fiscal year, the Secretary shall publish a summary report on the findings of reviews conducted under subsection (c) and on the outcomes of quality improvement plans implemented under subsection (e), during such fiscal year.

(2) Report availability

Such report shall be made widely available to—

(A) parents with children receiving assistance under this subchapter—

(i) in an understandable and uniform format; and

(ii) to the extent practicable, in a language that the parents understand; and

(B) the public through means such as—

(i) distribution through public agencies; and

(ii) posting such information on the Internet.

(3) Report information

Such report shall contain detailed data—

(A) on compliance with specific standards and measures; and

(B) sufficient to allow Head Start agencies to use such data to improve the quality of their programs.

(g) Self-assessments

(1) In general

Not less frequently than once each program year, with the consultation and participation of policy councils and, as applicable, policy committees and, as appropriate, other community members, each Head Start agency, and each delegate agency, that receives financial assistance under this subchapter shall conduct a comprehensive self-assessment of its effectiveness and progress in meeting program goals and objectives and in implementing and complying with standards described in subsection (a)(1).

(2) Goals, reports, and improvement plans

(A) Goals

An agency conducting a self-assessment shall establish agency-determined program goals for improving the school readiness of children participating in a program under this subchapter, including school readiness goals that are aligned with the Head Start Child Outcomes Framework, State early learning standards as appropriate, and requirements and expectations of the schools the children will be attending.

(B) Improvement plan

The agency shall develop, and submit to the Secretary a report containing, an improvement plan approved by the governing body of the agency to strengthen any areas identified in the self-assessment as weaknesses or in need of improvement.

(3) Ongoing monitoring

Each Head Start agency (including each Early Head Start agency) and each delegate agency shall establish and implement procedures for the ongoing monitoring of their respective programs, to ensure that the operations of the programs work toward meeting program goals and objectives and standards described in subsection (a)(1).

(h) Reduction of grants and redistribution of funds in cases of underenrollment

(1) Definitions

In this subsection:

(A) Actual enrollment

The term "actual enrollment" means, with respect to the program of a Head Start agency, the actual number of children enrolled in such program and reported by the agency (as required in paragraph (2)) in a given month.

(B) Base grant

The term "base grant" has the meaning given the term in section 9835(a)(7) of this title.

(C) Funded enrollment

The term "funded enrollment" means, with respect to the program of a Head Start agency in a fiscal year, the number of children that the agency is funded to serve through a grant for the program during such fiscal year, as indicated in the grant agreement.

(2) Enrollment reporting requirement

Each entity carrying out a Head Start program shall report on a monthly basis to the Secretary and the relevant Head Start agency—

(A) the actual enrollment in such program; and

(B) if such actual enrollment is less than the funded enrollment, any apparent reason for such enrollment shortfall.

(3) Secretarial review and plan

The Secretary shall—

(A) on a semiannual basis, determine which Head Start agencies are operating with an actual enrollment that is less than the funded enrollment based on not less than 4 consecutive months of data;

(B) for each such Head Start agency operating a program with an actual enrollment that is less than its funded enrollment, as determined under subparagraph (A), develop, in collaboration with such agency, a plan and timetable for reducing or eliminating underenrollment taking into consideration—

(i) the quality and extent of the outreach, recruitment, and communitywide strategic planning and needs assessment conducted by such agency;

(ii) changing demographics, mobility of populations, and the identification of new underserved low-income populations;

(iii) facilities-related issues that may impact enrollment;

(iv) the ability to provide full-working-day programs, where needed, through funds made available under this subchapter or through collaboration with entities carrying out other early childhood education and development programs, or programs with other funding sources (where available);

(v) the availability and use by families of other early childhood education and development options in the community served; and

(vi) agency management procedures that may impact enrollment; and

(C) provide timely and ongoing technical assistance to each agency described in subparagraph (B) for the purpose of assisting the Head Start agency to implement the plan described in such subparagraph.

(4) Implementation

Upon receipt of the technical assistance described in paragraph (3)(C), a Head Start agency shall immediately implement the plan described in paragraph (3)(B). The Secretary shall, where determined appropriate, continue to provide technical assistance to such agency.

(5) Secretarial review and adjustment for chronic underenrollment

(A) In general

If, after receiving technical assistance and developing and implementing the plan as described in paragraphs (3) and (4) for 12 months, a Head Start agency is operating a program with an actual enrollment that is less than 97 percent of its funded enrollment, the Secretary may—

(i) designate such agency as chronically underenrolled; and

(ii) recapture, withhold, or reduce the base grant for the program by a percentage equal to the percentage difference between funded enrollment and actual enrollment for the program for the most recent year for which the agency is determined to be underenrolled under paragraph (3)(A).

(B) Waiver or limitation of reductions

The Secretary may, as appropriate, waive or reduce the percentage recapturing, withholding, or reduction otherwise required by subparagraph (A), if, after the implementation of the plan described in paragraph (3)(B), the Secretary finds that—

(i) the causes of the enrollment shortfall, or a portion of the shortfall, are related to the

agency's serving significant numbers of highly mobile children, or are other significant causes as determined by the Secretary;

(ii) the shortfall can reasonably be expected to be temporary; or

(iii) the number of slots allotted to the agency is small enough that underenrollment does not create a significant shortfall.

(6) Redistribution of funds

(A) In general

Funds held by the Secretary as a result of recapturing, withholding, or reducing a base grant in a fiscal year shall be redistributed by the end of the following fiscal year as follows:

(i) Indian Head Start programs

If such funds are derived from an Indian Head Start program, then such funds shall be redistributed to increase enrollment by the end of the following fiscal year in 1 or more Indian Head Start programs.

(ii) Migrant and seasonal Head Start programs

If such funds are derived from a migrant or seasonal Head Start program, then such funds shall be redistributed to increase enrollment by the end of the following fiscal year in 1 or more programs of the type from which such funds are derived.

(iii) Early Head Start programs

If such funds are derived from an Early Head Start program in a State, then such funds shall be redistributed to increase enrollment by the end of the following fiscal year in 1 or more Early Head Start programs in that State. If such funds are derived from an Indian Early Head Start program, then such funds shall be redistributed to increase enrollment by the end of the following fiscal year in 1 or more Indian Early Head Start programs.

(iv) Other Head Start programs

If such funds are derived from a Head Start program in a State (excluding programs described in clauses (i) through (iii)), then such funds shall be redistributed to increase enrollment by the end of the following fiscal year in 1 or more Head Start programs (excluding programs described in clauses (i) through (iii)) that are carried out in such State.

(B) Adjustment to funded enrollment

The Secretary shall adjust as necessary the requirements relating to funded enrollment indicated in the grant agreement of a Head Start agency receiving redistributed funds under this paragraph.

(Pub. L. 97–35, title VI, §641A, as added Pub. L. 103–252, title I, §108, May 18, 1994, 108 Stat. 631; amended Pub. L. 105–285, title I, §108, Oct. 27, 1998, 112 Stat. 2713; Pub. L. 110–134, §8, Dec. 12, 2007, 121 Stat. 1385.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (c)(2)(K), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2007—Pub. L. 110–134 amended section generally. Prior to amendment, section related to, in subsec. (a), quality standards, in subsec. (b), results-based performance measures, in subsec. (c), monitoring of local agencies and programs, in subsec. (d), corrective action and termination, and, in subsec. (e), summaries of monitoring outcomes.

1998—Subsec. (a)(1). Pub. L. 105–285, §108(a)(1)(A), inserted ", including minimum levels of overall

accomplishment," after "regulation standards" in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 105–285, §108(a)(1)(B), struck out "education," after "including health,".

Subsec. (a)(1)(B) to (E). Pub. L. 105–285, §108(a)(1)(C), (D), added subpar. (B) and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (a)(2). Pub. L. 105–285, §108(a)(2), (3), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: "The regulations promulgated under this subsection shall establish the minimum levels of overall accomplishment that a Head Start agency shall achieve in order to meet the standards specified in paragraph (1)."

Subsec. (a)(2)(B)(iii). Pub. L. 105–285, §108(a)(4)(A), substituted "early childhood education and" for "child".

Subsec. (a)(2)(C)(i). Pub. L. 105–285, §108(a)(4)(B)(i), struck out "not later than 1 year after May 18, 1994," before "review" and substituted "this subsection; and" for "section 9846(b) of this title on the day before May 18, 1994; and".

Subsec. (a)(2)(C)(ii). Pub. L. 105–285, §108(a)(4)(B)(ii), substituted "October 27, 1998" for "November 2, 1978".

Subsec. (a)(3). Pub. L. 105–285, §108(a)(5), substituted "to a delegate agency" for "to an agency (referred to in this subchapter as the 'delegate agency')".

Pub. L. 105–285, §108(a)(3), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 105–285, §108(a)(3), redesignated par. (4) as (3).

Subsec. (b). Pub. L. 105–285, §108(b)(1), inserted "Results-based" in heading.

Subsec. (b)(1). Pub. L. 105–285, §108(b)(2), substituted "The Secretary" for "Not later than 1 year after May 18, 1994, the Secretary", "early childhood education and" for "child", and "results-based performance measures" for "performance measures" and inserted ", and the impact of the services provided through the programs to children and their families" before "(referred".

Subsec. (b)(2). Pub. L. 105–285, §108(b)(3)(A), (B), (F), substituted "Characteristics" for "Design" in heading and "shall—" for "shall be designed—" in introductory provisions and inserted concluding provisions.

Subsec. (b)(2)(A). Pub. L. 105–285, §108(b)(3)(C), substituted "be used to assess the impact of" for "to assess".

Subsec. (b)(2)(B). Pub. L. 105–285, §108(b)(3)(D), substituted "be adaptable" for "to be adaptable" and ", peer review, and program evaluation" for "and peer review" and inserted ", not later than July 1, 1999" before semicolon.

Subsec. (b)(2)(C). Pub. L. 105–285, §108(b)(3)(E), inserted "be developed" before "for other".

Subsec. (b)(3)(A). Pub. L. 105–285, §108(b)(4), substituted ", regionally, and locally" for "and by region".

Subsec. (b)(4), (5). Pub. L. 105–285, §108(b)(5), added pars. (4) and (5).

Subsec. (c)(1). Pub. L. 105–285, §108(c)(1), inserted "and results-based performance measures developed by the Secretary under subsection (b) of this section" after "standards established under this subchapter".

Subsec. (c)(2)(B). Pub. L. 105–285, §108(c)(2)(A), struck out "and" at end.

Subsec. (c)(2)(C). Pub. L. 105–285, §108(c)(2)(B), inserted "(including children with disabilities)" after "eligible children" and substituted semicolon for period at end.

Subsec. (c)(2)(D), (E). Pub. L. 105–285, §108(c)(2)(C), added subpars. (D) and (E).

Subsec. (d)(1). Pub. L. 105–285, §108(d)(1)(A), inserted "or results-based performance measures developed by the Secretary under subsection (b) of this section" after "subsection (a) of this section" in introductory provisions.

Subsec. (d)(1)(B). Pub. L. 105–285, §108(d)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "with respect to each identified deficiency, require the agency—

"(i) to correct the deficiency immediately; or

"(ii) at the discretion of the Secretary (taking into consideration the seriousness of the deficiency and the time reasonably required to correct the deficiency), to comply with the requirements of paragraph (2) concerning a quality improvement plan; and".

Subsec. (d)(2)(A). Pub. L. 105–285, §108(d)(2), substituted "required to correct a deficiency immediately or during a 90-day period under clause (i) or (ii) of paragraph (1)(B)" for "able to correct a deficiency immediately" in introductory provisions.

Subsec. (e). Pub. L. 105–285, §108(e), inserted at end "Such report shall be widely disseminated and available for public review in both written and electronic formats."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§9837. Powers and functions of Head Start agencies

(a) Authority

To be designated as a Head Start agency under this subchapter, an agency shall have authority under its charter or applicable law to receive and administer funds under this subchapter, funds and contributions from private or local public sources that may be used in support of a Head Start program, and funds under any Federal or State assistance program pursuant to which a public or private nonprofit or for-profit agency (as the case may be) organized in accordance with this subchapter, could act as grantee, contractor, or sponsor of projects appropriate for inclusion in a Head Start program. Such an agency shall also be empowered to transfer funds so received, and to delegate powers to other agencies, subject to the powers of its governing board and its overall program responsibilities. The power to transfer funds and delegate powers shall include the power to make transfers and delegations covering component projects in all cases where this will contribute to efficiency and effectiveness or otherwise further program objectives.

(b) Family and community involvement; family services

To be so designated, a Head Start agency shall, at a minimum, do all the following to involve and serve families and communities:

(1) Provide for the regular and direct participation of parents and community residents in the implementation of the Head Start program, including decisions that influence the character of such program, consistent with paragraphs (2)(D) and (3)(C) of subsection (c).

(2) Seek the involvement of parents, community residents, and local business in the design and implementation of the program.

(3) Establish effective procedures—

(A) to facilitate and seek the involvement of parents of participating children in activities designed to help such parents become full partners in the education of their children; and

(B) to afford such parents the opportunity to participate in the development and overall conduct of the program at the local level, including transportation assistance as appropriate.

(4) Offer (directly or through referral to local entities, public and school libraries, and entities carrying out family support programs) to such parents—

(A) family literacy services; and

(B) parenting skills training.

(5) Offer to parents of participating children substance abuse counseling (either directly or through referral to local entities), if needed, including information on the effect of drug exposure on infants and fetal alcohol syndrome.

(6) At the option of such agency, offer (directly or through referral to local entities) to such parents—

(A) training in basic child development (including cognitive, social, and emotional development);

(B) assistance in developing literacy and communication skills;

(C) opportunities to share experiences with other parents (including parent-mentor relationships);

(D) health services, including information on maternal depression;

(E) regular in-home visitation; or

(F) any other activity designed to help such parents become full partners in the education of their children.

(7) Provide, with respect to each participating family, a family needs assessment that includes consultation with such parents (including foster parents, grandparents, and kinship caregivers, where applicable), in a manner and language that such parents can understand (to the extent practicable), about the benefits of parent involvement and about the activities described in this subsection in which such parents may choose to be involved (taking into consideration their specific family needs, work schedules, and other responsibilities).

(8) Consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources.

(9) Perform community outreach to encourage individuals previously unaffiliated with Head Start programs to participate in its Head Start program as volunteers.

(10)(A) Inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this subchapter about the availability of child support services for purposes of establishing paternity and acquiring child support.

(B) Refer eligible parents to the child support offices of State and local governments.

(11) Provide to parents of limited English proficient children outreach and information, in an understandable and uniform format and, to the extent practicable, in a language that the parents can understand.

(12) Provide technical and other support needed to enable parents and community residents to secure, on their own behalf, available assistance from public and private sources.

(13) Promote the continued involvement of the parents (including foster parents, grandparents, and kinship caregivers, as appropriate) of children that participate in Head Start programs in the education of their children upon transition of their children to school, by working with the local educational agency—

(A) to provide training to the parents—

(i) to inform the parents about their rights and responsibilities concerning the education of their children; and

(ii) to enable the parents—

(I) to understand and work with schools in order to communicate with teachers and other school personnel;

(II) to support the schoolwork of their children; and

(III) to participate as appropriate in decisions relating to the education of their children; and

(B) to take other actions, as appropriate and feasible, to support the active involvement of the parents with schools, school personnel, and school-related organizations.

(14) Establish effective procedures for timely referral of children with disabilities to the State or local agency providing services under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.), and collaboration with that agency, consistent with section 9835(d)(3) of this title.

(15) Establish effective procedures for providing necessary early intervening services to children with disabilities prior to an eligibility determination by the State or local agency responsible for providing services under section 619 or part C of such Act, consistent with section 9835(d)(2) of this title.

(16) At the option of the Head Start agency, partner with an institution of higher education and a nonprofit organization to provide college students with the opportunity to serve as mentors or reading partners for Head Start participants.

(c) Program governance

Upon receiving designation as a Head Start agency, the agency shall establish and maintain a formal structure for program governance, for the oversight of quality services for Head Start children and families and for making decisions related to program design and implementation. Such structure shall include the following:

(1) Governing body

(A) In general

The governing body shall have legal and fiscal responsibility for the Head Start agency.

(B) Composition

The governing body shall be composed as follows:

(i) Not less than 1 member shall have a background and expertise in fiscal management or accounting.

(ii) Not less than 1 member shall have a background and expertise in early childhood education and development.

(iii) Not less than 1 member shall be a licensed attorney familiar with issues that come before the governing body.

(iv) Additional members shall—

(I) reflect the community to be served and include parents of children who are currently, or were formerly, enrolled in Head Start programs; and

(II) are selected for their expertise in education, business administration, or community affairs.

(v) Exceptions shall be made to the requirements of clauses (i) through (iv) for members of a governing body when those members oversee a public entity and are selected to their positions with the public entity by public election or political appointment.

(vi) If a person described in clause (i), (ii), or (iii) is not available to serve as a member of the governing body, the governing body shall use a consultant, or an other individual with relevant expertise, with the qualifications described in that clause, who shall work directly with the governing body.

(C) Conflict of interest

Members of the governing body shall—

(i) not have a financial conflict of interest with the Head Start agency (including any delegate agency);

(ii) not receive compensation for serving on the governing body or for providing services to the Head Start agency;

(iii) not be employed, nor shall members of their immediate family be employed, by the Head Start agency (including any delegate agency); and

(iv) operate as an entity independent of staff employed by the Head Start agency.

(D) Exception

If an individual holds a position as a result of public election or political appointment, and such position carries with it a concurrent appointment to serve as a member of a Head Start agency governing body, and such individual has any conflict of interest described in clause (ii) or (iii) of subparagraph (C)—

(i) such individual shall not be prohibited from serving on such body and the Head Start agency shall report such conflict to the Secretary; and

(ii) if the position held as a result of public election or political appointment provides compensation, such individual shall not be prohibited from receiving such compensation.

(E) Responsibilities

The governing body shall—

(i) have legal and fiscal responsibility for administering and overseeing programs under this subchapter, including the safeguarding of Federal funds;

(ii) adopt practices that assure active, independent, and informed governance of the Head Start agency, including practices consistent with subsection (d)(1), and fully participate in the development, planning, and evaluation of the Head Start programs involved;

(iii) be responsible for ensuring compliance with Federal laws (including regulations) and

applicable State, tribal, and local laws (including regulations); and

(iv) be responsible for other activities, including—

(I) selecting delegate agencies and the service areas for such agencies;

(II) establishing procedures and criteria for recruitment, selection, and enrollment of children;

(III) reviewing all applications for funding and amendments to applications for funding for programs under this subchapter;

(IV) establishing procedures and guidelines for accessing and collecting information described in subsection (d)(2);

(V) reviewing and approving all major policies of the agency, including—

(aa) the annual self-assessment and financial audit;

(bb) such agency's progress in carrying out the programmatic and fiscal provisions in such agency's grant application, including implementation of corrective actions; and

(cc) personnel policies of such agencies regarding the hiring, evaluation, termination, and compensation of agency employees;

(VI) developing procedures for how members of the policy council are selected, consistent with paragraph (2)(B);

(VII) approving financial management, accounting, and reporting policies, and compliance with laws and regulations related to financial statements, including the—

(aa) approval of all major financial expenditures of the agency;

(bb) annual approval of the operating budget of the agency;

(cc) selection (except when a financial auditor is assigned by the State under State law or is assigned under local law) of independent financial auditors who shall report all critical accounting policies and practices to the governing body; and

(dd) monitoring of the agency's actions to correct any audit findings and of other action necessary to comply with applicable laws (including regulations) governing financial statement and accounting practices;

(VIII) reviewing results from monitoring conducted under section 9836a(c) of this title, including appropriate followup activities;

(IX) approving personnel policies and procedures, including policies and procedures regarding the hiring, evaluation, compensation, and termination of the Executive Director, Head Start Director, Director of Human Resources, Chief Fiscal Officer, and any other person in an equivalent position with the agency;

(X) establishing, adopting, and periodically updating written standards of conduct that establish standards and formal procedures for disclosing, addressing, and resolving—

(aa) any conflict of interest, and any appearance of a conflict of interest, by members of the governing body, officers and employees of the Head Start agency, and consultants and agents who provide services or furnish goods to the Head Start agency; and

(bb) complaints, including investigations, when appropriate; and

(XI) to the extent practicable and appropriate, at the discretion of the governing body, establishing advisory committees to oversee key responsibilities related to program governance and improvement of the Head Start program involved.

(2) Policy council

(A) In general

Consistent with paragraph (1)(E), each Head Start agency shall have a policy council responsible for the direction of the Head Start program, including program design and operation, and long- and short-term planning goals and objectives, taking into account the annual communitywide strategic planning and needs assessment and self-assessment.

(B) Composition and selection

(i) The policy council shall be elected by the parents of children who are currently enrolled in the Head Start program of the Head Start agency.

(ii) The policy council shall be composed of—

(I) parents of children who are currently enrolled in the Head Start program of the Head Start agency (including any delegate agency), who shall constitute a majority of the members of the policy council; and

(II) members at large of the community served by the Head Start agency (including any delegate agency), who may include parents of children who were formerly enrolled in the Head Start program of the agency.

(C) Conflict of interest

Members of the policy council shall—

(i) not have a conflict of interest with the Head Start agency (including any delegate agency); and

(ii) not receive compensation for serving on the policy council or for providing services to the Head Start agency.

(D) Responsibilities

The policy council shall approve and submit to the governing body decisions about each of the following activities:

(i) Activities to support the active involvement of parents in supporting program operations, including policies to ensure that the Head Start agency is responsive to community and parent needs.

(ii) Program recruitment, selection, and enrollment priorities.

(iii) Applications for funding and amendments to applications for funding for programs under this subchapter, prior to submission of applications described in this clause.

(iv) Budget planning for program expenditures, including policies for reimbursement and participation in policy council activities.

(v) Bylaws for the operation of the policy council.

(vi) Program personnel policies and decisions regarding the employment of program staff, consistent with paragraph (1)(E)(iv)(IX), including standards of conduct for program staff, contractors, and volunteers and criteria for the employment and dismissal of program staff.

(vii) Developing procedures for how members of the policy council of the Head Start agency will be elected.

(viii) Recommendations on the selection of delegate agencies and the service areas for such agencies.

(3) Policy committees

Each delegate agency shall create a policy committee, which shall—

(A) be elected and composed of members, consistent with paragraph (2)(B) (with respect to delegate agencies);

(B) follow procedures to prohibit conflict of interest, consistent with clauses (i) and (ii) of paragraph (2)(C) (with respect to delegate agencies); and

(C) be responsible for approval and submission of decisions about activities as they relate to the delegate agency, consistent with paragraph (2)(D) (with respect to delegate agencies).

(d) Program governance administration

(1) Impasse policies

The Secretary shall develop policies, procedures, and guidance for Head Start agencies concerning—

(A) the resolution of internal disputes, including any impasse in the governance of Head Start programs; and

(B) the facilitation of meaningful consultation and collaboration about decisions of the governing body and policy council.

(2) Conduct of responsibilities

Each Head Start agency shall ensure the sharing of accurate and regular information for use by the governing body and the policy council, about program planning, policies, and Head Start agency operations, including—

(A) monthly financial statements, including credit card expenditures;

(B) monthly program information summaries;

(C) program enrollment reports, including attendance reports for children whose care is partially subsidized by another public agency;

(D) monthly reports of meals and snacks provided through programs of the Department of Agriculture;

(E) the financial audit;

(F) the annual self-assessment, including any findings related to such assessment;

(G) the communitywide strategic planning and needs assessment of the Head Start agency, including any applicable updates;

(H) communication and guidance from the Secretary; and

(I) the program information reports.

(3) Training and technical assistance

Appropriate training and technical assistance shall be provided to the members of the governing body and the policy council to ensure that the members understand the information the members receive and can effectively oversee and participate in the programs of the Head Start agency.

(e) Collaboration and coordination

To be so designated, a Head Start agency shall collaborate and coordinate with public and private entities, to the maximum extent practicable, to improve the availability and quality of services to Head Start children and families, including carrying out the following activities:

(1) Conduct outreach to schools in which children participating in the Head Start program will enroll following the program, local educational agencies, the local business community, community-based organizations, faith-based organizations, museums, and libraries to generate support and leverage the resources of the entire local community in order to improve school readiness.

(2)(A) In communities where both a public prekindergarten program and a Head Start program operate, collaborate and coordinate activities with the local educational agency or other public agency responsible for the operation of the prekindergarten program and providers of prekindergarten, including outreach activities to identify eligible children.

(B) With the permission of the parents of children enrolled in the Head Start program, regularly communicate with the schools in which the children will enroll following the program, to—

(i) share information about such children;

(ii) collaborate with the teachers in such schools regarding professional development and instructional strategies, as appropriate; and

(iii) ensure a smooth transition to school for such children.

(3) Coordinate activities and collaborate with programs under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.], the agencies responsible for administering section 5106a of this title and parts B and E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.], programs under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.), programs under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.), and other entities providing early childhood education and development programs or services, serving the children and families served by the Head Start agency.

(4) Take steps to coordinate activities with the local educational agency serving the community involved and with schools in which children participating in the Head Start program will enroll following the program, including—

(A) collaborating on the shared use of transportation and facilities, in appropriate cases;

(B) collaborating to reduce the duplication and enhance the efficiency of services while increasing the program participation of underserved populations of eligible children; and

(C) exchanging information on the provision of noneducational services to such children.

(5) Enter into a memorandum of understanding, not later than 1 year after December 12, 2007, with the appropriate local entity responsible for managing publicly funded preschool programs in the service area of the Head Start agency, that shall—

(A)(i) provide for a review of each of the activities described in clause (ii); and

(ii) include plans to coordinate, as appropriate, activities regarding—

(I) educational activities, curricular objectives, and instruction;

(II) public information dissemination and access to programs for families contacting the Head Start program or any of the preschool programs;

(III) selection priorities for eligible children to be served by programs;

(IV) service areas;

(V) staff training, including opportunities for joint staff training on topics such as academic content standards, instructional methods, curricula, and social and emotional development;

(VI) program technical assistance;

(VII) provision of additional services to meet the needs of working parents, as applicable;

(VIII) communications and parent outreach for smooth transitions to kindergarten as required in paragraphs (3) and (6) of section 9837a(a) of this title;

(IX) provision and use of facilities, transportation, and other program elements; and

(X) other elements mutually agreed to by the parties to such memorandum;

(B) be submitted to the Secretary and the State Director of Head Start Collaboration not later than 30 days after the parties enter into such memorandum, except that—

(i) where there is an absence of publicly funded preschool programs in the service area of a Head Start agency, this paragraph shall not apply; or

(ii) where the appropriate local entity responsible for managing the publicly funded preschool programs is unable or unwilling to enter into such a memorandum, this paragraph shall not apply and the Head Start agency shall inform the Secretary and the State Director of Head Start Collaboration of such inability or unwillingness; and

(C) be revised periodically and renewed biennially by the parties to such memorandum, in alignment with the beginning of the school year.

(f) Quality standards, curricula, and assessment

To be so designated, each Head Start agency shall—

(1) take steps to ensure, to the maximum extent practicable, that children maintain the developmental and educational gains achieved in Head Start programs and build upon such gains in further schooling;

(2) establish a program with the standards set forth in section 9836a(a)(1) of this title, with particular attention to the standards set forth in subparagraphs (A) and (B) of such section;

(3) implement a research-based early childhood curriculum that—

(A) promotes young children's school readiness in the areas of language and cognitive development, early reading and mathematics skills, socio-emotional development, physical development, and approaches to learning;

(B) is based on scientifically valid research and has standardized training procedures and curriculum materials to support implementation;

(C) is comprehensive and linked to ongoing assessment, with developmental and learning goals and measurable objectives;

(D) is focused on improving the learning environment, teaching practices, family involvement, and child outcomes across all areas of development; and

(E) is aligned with the Head Start Child Outcomes Framework developed by the Secretary and, as appropriate, State early learning standards;

(4) implement effective interventions and support services that help promote the school readiness of children participating in the program;

(5) use research-based assessment methods that reflect the characteristics described in section 9836a(b)(2) of this title in order to support the educational instruction and school readiness of children in the program;

(6) use research-based developmental screening tools that have been demonstrated to be standardized, reliable, valid, and accurate for the child being assessed, to the maximum extent practicable, for the purpose of meeting the relevant standards described in section 9836a(a)(1) of this title;

(7) adopt, in consultation with experts in child development and with classroom teachers, an evaluation to assess whether classroom teachers have mastered the functions discussed in section 9843a(a)(1) of this title;

(8) use the information provided from the assessment conducted under section 9836a(c)(2)(F) of this title to inform professional development plans, as appropriate, that lead to improved teacher effectiveness;

(9) establish goals and measurable objectives for the provision of health, educational, nutritional, and social services provided under this subchapter and related to the program mission and to promote school readiness; and

(10) develop procedures for identifying children who are limited English proficient, and informing the parents of such children about the instructional services used to help children make progress towards acquiring the knowledge and skills described in section 9836a(a)(1)(B) of this title and acquisition of the English language.

(g) Funded enrollment; waiting list

Each Head Start agency shall enroll 100 percent of its funded enrollment and maintain an active waiting list at all times with ongoing outreach to the community and activities to identify underserved populations.

(h) Technical assistance and training plan

In order to receive funds under this subchapter, a Head Start agency shall develop an annual technical assistance and training plan. Such plan shall be based on the agency's self-assessment, the communitywide strategic planning and needs assessment, the needs of parents and children to be served by such agency, and the results of the reviews conducted under section 9836a(c) of this title.

(i) Financial management

In order to receive funds under this subchapter, a Head Start agency shall document strong fiscal controls, including the employment of well-qualified fiscal staff with a history of successful management of a public or private organization.

(Pub. L. 97–35, title VI, §642, Aug. 13, 1981, 95 Stat. 502; Pub. L. 99–425, title I, §103, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–501, title I, §109, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102–401, §2(i), (k)(3), Oct. 7, 1992, 106 Stat. 1957, 1959; Pub. L. 103–252, title I, §109, May 18, 1994, 108 Stat. 634; Pub. L. 105–285, title I, §109, Oct. 27, 1998, 112 Stat. 2716; Pub. L. 108–446, title III, §305(l)(4), Dec. 3, 2004, 118 Stat. 2806; Pub. L. 110–134, §9, Dec. 12, 2007, 121 Stat. 1397; Pub. L. 114–95, title IX, §9215(nn)(3), Dec. 10, 2015, 129 Stat. 2177.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (b)(14), (15) and (e)(3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (e)(3), is subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V,

§5082(2), Nov. 5, 1990, 104 Stat. 1388–236, which is classified generally to subchapter II–B (§9857 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see section 9857(a) of this title and Tables.

The Social Security Act, referred to in subsec. (e)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts B and E of title IV of the Social Security Act are classified generally to parts B (§620 et seq.) and E (§670 et seq.), respectively, of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (e)(3), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Subtitle B of title VII of the Act is classified generally to part B (§11431 et seq.) of subchapter VI of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2015—Subsec. (b)(4). Pub. L. 114–95, §9215(nn)(3)(A), struck out ", such as entities carrying out Even Start programs under subpart 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6381 et seq.)" after "local entities" in introductory provisions.

Subsec. (e)(3). Pub. L. 114–95, §9215(nn)(3)(B), struck out "Even Start programs under subpart 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6381 et seq.)," before "programs under section 619".

2007—Pub. L. 110–134 amended section generally. Prior to amendment, section related to, in subsec. (a), receipt, administration, and transfer of funds, sponsorship of projects, and delegation of authority, in subsec. (b), participation of parents in decisionmaking and implementation of programs, in subsec. (c), coordination with other agencies, in subsec. (d), transition coordination with schools, and, in subsec. (e), assessment when hiring or evaluating classroom teachers.

2004—Subsec. (c). Pub. L. 108–446 substituted "1431–1444" for "1431–1445".

1998—Subsec. (a). Pub. L. 105–285, §109(1), inserted "or for-profit" after "nonprofit".

Subsec. (b)(6). Pub. L. 105–285, §109(2)(E), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(6)(D) to (F). Pub. L. 105–285, §109(2)(A), struck out subpar. (D) which read as follows: "substance abuse counseling;" and further directed the amendment of par. (6) "by redesignating subparagraphs (E) and (F) and subparagraphs (D) and (E), respectively", which was executed by redesignating subpars. (E) and (F) as (D) and (E), respectively, to reflect the probable intent of Congress.

Subsec. (b)(7). Pub. L. 105–285, §109(2)(D), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 105–285, §109(2)(D), (F), redesignated par. (7) as (8) and substituted "paragraphs (4) through (7)" for "paragraphs (4) through (6)". Former par. (8) redesignated (9).

Pub. L. 105–285, §109(2)(B), struck out "and" at end.

Subsec. (b)(9). Pub. L. 105–285, §109(2)(D), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 105–285, §109(2)(C), substituted "; and" for period at end.

Subsec. (b)(10). Pub. L. 105–285, §109(2)(D), redesignated par. (9) as (10).

Subsec. (b)(11). Pub. L. 105–285, §109(2)(G), added par. (11).

Subsec. (c). Pub. L. 105–285, §109(3), inserted "and collaborate" after "shall coordinate" and "and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C 1431–1445, 1419)" after "(20 U.S.C. 2741 et seq.)" and substituted "the State program carried out under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), and other early childhood education and development" for "section 602(g) of this title, and other".

Subsec. (d)(1). Pub. L. 105–285, §109(4)(A), substituted "take steps to ensure, to the maximum extent possible, that children maintain" for "carry out the actions specified in this subsection, to the extent feasible and appropriate in the circumstances (including the extent to which such agency is able to secure the cooperation of parents and schools) to enable children to maintain" and "build" for "to build" and inserted "and educational" after "developmental".

Subsec. (d)(2), (3). Pub. L. 105–285, §109(4)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to coordination between Head Start agency and local education agency and schools.

Subsec. (d)(4). Pub. L. 105–285, §109(4)(C), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (d)(4)(A). Pub. L. 105–285, §109(4)(D), substituted "section 9837a of this title" for "the Head Start Transition Project Act (42 U.S.C. 9855 et seq.)".

Subsec. (d)(5). Pub. L. 105–285, §109(4)(C), redesignated par. (5) as (4).

Subsec. (e). Pub. L. 105–285, §109(5), added subsec. (e).

1994—Subsec. (b). Pub. L. 103–252, §109(1), amended subsec. (b) generally. Prior to amendment, subsec.

(b) read as follows: "In order to be so designated, a Head Start agency must also (1) establish effective procedures by which parents and area residents concerned will be enabled to directly participate in decisions that influence the character of programs affecting their interests; (2) provide for their regular participation in the implementation of such programs; (3) provide technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources; (4) involve parents of children participating in its Head Start program in appropriate educational services (in accordance with the performance standards in effect upon section 9846(b) of this title or through referral of such parents to educational services available in the community) in order to aid their children to attain their full potential; (5) establish procedures to seek reimbursement, to the extent feasible, from other agencies for services for which any such other agency is responsible, which are provided to a Head Start participant by the Head Start agency; (6) provide (directly or through referral to educational services available in the community) parents of children participating in its Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and (7) consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources."

Subsec. (c). Pub. L. 103–252, §109(2), struck out "schools that will subsequently serve children in Head Start programs," after "coordinate with" and inserted ", including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.)," after "other programs".

Subsec. (d). Pub. L. 103–252, §109(3), added subsec. (d).

1992—Subsec. (b)(6), (7). Pub. L. 102–401, §2(i), added cls. (6) and (7).

Subsec. (c). Pub. L. 102–401, §2(k)(3), substituted "subchapter" for "subtitle".

1990—Subsec. (b)(4), (5). Pub. L. 101–501, §109(1), added cl. (4) and redesignated former cl. (4) as (5).

Subsec. (c). Pub. L. 101–501, §109(2), substituted "with schools that will subsequently serve children in Head Start programs, the State agency responsible for administering section 602(g) of this title, and other programs serving the children and families served by the Head Start agency to carry out the provisions of this subtitle" for "with other State and local programs serving the children in the Head Start agency to carry out the provisions of this subsection".

1986—Subsec. (c). Pub. L. 99–425 inserted "State and local" before "programs".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

§9837a. Head Start transition and alignment with K–12 education

(a) In general

Each Head Start agency shall take steps to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program to promote continuity of services and effective transitions, including—

(1) developing and implementing a systematic procedure for transferring, with parental consent, Head Start program records for each participating child to the school in which such child will enroll;

(2) establishing ongoing channels of communication between Head Start staff and their counterparts in the schools (including teachers, social workers, local educational agency liaisons designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)), and health staff) to facilitate coordination of programs;

(3) establishing ongoing communications between the Head Start agency and local educational agency for developing continuity of developmentally appropriate curricular objectives (which for the purpose of the Head Start program shall be aligned with the Head Start Child Outcomes Framework and, as appropriate, State early learning standards) and for shared expectations for children's learning and development as the children transition to school;

(4) organizing and participating in joint training, including transition-related training for school staff and Head Start staff;

(5) establishing comprehensive transition policies and procedures that support children transitioning to school, including by engaging the local educational agency in the establishment of such policies;

(6) conducting outreach to parents and elementary school (such as kindergarten) teachers to discuss the educational, developmental, and other needs of individual children;

(7) helping parents of limited English proficient children understand—

(A) the instructional and other services provided by the school in which such child will enroll after participation in Head Start; and

(B) as appropriate, the information provided to parents of English learners under section 1112(e)(3) of the Elementary and Secondary Education Act of the [1] 1965 [20 U.S.C. 6312(e)(3)];

(8) developing and implementing a family outreach and support program, in cooperation with entities carrying out parent and family engagement efforts under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], and family outreach and support efforts under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.), taking into consideration the language needs of parents of limited English proficient children;

(9) assisting families, administrators, and teachers in enhancing educational and developmental continuity and continuity of parental involvement in activities between Head Start services and elementary school classes;

(10) linking the services provided in such Head Start program with educational services, including services relating to language, literacy, and numeracy, provided by such local educational agency;

(11) helping parents (including grandparents and kinship caregivers, as appropriate) to understand the importance of parental involvement in a child's academic success while teaching them strategies for maintaining parental involvement as their child moves from Head Start to elementary school;

(12) helping parents understand the instructional and other services provided by the school in which their child will enroll after participation in the Head Start program;

(13) developing and implementing a system to increase program participation of underserved populations of eligible children; and

(14) coordinating activities and collaborating to ensure that curricula used in the Head Start program are aligned with—

(A) the Head Start Child Outcomes Framework, as developed by the Secretary; and

(B) State early learning standards, as appropriate, with regard to cognitive, social, emotional, and physical competencies that children entering kindergarten are expected to demonstrate.

(b) Construction

In this section, a reference to a Head Start agency, or its program, services, facility, or personnel, shall not be construed to be a reference to an Early Head Start agency, or its program, services, facility, or personnel.

(c) Dissemination and technical assistance

The Secretary, in consultation with the Secretary of Education, shall—

(1) disseminate to Head Start agencies information on effective policies and activities relating to the transition of children from Head Start programs to public schools; and

(2) provide technical assistance to such agencies to promote and assist such agencies to adopt and implement such effective policies and activities.

(Pub. L. 97–35, title VI, §642A, as added Pub. L. 105–285, title I, §110, Oct. 27, 1998, 112 Stat. 2717; amended Pub. L. 110–134, §10, Dec. 12, 2007, 121 Stat. 1407; Pub. L. 114–95, title IX, §9215(nn)(4), Dec. 10, 2015, 129 Stat. 2177.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(8), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(8), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Subtitle B of title VII of the Act is classified generally to part B (§11431 et seq.) of subchapter VI of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2015—Subsec. (a)(7)(B). Pub. L. 114–95, §9215(nn)(4)(A), substituted "the information provided to parents of English learners under section 1112(e)(3) of the Elementary and Secondary Education Act of the 1965" for "the information provided to parents of limited English proficient children under section 3302 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7012)".

Subsec. (a)(8). Pub. L. 114–95, §9215(nn)(4)(B), substituted "parent and family engagement efforts under title I of the Elementary and Secondary Education Act of 1965" for "parental involvement efforts under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.)".

2007—Pub. L. 110–134 amended section generally. Prior to amendment, section related to requirements for Head Start agencies to coordinate with local educational agencies and schools to assist in transition from Head Start to school.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

[1] *So in original.*

§9837b. Head Start collaboration; State early education and care

(a)(1) From amounts made available under section 9835(a)(2)(B)(vi) of this title, the Secretary shall award the collaboration grants described in paragraphs (2), (3), and (4).

(2)(A) The Secretary shall award, upon submission of a written request, a collaboration grant to each State and to each national administrative office serving Indian Head Start programs and migrant or seasonal Head Start programs to facilitate collaboration among Head Start agencies (including Early Head Start agencies) and entities that carry out activities designed to benefit low-income children from birth to school entry, and their families. The national administrative offices shall use the funds made available through the grants to carry out the authorities and responsibilities described in subparagraph (B) and paragraphs (3) and (4), as appropriate.

(B) Grants described in subparagraph (A) shall be used to—

(i) assist Head Start agencies to collaborate with entities involved in State and local planning processes to better meet the needs of low-income children from birth to school entry, and their families;

(ii) assist Head Start agencies to coordinate activities with the State agency responsible for administering the State program carried out under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.] and entities providing resource and referral services in the State, to make full-working-day and full calendar year services available to children;

(iii) promote alignment of curricula used in Head Start programs and continuity of services with the Head Start Child Outcomes Framework and, as appropriate, State early learning standards;

(iv) promote better linkages between Head Start agencies and other child and family agencies, including agencies that provide health, mental health, or family services, or other child or family supportive services, such as services provided under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.); and

(v) carry out the activities of the State Director of Head Start Collaboration authorized in paragraph (4).

(3) In order to improve coordination and delivery of early childhood education and development to children in the State, a State that receives a collaboration grant under paragraph (2) shall—

(A) appoint or designate an individual to serve as, or carry out the responsibilities of, the State Director of Head Start Collaboration;

(B) ensure that the State Director of Head Start Collaboration holds a position with sufficient authority and access to ensure that the collaboration described in paragraph (2) is effective and involves a range of State agencies; and

(C) involve the State Head Start Association in the selection of the Director and involve the Association in determinations relating to the ongoing direction of the collaboration office involved.

(4) The State Director of Head Start Collaboration shall—

(A) not later than 1 year after the State receives a collaboration grant under paragraph (2), conduct an assessment that—

(i) addresses the needs of Head Start agencies in the State with respect to collaboration, coordination and alignment of services, and alignment of curricula and assessments used in Head Start programs with the Head Start Child Outcomes Framework and, as appropriate, State early learning standards;

(ii) shall be updated on an annual basis; and

(iii) shall be made available to the general public within the State;

(B) develop a strategic plan that is based on the assessment described in subparagraph (A) that will—

(i) enhance collaboration and coordination of Head Start services by Head Start agencies with other entities providing early childhood education and development (such as child care or services offered by museums), health care, mental health care, welfare, child protective services, education and community service activities, family literacy services, reading readiness programs (including such programs offered by public and school libraries), services relating to children with disabilities, other early childhood education and development for limited English

proficient children and homeless children, and services provided for children in foster care and children referred to Head Start programs by child welfare agencies, including agencies and State officials responsible for services described in this clause;

(ii) assist Head Start agencies to develop a plan for the provision of full working-day, full calendar year services for children enrolled in Head Start programs who need such services;

(iii) assist Head Start agencies to align curricula and assessments used in Head Start programs with the Head Start Child Outcomes Framework and, as appropriate, State early learning standards;

(iv) enable Head Start agencies to better access professional development opportunities for Head Start staff, such as by working with Head Start agencies to enable the agencies to meet the degree requirements described in section 9843a(a)(2)(A) of this title, including providing distance learning opportunities for Head Start staff, where needed to make higher education more accessible to Head Start staff; and

(v) enable the Head Start agencies to better conduct outreach to eligible families;

(C) promote partnerships between Head Start agencies, State and local governments, and the private sector to help ensure that children from low-income families, who are in Head Start programs or are preschool age, are receiving comprehensive services to prepare the children for elementary school;

(D) consult with the chief State school officer, local educational agencies, and providers of early childhood education and development, at both the State and local levels;

(E) promote partnerships between Head Start agencies, schools, law enforcement, relevant community-based organizations, and substance abuse and mental health treatment agencies to strengthen family and community environments and to reduce the impact on child development of substance abuse, child abuse, domestic violence, and other high-risk behaviors that compromise healthy development;

(F) promote partnerships between Head Start agencies and other organizations in order to enhance Head Start program quality, including partnerships to promote inclusion of more books in Head Start classrooms;

(G) identify other resources and organizations (both public and private) for the provision of in-kind services to Head Start agencies in the State; and

(H) serve on the State Advisory Council in order to assist the efforts of Head Start agencies to engage in effective coordination and collaboration.

(b)(1)(A) The Governor of the State shall—

(i) designate or establish a council to serve as the State Advisory Council on Early Childhood Education and Care for children from birth to school entry (in this subchapter referred to as the "State Advisory Council"); and

(ii) designate an individual to coordinate activities of the State Advisory Council, as described in subparagraph (D)(i).

(B) The Governor may designate an existing entity in the State to serve as the State Advisory Council, and shall appoint representatives to the State Advisory Council at the Governor's discretion. In designating an existing entity, the Governor shall take steps to ensure that its membership includes, to the extent possible, representatives consistent with subparagraph (C).

(C) Members of the State Advisory Council shall include, to the maximum extent possible—

(i) a representative of the State agency responsible for child care;

(ii) a representative of the State educational agency;

(iii) a representative of local educational agencies;

(iv) a representative of institutions of higher education in the State;

(v) a representative of local providers of early childhood education and development services;

(vi) a representative from Head Start agencies located in the State, including migrant and seasonal Head Start programs and Indian Head Start programs;

(vii) the State Director of Head Start Collaboration;

(viii) a representative of the State agency responsible for programs under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.);

(ix) a representative of the State agency responsible for health or mental health care; and

(x) representatives of other entities determined to be relevant by the Governor of the State.

(D)(i) The State Advisory Council shall, in addition to any responsibilities assigned to the Council by the Governor of the State—

(I) conduct a periodic statewide needs assessment concerning the quality and availability of early childhood education and development programs and services for children from birth to school entry, including an assessment of the availability of high-quality pre-kindergarten services for low-income children in the State;

(II) identify opportunities for, and barriers to, collaboration and coordination among Federally-funded and State-funded child development, child care, and early childhood education programs and services, including collaboration and coordination among State agencies responsible for administering such programs;

(III) develop recommendations for increasing the overall participation of children in existing Federal, State, and local child care and early childhood education programs, including outreach to underrepresented and special populations;

(IV) develop recommendations regarding the establishment of a unified data collection system for public early childhood education and development programs and services throughout the State;

(V) develop recommendations regarding statewide professional development and career advancement plans for early childhood educators in the State;

(VI) assess the capacity and effectiveness of 2- and 4-year public and private institutions of higher education in the State toward supporting the development of early childhood educators, including the extent to which such institutions have in place articulation agreements, professional development and career advancement plans, and practice or internships for students to spend time in a Head Start or prekindergarten program; and

(VII) make recommendations for improvements in State early learning standards and undertake efforts to develop high-quality comprehensive early learning standards, as appropriate.

(ii) The State Advisory Council shall hold public hearings and provide an opportunity for public comment on the activities described in clause (i). The State Advisory Council shall submit a statewide strategic report addressing the activities described in clause (i) to the State Director of Head Start Collaboration and the Governor of the State.

(iii) After submission of a statewide strategic report under clause (ii), the State Advisory Council shall meet periodically to review any implementation of the recommendations in such report and any changes in State and local needs.

(2)(A) The Secretary shall use the portion reserved under section 9835(a)(4)(A)(iii) of this title to award, on a competitive basis, one-time startup grants of not less than $500,000 to eligible States to enable such States to pay for the Federal share of developing and implementing a plan pursuant to the responsibilities included under paragraph (1)(D)(i). A State that receives funds under this paragraph shall use such funds to facilitate the development or enhancement of high-quality systems of early childhood education and care designed to improve school preparedness through one or more of the following activities—

(i) promoting school preparedness of children from birth through school entry, including activities to encourage families and caregivers to engage in highly interactive, developmentally and age-appropriate activities to improve children's early social, emotional, and cognitive development, support the transition of young children to school, and foster parental and family involvement in the early education of young children;

(ii) supporting professional development, recruitment, and retention initiatives for early childhood educators;

(iii) enhancing existing early childhood education and development programs and services (in

existence on the date on which the grant involved is awarded), including quality improvement activities authorized under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.]; and

(iv) carrying out other activities consistent with the State's plan and application, pursuant to subparagraph (B).

(B) To be eligible to receive a grant under this paragraph, a State shall prepare and submit to the Secretary a plan and application, for a 3-year period, at such time, in such manner, and containing such information as the Secretary shall require, including—

(i) the statewide strategic report described in paragraph (1)(D)(ii), including a description of the State Advisory Council's responsibilities under paragraph (1)(D)(i);

(ii) a description, for each fiscal year, of how the State will make effective use of funds available under this paragraph, with funds described in subparagraph (C), to create an early childhood education and care system, by developing or enhancing programs and activities consistent with the statewide strategic report described in paragraph (1)(D)(i);

(iii) a description of the State early learning standards and the State's goals for increasing the number of children entering kindergarten ready to learn;

(iv) information identifying the agency or joint interagency office, and individual, designated to carry out the activities under this paragraph, which may be the individual designated under paragraph (1)(A)(ii); and

(v) a description of how the State plans to sustain activities under this paragraph beyond the grant period.

(C) The Federal share of the cost of activities proposed to be conducted under subparagraph (A) shall be 30 percent, and the State shall provide the non-Federal share.

(D) Funds made available under this paragraph shall be used to supplement, and not supplant, other Federal, State, and local funds expended to carry out activities related to early childhood education and care in the State.

(E) Not later than 18 months after the date a State receives a grant under this paragraph, the State shall submit an interim report to the Secretary. A State that receives a grant under this paragraph shall submit a final report to the Secretary at the end of the grant period. Each report shall include—

(i) a description of the activities and services carried out under the grant, including the outcomes of such activities and services in meeting the needs described in the periodic needs assessment and statewide strategic report;

(ii) information about how the State used such funds to meet the goals of this subsection through activities to develop or enhance high-quality systems of early childhood education and care, increase effectiveness of delivery systems and use of funds, and enhance existing programs and services;

(iii) information regarding the remaining needs described in the periodic statewide needs assessment and statewide strategic report that have not yet been addressed by the State; and

(iv) any other information that the Secretary may require.

(F) Nothing in this subsection shall be construed to provide the State Advisory Council with authority to modify, supersede, or negate the requirements of this subchapter.

(Pub. L. 97–35, title VI, §642B, as added and amended Pub. L. 110–134, §11, Dec. 12, 2007, 121 Stat. 1408.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Child Care and Development Block Grant Act of 1990, referred to in subsecs. (a)(2)(B)(ii) and (b)(2)(A)(iii), is subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236, which is classified generally to

subchapter II–B (§9857 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see section 9857(a) of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(2)(B)(iv) and (b)(1)(C)(viii), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–134, §11(b), added subsec. (b).

§9838. Submission of plans to chief executive officer

In carrying out the provisions of this subchapter, no contract, agreement, grant, or other assistance shall be made for the purpose of carrying out a Head Start program within a State unless a plan setting forth such proposed contract, agreement, grant, or other assistance has been submitted to the chief executive officer of the State, and such plan has not been disapproved by such officer within 45 days of such submission, or, if disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State), has been reconsidered by the Secretary and found by the Secretary to be fully consistent with the provisions and in furtherance of the purposes of this subchapter, as evidenced by a written statement of the Secretary's findings that is transmitted to such officer. Funds to cover the costs of the proposed contract, agreement, grant, or other assistance shall be obligated from the appropriation which is current at the time the plan is submitted to such officer. This section shall not, however, apply to contracts, agreements, grants, loans, or other assistance to any institution of higher education in existence on August 13, 1981. This section shall not apply to contracts, agreements, grants, loans, or other assistance for Indian Head Start programs or migrant or seasonal Head Start programs.

(Pub. L. 97–35, title VI, §643, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101–501, title I, §110, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102–401, §2(k)(4), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 105–285, title I, §111, Oct. 27, 1998, 112 Stat. 2718; Pub. L. 110–134, §12, Dec. 12, 2007, 121 Stat. 1414.)

EDITORIAL NOTES

AMENDMENTS

2007—Pub. L. 110–134 inserted at end "This section shall not apply to contracts, agreements, grants, loans, or other assistance for Indian Head Start programs or migrant or seasonal Head Start programs."

1998—Pub. L. 105–285, in first sentence, substituted "45 days" for "30 days" and "disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State)" for "so disapproved" and inserted ", as evidenced by a written statement of the Secretary's findings that is transmitted to such officer" before period.

1992—Pub. L. 102–401 substituted "such officer" for "the such officer" in two places.

1990—Pub. L. 101–501 substituted "chief executive officer" for first reference to "Governor" and "such officer" for second and third references to "Governor".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§9839. Administrative requirements and standards

(a) Employment practices, nonpartisanship, staff accountability, public access to information, etc.

(1) Each Head Start agency shall observe standards of organization, management, and administration that will ensure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of this subchapter and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism. Each such agency shall establish or adopt rules to carry out this section, which shall include rules to assure full staff accountability in matters governed by law, regulations, or agency policy. Each agency shall also provide for reasonable public access to information, including public hearings at the request of appropriate community groups and reasonable public access to books and records of the agency or other agencies engaged in program activities or operations involving the use of authority or funds for which it is responsible.

(2) Each Head Start agency shall make available to the public a report published at least once in each fiscal year that discloses the following information from the most recently concluded fiscal year, except that reporting such information shall not reveal personally identifiable information about an individual child or parent:

(A) The total amount of public and private funds received and the amount from each source.

(B) An explanation of budgetary expenditures and proposed budget for the fiscal year.

(C) The total number of children and families served, the average monthly enrollment (as a percentage of funded enrollment), and the percentage of eligible children served.

(D) The results of the most recent review by the Secretary and the financial audit.

(E) The percentage of enrolled children that received medical and dental exams.

(F) Information about parent involvement activities.

(G) The agency's efforts to prepare children for kindergarten.

(H) Any other information required by the Secretary.

(3) Each such agency shall adopt for itself and other agencies using funds or exercising authority for which it is responsible, rules designed to—

(A) establish specific standards governing salaries, salary increases, travel and per diem allowances, and other employee benefits;

(B) assure that only persons capable of discharging their duties with competence and integrity are employed and that employees are promoted or advanced under impartial procedures calculated to improve agency performance and effectiveness;

(C) guard against personal or financial conflicts of interest; and

(D) define employee duties in an appropriate manner that will in any case preclude employees from participating, in connection with the performance of their duties, in any form of picketing, protest, or other direct action that is in violation of law.

(b) Development and administrative costs of programs

Except as provided in subsection (f), no financial assistance shall be extended under this subchapter in any case in which the Secretary determines that the costs of developing and administering a program assisted under this subchapter exceed 15 percent of the total costs, including the required non-Federal contributions to such costs, of such program. The Secretary shall establish by regulation, criteria for determining (1) the costs of developing and administering such program; and (2) the total costs of such program. In any case in which the Secretary determines that the cost of administering such program does not exceed 15 percent of such total costs but is, in the judgment of the Secretary, excessive, the Secretary shall forthwith require the recipient of such financial assistance to take such steps prescribed by the Secretary as will eliminate such excessive administrative cost, including the sharing by one or more Head Start agencies of a common director

and other administrative personnel. The Secretary may waive the limitation prescribed by this subsection for specific periods of time not to exceed 12 months whenever the Secretary determines that such a waiver is necessary in order to carry out the purposes of this subchapter.

(c) Rules and regulations; special or simplified requirements for small agencies; common or joint use of facilities

The Secretary shall prescribe rules or regulations to supplement subsections (a) and (f), which shall be binding on all agencies carrying on Head Start program activities with financial assistance under this subchapter. The Secretary may, where appropriate, establish special or simplified requirements for smaller agencies or agencies operating in rural areas. Policies and procedures shall be established to ensure that indirect costs attributable to the common or joint use of facilities and services by programs assisted under this subchapter and other programs shall be fairly allocated among the various programs which utilize such facilities and services.

(d) Publication and notification of proposed rules, etc.

At least 30 days prior to their effective date, all rules, regulations, and application forms shall be published in the Federal Register and shall be sent to each grantee with the notification that each such grantee has the right to submit comments pertaining thereto to the Secretary prior to the final adoption thereof.

(e) Neutrality concerning union organizing

Funds appropriated to carry out this subchapter shall not be used to assist, promote, or deter union organizing.

(f) Purchase of facility; approval requirements; financial assistance

(1) The Secretary shall establish uniform procedures for Head Start agencies to request approval to purchase facilities, or to request approval of the purchase (after December 31, 1986) of facilities, to be used to carry out Head Start programs. The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities.

(2) Financial assistance provided under this subchapter may not be used by a Head Start agency to purchase a facility (including paying the cost of amortizing the principal, and paying interest on, loans) to be used to carry out a Head Start program unless the Secretary approves a request that is submitted by such agency and contains—

(A) a description of the efforts by the agency to coordinate or collaborate with other providers in the community to seek assistance, including financial assistance, prior to the use of funds under this section;

(B) a description of the site of the facility proposed to be purchased or that was previously purchased;

(C) the plans and specifications of such facility;

(D) information demonstrating that—

(i) the proposed purchase will result, or the previous purchase has resulted, in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out such program; or

(ii) the lack of alternative facilities will prevent, or would have prevented, the operation of such program;

(E) in the case of a request regarding a previously purchased facility, information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program; and

(F) such other information and assurances as the Secretary may require.

(3) Upon a determination by the Secretary that suitable facilities are not otherwise available to Indian tribes to carry out Head Start programs, and that the lack of suitable facilities will inhibit the operation of such programs, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance to make payments for the purchase of facilities owned by such tribes. The amount of such a payment for such a facility shall not exceed the fair market value of the facility.

(g) Payments for capital expenditures

(1) Upon a determination by the Secretary that suitable facilities (including public school facilities) are not otherwise available to Indian tribes, rural communities, and other low-income communities to carry out Head Start programs, that the lack of suitable facilities will inhibit the operation of such programs, and that construction of such facilities is more cost effective than purchase of available facilities or renovation, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance under this subchapter to make payments for capital expenditures related to facilities that will be used to carry out such programs. The Secretary shall establish uniform procedures for Head Start agencies to request approval for such payments, and shall promote, to the extent practicable, the collocation of Head Start programs with other programs serving low-income children and families.

(2) Such payments may be used for capital expenditures (including paying the cost of amortizing the principal, and paying interest on, loans) such as expenditures for—

(A) construction of facilities that are not in existence on the date of the determination;

(B) major renovation of facilities in existence on such date; and

(C) purchase of vehicles used for programs conducted at the Head Start facilities.

(3) All laborers and mechanics employed by contractors or subcontractors in the construction or renovation of facilities to be used to carry out Head Start programs shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40.

(h) Personnel preferences to Indian tribe members

In all personnel actions of the American Indian Programs Branch of the Head Start Bureau of the Administration for Children and Families, the Secretary shall give the same preference to individuals who are members of an Indian tribe as the Secretary gives to a disabled veteran, as defined in section 2108(3)(C) of title 5. The Secretary shall take such additional actions as may be necessary to promote recruitment of such individuals for employment in the Administration.

(Pub. L. 97–35, title VI, §644, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101–501, title I, §§111, 112, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102–401, §2(j), Oct. 7, 1992, 106 Stat. 1958; Pub. L. 103–218, title IV, §403, Mar. 9, 1994, 108 Stat. 96; Pub. L. 103–252, title I, §110, May 18, 1994, 108 Stat. 636; Pub. L. 105–285, title I, §106(e), Oct. 27, 1998, 112 Stat. 2712; Pub. L. 110–134, §13, Dec. 12, 2007, 121 Stat. 1414.)

EDITORIAL NOTES

CODIFICATION

In subsec. (g)(3), "sections 3141–3144, 3146, and 3147 of title 40" substituted for "the Act of March 3, 1931, as amended (40 U.S.C. 276a et seq., commonly known as the 'Davis-Bacon Act')" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–134, §13(1), added subsec. (a) and struck out former subsec. (a) which related to employment practices, nonpartisanship, staff accountability, and public access to information.

Subsec. (f)(2). Pub. L. 110–134, §13(2)(A), added subpar. (A) and redesignated former subpars. (A) to (E) as (B) to (F), respectively.

Subsec. (f)(3). Pub. L. 110–134, §13(2)(B), struck out ", from the amount reserved under section 9835(a)(2)(A) of this title," after "financial assistance".

1998—Subsec. (f)(2). Pub. L. 105–285 substituted "Financial assistance" for "Except as provided in section 9835(a)(3)(C)(v) of this title, financial assistance".

1994—Subsec. (d). Pub. L. 103–252, §110(1), struck out "guidelines, instructions," after "all rules, regulations,".

Subsec. (f)(1). Pub. L. 103–218, §403(1), inserted ", or to request approval of the purchase (after December 31, 1986) of facilities," after "to purchase facilities" and inserted at end "The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities."

Subsec. (f)(2). Pub. L. 103–252, §110(2)(A), substituted "section 9835(a)(3)(C)(v)" for "section 9835(a)(3)(A)(v)".

Subsec. (f)(2)(A). Pub. L. 103–218, §403(2)(A), inserted before semicolon at end "or that was previously purchased".

Subsec. (f)(2)(C)(i). Pub. L. 103–218, §403(2)(B)(i), inserted ", or the previous purchase has resulted," after "purchase will result".

Subsec. (f)(2)(C)(ii). Pub. L. 103–218, §403(2)(B)(ii), inserted ", or would have prevented," after "will prevent" and struck out "and" after semicolon at end.

Subsec. (f)(2)(D), (E). Pub. L. 103–218, §403(2)(C), (D), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (f)(3). Pub. L. 103–252, §110(2)(B), added par. (3).

Subsecs. (g), (h). Pub. L. 103–252, §110(3), added subsecs. (g) and (h).

1992—Subsec. (b). Pub. L. 102–401, §2(j)(1), substituted "Except as provided in subsection (f), no" for "No".

Subsec. (c). Pub. L. 102–401, §2(j)(2), substituted "subsections (a) and (f)" for "subsection (a)".

Subsec. (f). Pub. L. 102–401, §2(j)(3), added subsec. (f).

1990—Subsec. (b). Pub. L. 101–501, §111, inserted "the required" before "non-Federal contributions".

Subsec. (e). Pub. L. 101–501, §112, added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

STUDY OF BENEFITS FOR HEAD START EMPLOYEES

Pub. L. 103–252, title I, §120, May 18, 1994, 108 Stat. 648, provided that:

"(a) STUDY.—The Secretary of Health and Human Services shall conduct a study regarding the benefits available to individuals employed by Head Start agencies under the Head Start Act (42 U.S.C. 9831 et seq.).

"(b) REPORT.—

"(1) PREPARATION.—The Secretary shall prepare a report, containing the results of the study, that—

"(A) describes the benefits, including health care benefits, family and medical leave, and retirement pension benefits, available to such individuals;

"(B) includes recommendations for increasing the access of the individuals to benefits, including access to a retirement pension program; and

"(C) addresses the feasibility of participation by such individuals in the Federal Employees' Retirement System under chapter 84 of title 5, United States Code.

"(2) SUBMISSION.—The Secretary shall submit the report to the appropriate committees of

Congress."

§9840. Participation in Head Start programs

(a) Criteria for eligibility

(a)(1)(A) [1] The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter.

(B) Except as provided in paragraph (2), such regulation shall provide—

(i) that children from low-income families shall be eligible for participation in programs assisted under this subchapter if their families' incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance;

(ii) that homeless children shall be deemed to be eligible for such participation;

(iii) that programs assisted under this subchapter may include—

(I) to a reasonable extent (but not to exceed 10 percent of participants), participation of children in the area served who would benefit from such programs but who are not eligible under clause (i) or (ii); and

(II) from the area served, an additional 35 percent of participants who are not eligible under clause (i) or (ii) and whose families have incomes below 130 percent of the poverty line, if—

(aa) the Head Start agency involved establishes and implements outreach and enrollment policies and procedures that ensure such agency is meeting the needs of children eligible under clause (i) or (ii) (or subclause (I) if the child involved has a disability) prior to meeting the needs of children eligible under this subclause; and

(bb) in prioritizing the selection of children to be served, the Head Start agency establishes criteria that provide that the agency will serve children eligible under clause (i) or (ii) prior to serving the children eligible under this subclause;

(iv) that any Head Start agency serving children eligible under clause (iii)(II) shall report annually to the Secretary information on—

(I) how such agency is meeting the needs of children eligible under clause (i) or (ii), in the area served, including local demographic data on families of children eligible under clause (i) or (ii);

(II) the outreach and enrollment policies and procedures established by the agency that ensure the agency is meeting the needs of children eligible under clause (i) or (ii) (or clause (iii)(I) if the child involved has a disability) prior to meeting the needs of children eligible under clause (iii)(II);

(III) the efforts, including outreach efforts (that are appropriate to the community involved), of such agency to be fully enrolled with children eligible under clause (i) or (ii);

(IV) the policies, procedures, and selection criteria such agency is implementing to serve eligible children, consistent with clause (iii)(II);

(V) the agency's enrollment level, and enrollment level over the fiscal year prior to the fiscal year in which the report is submitted;

(VI) the number of children served by the agency, disaggregated by whether such children are eligible under clause (i), clause (ii), clause (iii)(I), or clause (iii)(II); and

(VII) the eligibility criteria category of the children on the agency's waiting list;

(v) that a child who has been determined to meet the eligibility criteria described in this subparagraph and who is participating in a Head Start program in a program year shall be considered to continue to meet the eligibility criteria through the end of the succeeding program year.

(C) In determining, for purposes of this paragraph, whether a child who has applied for enrollment

in a Head Start program meets the eligibility criteria, an entity may consider evidence of family income during the 12 months preceding the month in which the application is submitted, or during the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

(2) Whenever a Head Start program is operated in a community with a population of 1,000 or less individuals and—

(A) there is no other preschool program in the community;

(B) the community is located in a medically underserved area, as designated by the Secretary pursuant to section 254c(b)(3) [2] of this title and is located in a health professional shortage area, as designated by the Secretary pursuant to section 254e(a)(1) of this title;

(C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B); and

(D) not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1);

the Head Start program in each such locality shall establish the criteria for eligibility, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program. During the period beginning on October 30, 1984, and ending on October 1, 1994, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.

(3)(A) In this paragraph:

(i) The term "dependent" has the meaning given the term in paragraphs (2)(A) and (4)(A)(i) of section 401(a) of title 37.

(ii) The terms "member" and "uniformed services" have the meanings given the terms in paragraphs (23) and (3), respectively, of section 101 of title 37.

(B) The following amounts of pay and allowance of a member of the uniformed services shall not be considered to be income for purposes of determining the eligibility of a dependent of such member for programs funded under this subchapter:

(i) The amount of any special pay payable under section 310 or 351 of title 37, relating to duty subject to hostile fire or imminent danger.

(ii) The amount of basic allowance payable under section 403 of such title, including any such amount that is provided on behalf of the member for housing that is acquired or constructed under the alternative authority for the acquisition and improvement of military housing under subchapter IV of chapter 169 of title 10 or any other related provision of law.

(4) After demonstrating a need through a communitywide strategic planning and needs assessment, a Head Start agency may apply to the Secretary to convert part-day sessions, particularly consecutive part-day sessions, into full-working-day sessions.

(5)(A) Upon written request and pursuant to the requirements of this paragraph, a Head Start agency may use funds that were awarded under this subchapter to serve children age 3 to compulsory school age, in order to serve infants and toddlers if the agency submits an application to the Secretary containing, as specified in rules issued by the Secretary, all of the following information:

(i) The amount of such funds that are proposed to be used in accordance with section 9840a(b) of this title.

(ii) A communitywide strategic planning and needs assessment demonstrating how the use of such funds would best meet the needs of the community.

(iii) A description of how the needs of pregnant women, and of infants and toddlers, will be addressed in accordance with section 9840a(b) of this title, and with regulations prescribed by the

Secretary pursuant to section 9836a of this title in areas including the agency's approach to child development and provision of health services, approach to family and community partnerships, and approach to program design and management.

(iv) A description of how the needs of eligible children will be met in the community.

(v) Assurances that the agency will participate in technical assistance activities (including planning, start-up site visits, and national training activities) in the same manner as recipients of grants under section 9840a of this title.

(vi) Evidence that the agency meets the same eligibility criteria as recipients of grants under section 9840a of this title.

(B) An application that satisfies the requirements specified in subparagraph (A) shall be approved by the Secretary unless the Secretary finds that—

(i) the agency lacks adequate capacity and capability to carry out an effective Early Head Start program; or

(ii) the information provided under subparagraph (A) is inadequate.

(C) In approving such applications, the Secretary shall take into account the costs of serving persons under section 9840a of this title.

(D) Any Head Start agency with an application approved under subparagraph (B) shall be considered to be an Early Head Start agency and shall be subject to the same rules, regulations, and conditions as apply to recipients of grants under section 9840a of this title, with respect to activities carried out under this paragraph.

(b) Establishment of fee schedule or charging of fees; payment by families willing and able to pay

The Secretary shall not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in Head Start programs, unless such fees are authorized by legislation hereafter enacted. Nothing in this subsection shall be construed to prevent the families of children who participate in Head Start programs and who are willing and able to pay the full cost of such participation from doing so. A Head Start agency that provides a Head Start program with full-working-day services in collaboration with other agencies or entities may collect a family copayment to support extended day services if a copayment is required in conjunction with the collaborative. The copayment charged to families receiving services through the Head Start program shall not exceed the copayment charged to families with similar incomes and circumstances who are receiving the services through participation in a program carried out by another agency or entity.

(c) Availability of more than one year of services; children eligible

Each Head Start program operated in a community shall be permitted to provide more than 1 year of Head Start services to eligible children in the State. Each Head Start program operated in a community shall be permitted to recruit and accept applications for enrollment of children throughout the year.

(d) Indian tribes

(1) An Indian tribe that—

(A) operates a Head Start program;

(B) enrolls as participants in the program all children in the community served by the tribe (including a community that is an off-reservation area, designated by an appropriate tribal government, in consultation with the Secretary) from families that meet the low-income criteria prescribed under subsection (a)(1)(A); and

(C) has the resources to enroll additional children in the community who do not meet the low-income criteria;

may enroll such additional children in a Head Start program, in accordance with this subsection, if the program predominantly serves children who meet the low-income criteria.

(2) The Indian tribe shall enroll the children in the Head Start program in accordance with such requirements as the Secretary may specify by regulation promulgated after consultation with Indian tribes.

(3) Notwithstanding any other provision of this Act, an Indian tribe or tribes that operates both an Early Head Start program under section 9840a of this title and a Head Start program may, at its discretion, at any time during the grant period involved, reallocate funds between the Early Head Start program and the Head Start program in order to address fluctuations in client populations, including pregnant women and children from birth to compulsory school age. The reallocation of such funds between programs by an Indian tribe or tribes during a year shall not serve as the basis for the Secretary to reduce a base grant (as defined in section 9835(a)(7) of this title) for either program in succeeding years.

(Pub. L. 97–35, title VI, §645, Aug. 13, 1981, 95 Stat. 504; Pub. L. 98–558, title I, §105, Oct. 30, 1984, 98 Stat. 2879; Pub. L. 99–425, title I, §104, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–501, title I, §§113, 114, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 101–597, title IV, §401(e), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–252, title I, §111, May 18, 1994, 108 Stat. 637; Pub. L. 105–285, title I, §112, Oct. 27, 1998, 112 Stat. 2718; Pub. L. 110–134, §14, Dec. 12, 2007, 121 Stat. 1415; Pub. L. 114–328, div. A, title VI, §618(j), Dec. 23, 2016, 130 Stat. 2161.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 254c of this title, referred to in subsec. (a)(2)(B), was in the original a reference to section 330 of the Public Health Service Act, act July 1, 1944, which was omitted in the general amendment of subpart I (§254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104–299, §2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

This Act, referred to in subsec. (d)(3), is Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, known as the Omnibus Budget Reconciliation Act of 1981. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2016—Subsec. (a)(3)(B)(i). Pub. L. 114–328 inserted "or 351" after "section 310".

2007—Subsec. (a). Pub. L. 110–134, §14(1)(A), added par. (a)(1) and struck out former par. (1) which related to criteria for eligibility for participation in Head Start programs assisted under this subchapter.

Subsec. (a)(3) to (5). Pub. L. 110–134, §14(1)(B), added pars. (3) to (5).

Subsec. (c). Pub. L. 110–134, §14(2), struck out "(age 3 to compulsory school attendance)" after "eligible children".

Subsec. (d)(3). Pub. L. 110–134, §14(3), added par. (3) and struck out former par. (3) which read as follows: "In providing services through a Head Start program to such children, the Indian tribe may not use funds that the Secretary has determined, in accordance with section 9835(g)(3) of this title, are to be used for expanding Head Start programs under this subchapter."

1998—Subsec. (a)(1). Pub. L. 105–285, §112(a), substituted "criteria may provide—" for "criteria may provide", realigned margins of subpars. (A) and (B), in subpar. (B) substituted "shall prescribe, that—" for "shall prescribe, that", inserted "(i)" before "programs assisted under this subchapter may", and substituted "subparagraph (A); and", cl. (ii), and concluding provisions for "clause (A)."

Subsec. (b). Pub. L. 105–285, §112(b), inserted at end "A Head Start agency that provides a Head Start program with full-working-day services in collaboration with other agencies or entities may collect a family copayment to support extended day services if a copayment is required in conjunction with the collaborative. The copayment charged to families receiving services through the Head Start program shall not exceed the copayment charged to families with similar incomes and circumstances who are receiving the services through participation in a program carried out by another agency or entity."

Subsec. (c). Pub. L. 105–285, §112(c), inserted at end "Each Head Start program operated in a community shall be permitted to recruit and accept applications for enrollment of children throughout the year."

Subsec. (d)(1)(B). Pub. L. 105–285, §112(d), substituted "a community that is an off-reservation area, designated by an appropriate tribal government, in consultation with the Secretary" for "a community with a near-reservation designation, as defined by the Bureau of Indian Affairs".

1994—Subsec. (c). Pub. L. 103–252, §111(1), substituted "shall be permitted to provide more than 1 year

of Head Start services to eligible children (age 3 to compulsory school attendance) in the State." for "may provide more than one year of Head Start services to children from age 3 to the age of compulsory school attendance in the State in which the Head Start program is located. The Secretary may not issue or enforce any rule (as defined in section 551(4) of title 5) or guideline that forbids any Head Start agency to carry out a Head Start program in accordance with the authority described in the preceding sentence."

Subsec. (d). Pub. L. 103–252, §111(2), added subsec. (d).

1990—Subsec. (a)(2). Pub. L. 101–501, §113, substituted "1994" for "1990" in closing provisions.

Subsec. (a)(2)(B). Pub. L. 101–597 substituted "health professional shortage area" for "health manpower shortage area".

Subsec. (c). Pub. L. 101–501, §114, inserted at end "The Secretary may not issue or enforce any rule (as defined in section 551(4) of title 5) or guideline that forbids any Head Start agency to carry out a Head Start program in accordance with the authority described in the preceding sentence."

1986—Subsec. (a)(2). Pub. L. 99–425 substituted "1990" for "1986" in closing provisions.

1984—Subsec. (a)(2). Pub. L. 98–558, §105(a), inserted at end "During the period beginning on October 30, 1984, and ending on October 1, 1986, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs."

Subsec. (c). Pub. L. 98–558, §105(b), added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

SELECTION CRITERIA FOR INDIAN TRIBE OPERATING HEAD START PROGRAM

Pub. L. 118–47, div. D, title II, §238, Mar. 23, 2024, 138 Stat. 681, provided that: "In this fiscal year and each fiscal year thereafter, notwithstanding the income eligibility requirements of subsections (a) and paragraphs (1) and (2) of subsection (d) of section 645 of the Head Start Act [42 U.S.C. 9840] and income eligibility criteria and allowances prescribed in regulations, an Indian tribe that operates a Head Start program may, at its discretion, establish selection criteria, including criteria to prioritize children in families for which a child, a family member, or a member of the same household, is a member of an Indian tribe, to enroll children who would benefit from the Head Start program."

SELECTION CRITERIA FOR AGENCY OPERATING MIGRANT OR SEASONAL HEAD START PROGRAM

Pub. L. 118–47, div. D, title II, §239, Mar. 23, 2024, 138 Stat. 681, provided that: "In this fiscal year and each fiscal year thereafter, notwithstanding the income eligibility requirements of subsection (a) of section 645 of the Head Start Act [42 U.S.C. 9840] and income eligibility criteria and allowances prescribed in regulations, an agency that operates a migrant or seasonal Head Start program may, at its discretion, establish selection criteria to enroll children who would benefit from the Head Start program, giving priority to children of migrant farmworker families: *Provided*, That such selection criteria shall limit that enrollment to children who have at least one family member whose income comes primarily from agricultural employment as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802)."

[1] *So in original. The "(a)" probably should not appear.*

[2] *See References in Text note below.*

§9840a. Early Head Start programs

(a) In general

The Secretary shall make grants to entities (referred to in this subchapter as "Early Head Start agencies") in accordance with this section for programs (referred to in this subchapter as "Early Head Start programs") providing family-centered services for low-income families with very young children designed to promote the development of the children, and to enable their parents to fulfill their roles as parents and to move toward self-sufficiency.

(b) Scope and design of programs

In carrying out a program described in subsection (a), an entity receiving assistance under this section shall—

(1) provide, either directly or through referral, early, continuous, intensive, and comprehensive child development and family support services that will enhance the physical, social, emotional, and intellectual development of participating children;

(2) ensure that the level of services provided to families responds to their needs and circumstances;

(3) promote positive parent-child interactions;

(4) provide services to parents to support their role as parents (including parenting skills training and training in basic child development) and services to help the families move toward self-sufficiency (including educational and employment services, as appropriate);

(5) coordinate services with services provided by programs in the State (including home-based services) and programs in the community (including programs for infants and toddlers with disabilities and programs for homeless infants and toddlers) to ensure a comprehensive array of services (such as health and mental health services and family support services);

(6) ensure that children with documented behavioral problems, including problems involving behavior related to prior or existing trauma, receive appropriate screening and referral;

(7) ensure formal linkages with local Head Start programs in order to provide for continuity of services for children and families;

(8) develop and implement a systematic procedure for transitioning children and parents from an Early Head Start program to a Head Start program or other local early childhood education and development program;

(9) establish channels of communication between staff of the Early Head Start program, and staff of a Head Start program or other local providers of early childhood education and development programs, to facilitate the coordination of programs;

(10) in the case of a Head Start agency that operates a program and that also provides Head Start services through the age of mandatory school attendance, ensure that children and families participating in the program receive such services through such age;

(11) ensure formal linkages with providers of early intervention services for infants and toddlers with disabilities under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), with the State interagency coordinating council, as established in part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), and with the agency responsible for administering section 5106a of this title;

(12) meet such other requirements concerning design and operation of the program described in subsection (a) as the Secretary may establish.

(c) Persons eligible to participate

Persons who may participate in programs described in subsection (a) include—

(1) pregnant women; and

(2) families with children under age 3;

who meet the eligibility criteria specified in section 9840(a)(1) of this title, including the criteria specified in section 9840(a)(1)(B)(ii) of this title.

(d) Eligible service providers

To be eligible to receive assistance under this section, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Entities that may apply to carry out activities under this section include—

(1) entities operating Head Start programs under this subchapter;

(2) entities operating Indian Head Start programs or migrant or seasonal Head Start programs; and

(3) other public entities, and nonprofit or for-profit private entities, including community-based and faith-based organizations, capable of providing child and family services that meet the standards for participation in programs under this subchapter and meet such other appropriate requirements relating to the activities under this section as the Secretary may establish.

(e) Selection of grant recipients

The Secretary shall award grants under this section on a competitive basis to applicants meeting the criteria specified in subsection (d) (giving priority to entities with a record of providing early, continuous, and comprehensive childhood development and family services).

(f) Distribution

In awarding grants to eligible applicants under this section, the Secretary shall—

(1) ensure an equitable national geographic distribution of the grants; and

(2) award grants to applicants proposing to serve communities in rural areas and to applicants proposing to serve communities in urban areas.

(g) Monitoring, training, technical assistance, and evaluation

(1) Requirement

In order to ensure the successful operation of programs assisted under this section, the Secretary shall use funds made available under section 9835(a)(2)(E) of this title to monitor the operation of such programs, and funds made available under section 9835(a)(2)(C)(i)(I) of this title to provide training and technical assistance tailored to the particular needs of such programs, consistent with section 9835(c) of this title.

(2) Training and technical assistance

(A) Activities

Of the portion set aside under section 9835(a)(2)(C)(i)(I) of this title—

(i) not less than 50 percent shall be made available to Early Head Start agencies to use directly, which may include, at their discretion, the establishment of local or regional agreements with community experts, institutions of higher education, or private consultants, for training and technical assistance activities in order to make program improvements identified by such agencies;

(ii) not less than 25 percent shall be available to the Secretary to support a State-based training and technical assistance system, or a national system, described in section 9843(e) of this title, including infant and toddler specialists, to support Early Head Start agencies, consistent with subparagraph (B); and

(iii) the remainder of such amount shall be made available to the Secretary to assist Early Head Start agencies in meeting and exceeding the standards described in section 9836a(a)(1) of this title (directly, or through grants, contracts, or other agreements or arrangements with an entity with demonstrated expertise relating to infants, toddlers, and families) by—

(I) providing ongoing training and technical assistance to Early Head Start agencies, including developing training and technical assistance materials and resources to support program development and improvement and best practices in providing services to children and families served by Early Head Start programs;

(II) supporting a national network of infant and toddler specialists designed to improve the quality of Early Head Start programs;

(III) providing ongoing training and technical assistance on Early Head Start program development and improvement for regional staff charged with monitoring and overseeing the administration of the program carried out under this section; and

(IV) if funds remain after the activities described in subclauses (I), (II), and (III) are carried out, carry out 1 or more of the following activities:

(aa) Providing support and program planning and implementation assistance for new Early Head Start agencies, including for agencies who want to use funds as described in section 9840(a)(5) of this title to serve infants and toddlers.

(bb) Creating special training and technical assistance initiatives targeted to serving high-risk populations, such as children in the child welfare system and homeless children.

(cc) Providing professional development designed to increase program participation for underserved populations of eligible children.

(B) Contracts

For the purposes of supporting a State-based system, as described in subparagraph (A)(ii), that will meet the needs of Early Head Start agencies and provide high-quality, sustained, and intensive training and technical assistance on programming for infants and toddlers to Early Head Start agencies, and in order to help such agencies meet or exceed the standards described in section 9836a(a)(1) of this title, the Secretary shall—

(i) use funds reserved under subparagraph (A)(ii) in combination with funds reserved under section 9835(a)(2)(C)(i)(II)(bb) of this title to ensure the contracts described in section 9843(e)(1) of this title provide for a minimum of 1 full-time specialist with demonstrated expertise in the development of infants and toddlers; and

(ii) ensure that such contracts and the services provided in the contracts are integrated with and augment the contracts awarded and services provided under section 9843(e) of this title;

(h) Center-based staff

The Secretary shall—

(1) ensure that, not later than September 30, 2010, all teachers providing direct services to children and families participating in Early Head Start programs located in Early Head Start centers, have a minimum of a child development associate credential, and have been trained (or have equivalent coursework) in early childhood development; and

(2) establish staff qualification goals to ensure that not later than September 30, 2012, all such teachers have been trained (or have equivalent coursework) in early childhood development with a focus on infant and toddler development.

(i) Staff qualifications and development

(1) Home visitor staff standards

In order to further enhance the quality of home visiting services provided to families of children participating in home-based, center-based, or combination program options under this subchapter, the Secretary shall establish standards for training, qualifications, and the conduct of home visits for home visitor staff in Early Head Start programs.

(2) Contents of standards

The standards for training, qualifications, and the conduct of home visits shall include content related to—

(A) structured child-focused home visiting that promotes parents' ability to support the child's cognitive, social, emotional, and physical development;

(B) effective strengths-based parent education, including methods to encourage parents as their child's first teachers;

(C) early childhood development with respect to children from birth through age 3;

(D) methods to help parents promote emergent literacy in their children from birth through age 3, including use of research-based strategies to support the development of literacy and language skills for children who are limited English proficient;

(E) ascertaining what health and developmental services the family receives and working with providers of these services to eliminate gaps in service by offering annual health, vision, hearing, and developmental screening for children from birth to entry into kindergarten, when needed;

(F) strategies for helping families coping with crisis; and

(G) the relationship of health and well-being of pregnant women to prenatal and early child development.

(Pub. L. 97–35, title VI, §645A, as added Pub. L. 103–252, title I, §112(a), May 18, 1994, 108 Stat. 638; amended Pub. L. 105–285, title I, §113, Oct. 27, 1998, 112 Stat. 2719; Pub. L. 110–134, §15, Dec. 12, 2007, 121 Stat. 1418.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(11), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2007—Pub. L. 110–134, §15(1), struck out "for families with infants and toddlers" after "programs" in section catchline.

Subsec. (a). Pub. L. 110–134, §15(2), substituted "The Secretary shall make grants to entities (referred to in this subchapter as 'Early Head Start agencies') in accordance with this section for programs (referred to in this subchapter as 'Early Head Start programs')" for "The Secretary shall make grants, in accordance with the provisions of this section for programs".

Subsec. (b)(4). Pub. L. 110–134, §15(3)(A), added par. (4) and struck out former par. (4) which read as follows: "provide services to parents to support their role as parents and to help the families move toward self-sufficiency (including educational and employment services as appropriate);".

Subsec. (b)(5). Pub. L. 110–134, §15(3)(B), added par. (5) and struck out former par. (5) which read as follows: "coordinate services with services provided by programs in the State and programs in the community (including programs for infants and toddlers with disabilities) to ensure a comprehensive array of services (such as health and mental health services);".

Subsec. (b)(6), (7). Pub. L. 110–134, §15(3)(C), (D), added par. (6) and redesignated former par. (6) as (7). Former par. (7) redesignated (10).

Subsec. (b)(8), (9). Pub. L. 110–134, §15(3)(E), added pars. (8) and (9).

Pub. L. 110–134, §15(3)(C), redesignated pars. (8) and (9) as (11) and (12), respectively.

Subsec. (b)(10). Pub. L. 110–134, §15(3)(C), redesignated par. (7) as (10).

Subsec. (b)(11). Pub. L. 110–134, §15(3)(F), added par. (11) and struck out former par. (11) which read as follows: "ensure formal linkages with the agencies and entities described in section 644(b) of the Individuals with Disabilities Education Act (20 U.S.C. 1444(b)) and providers of early intervention services for infants and toddlers with disabilities under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and".

Pub. L. 110–134, §15(3)(C), redesignated par. (8) as (11).

Subsec. (b)(12). Pub. L. 110–134, §15(3)(C), redesignated par. (9) as (12).

Subsec. (c). Pub. L. 110–134, §15(4), substituted "eligibility criteria specified in section 9840(a)(1) of this title, including the criteria specified in section 9840(a)(1)(B)(ii) of this title" for "income criteria specified for families in section 9840(a)(1) of this title" in concluding provisions.

Subsec. (d)(1) to (3). Pub. L. 110–134, §15(5), added pars. (1) to (3) and struck out former pars. (1) and (2) which read as follows:

"(1) entities operating Head Start programs under this subchapter; and

"(2) other public entities, and nonprofit or for-profit private entities, capable of providing child and family services that meet the standards for participation in programs under this subchapter and meet such other

appropriate requirements relating to the activities under this section as the Secretary may establish."

Subsec. (e). Pub. L. 110–134, §15(6), substituted "The Secretary shall award grants under this section" for "From the portion specified in section 9835(a)(6) of this title, the Secretary shall award grants under this subsection".

Subsec. (g). Pub. L. 110–134, §15(7), added subsec. (g) and struck out former subsec. (g) which related to monitoring, training, technical assistance, and evaluation of programs assisted under this section.

Subsecs. (h), (i). Pub. L. 110–134, §15(8), added subsecs. (h) and (i).

1998—Pub. L. 105–285, §113(1), inserted "Early Head Start" in section catchline.

Subsec. (a). Pub. L. 105–285, §113(2), substituted "provisions of this section for" for "provisions of this section for—", struck out par. (1) designation before "programs providing", substituted "self-sufficiency." for "self-sufficiency; and", and struck out par. (2) which read as follows: "provision of training and technical assistance to entities carrying out programs, and evaluation of programs, that were supported under the Comprehensive Child Development Act (42 U.S.C. 9881 et seq.), as in effect on the day before May 18, 1994."

Subsec. (b)(5). Pub. L. 105–285, §113(3)(A), inserted "(including programs for infants and toddlers with disabilities)" after "community".

Subsec. (b)(7). Pub. L. 105–285, §113(3)(B), struck out "and" at end.

Subsec. (b)(8), (9). Pub. L. 105–285, §113(3)(C), (D), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c). Pub. L. 105–285, §113(4)(A), substituted "subsection (a)" for "subsection (a)(1)" in introductory provisions.

Subsec. (c)(2). Pub. L. 105–285, §113(4)(B), substituted "3;" for "3 (or under age 5, in the case of children served by an entity specified in subsection (e)(3) of this section);".

Subsec. (d). Pub. L. 105–285, §113(5), inserted "and" at end of par. (1), redesignated par. (3) as (2), inserted "or for-profit" after "nonprofit", and struck out former par. (2) which read as follows: "entities that, on the day before the date of enactment of this section, were operating—

"(A) Parent-Child Centers receiving financial assistance under section 9835(a)(4) of this title, as in effect on such date; or

"(B) programs receiving financial assistance under the Comprehensive Child Development Act, as in effect on such date; and".

Subsec. (e). Pub. L. 105–285, §113(8), struck out "other" before "grant recipients" in heading and substituted "From the portion specified in section 9835(a)(6) of this title," for "From the balance remaining of the portion specified in section 9835(a)(6) of this title, after making grants to the eligible entities specified in subsection (e) of this section," in text.

Pub. L. 105–285, §113(6), (7), redesignated subsec. (f) as (e) and struck out heading and text of former subsec. (e) which related to time-limited priority for certain entities.

Subsecs. (f), (g). Pub. L. 105–285, §113(7), (10), added subsec. (g) and redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (h). Pub. L. 105–285, §113(9), struck out heading and text of subsec. (h) which related to Secretarial responsibilities.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§9841. Appeals, notice, hearing, and mediation; alternative agency for Indian tribe

(a) Notice requirements; suspension or termination of assistance stayed pending hearing; mediation

The Secretary shall prescribe—

(1) procedures to assure that special notice of and an opportunity for a timely and expeditious appeal to the Secretary will be provided for an agency or organization which desires to serve as a

delegate agency under this subchapter and whose application to the Head Start agency has been wholly or substantially rejected or has not been acted upon within a period of time deemed reasonable by the Secretary, in accordance with regulations which the Secretary shall prescribe;

(2) procedures to assure that financial assistance under this subchapter shall not be suspended, except in emergency situations, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken;

(3) procedures to assure that financial assistance under this subchapter may be terminated or reduced, and an application for refunding may be denied, after the recipient has been afforded reasonable notice and opportunity for a full and fair hearing, including—

(A) a right to file a notice of appeal of a decision not later than 30 days after notice of the decision from the Secretary; and

(B) access to a full and fair hearing of the appeal, not later than 120 days after receipt by the Secretary of the notice of appeal;

(4) procedures (including mediation procedures) are developed and published, to be used in order to—

(A) resolve in a timely manner conflicts potentially leading to an adverse action between—

(i) recipients of financial assistance under this subchapter; and

(ii) delegate agencies, or policy councils of Head Start agencies;

(B) avoid the need for an administrative hearing on an adverse action; and

(C) prohibit a Head Start agency from expending financial assistance awarded under this subchapter for the purpose of paying legal fees, or other costs incurred, pursuant to an appeal under paragraph (3);

(5) procedures to assure that the Secretary may suspend financial assistance to a recipient under this subchapter—

(A) except as provided in subparagraph (B), for not more than 30 days; or

(B) in the case of a recipient under this subchapter that has multiple and recurring deficiencies for 180 days or more and has not made substantial and significant progress toward meeting the goals of the grantee's quality improvement plan or eliminating all deficiencies identified by the Secretary, during the hearing of an appeal described in paragraph (3), for any amount of time; and

(6) procedures to assure that in cases where a Head Start agency prevails in a decision under paragraph (4), the Secretary may determine and provide a reimbursement to the Head Start agency for fees deemed reasonable and customary.

(b) Notification of conflict by Head Start agency to regional office

In prescribing procedures for the mediation described in subsection (a)(4), the Secretary shall specify—

(1) the date by which a Head Start agency engaged in a conflict described in subsection (a)(4) will notify the appropriate regional office of the Department of the conflict; and

(2) a reasonable period for the mediation.

(c) Timeline for administrative hearing

The Secretary shall also specify—

(1) a timeline for an administrative hearing, if necessary, on an adverse action; and

(2) a timeline by which the person conducting the administrative hearing shall issue a decision based on the hearing.

(d) Termination of designation not stayed upon appeal

In any case in which a termination, reduction, or suspension of financial assistance under this subchapter is upheld in an administrative hearing under this section, such termination, reduction, or

suspension shall not be stayed pending any judicial appeal of such administrative decision.

(e) Establishment of alternative agency by Indian tribe

(1) The Secretary shall by regulation specify a process by which an Indian tribe may identify and establish an alternative agency, and request that the alternative agency be designated under section 9836 of this title as the Head Start agency providing services to the tribe, if—

(A) the Secretary terminates financial assistance under this section to the only agency that was receiving financial assistance to provide Head Start services to the Indian tribe; and

(B) the tribe would otherwise be precluded from providing such services to the members of the tribe.

(2) The regulation required by this subsection shall prohibit such designation of an alternative agency that includes an employee who—

(A) served on the administrative staff or program staff of the agency described in paragraph (1)(A); and

(B) was responsible for a deficiency that—

(i) relates to the performance standards or financial management standards described in section 9836a(a)(1) of this title; and

(ii) was the basis for the termination of financial assistance described in paragraph (1)(A);

as determined by the Secretary after providing the notice and opportunity described in subsection (a)(3).

(Pub. L. 97–35, title VI, §646, Aug. 13, 1981, 95 Stat. 504; Pub. L. 101–501, title I, §115, Nov. 3, 1990, 104 Stat. 1232; Pub. L. 103–252, title I, §113, May 18, 1994, 108 Stat. 641; Pub. L. 110–134, §16, Dec. 12, 2007, 121 Stat. 1421.)

EDITORIAL NOTES

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–134, §16(1), struck out "procedures to assure that" after "prescribe" in introductory provisions.

Subsec. (a)(1), (2). Pub. L. 110–134, §16(2), inserted "procedures to assure that" after the par. designation.

Subsec. (a)(3) to (6). Pub. L. 110–134, §16(3), added pars. (3) to (6) and struck out former pars. (3) and (4) which read as follows:

"(3) financial assistance under this subchapter shall not be terminated or reduced, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than 30 days, unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing; and

"(4) the Secretary shall develop and publish procedures (including mediation procedures) to be used in order to—

"(A) resolve in a timely manner conflicts potentially leading to adverse action between—

"(i) recipients of financial assistance under this subchapter; and

"(ii) delegate agencies or Head Start Parent Policy Councils; and

"(B) avoid the need for an administrative hearing on an adverse action."

1994—Subsec. (a)(4). Pub. L. 103–252, §113(a), added par. (4).

Subsecs. (b) to (e). Pub. L. 103–252, §113(b), added subsecs. (b) to (e) and struck out former subsec. (b) which read as follows: "The Secretary may not prescribe any procedure that would modify the operation of section 1303.21 or 1303.33, or any of subdivisions (a) through (f) of section 1303.35, of title 45 of the Code of Federal Regulations as in effect on April 1, 1990."

1990—Subsec. (a). Pub. L. 101–501, §115(1), (2), designated existing provisions as subsec. (a) and inserted "or reduced" after "terminated" in par. (3).

Subsec. (b). Pub. L. 101–501, §115(3), added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 115(1), (2) of Pub. L. 101–501 effective Oct. 1, 1990, and amendment by section 115(3) of Pub. L. 101–501 effective Apr. 1, 1990, see section 1001(a), (b)(2) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§9842. Records and audits

(a) Each recipient of financial assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such financial assistance, the total cost of the project or undertaking in connection with which such financial assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this subchapter.

(c) Each recipient of financial assistance under this subchapter shall—

(1) maintain, and annually submit to the Secretary, a complete accounting of the recipient's administrative expenses (including a detailed statement identifying the amount of financial assistance provided under this subchapter used to pay expenses for salaries and compensation and the amount (if any) of other funds used to pay such expenses);

(2) not later than 30 days after the date of completion of an audit conducted in the manner and to the extent provided in chapter 75 of title 31 (commonly known as the "Single Audit Act of 1984"), submit to the Secretary a copy of the audit management letter and of any audit findings as they relate to the Head Start program; and

(3) provide such additional documentation as the Secretary may require.

(Pub. L. 97–35, title VI, §647, Aug. 13, 1981, 95 Stat. 505; Pub. L. 110–134, §17, Dec. 12, 2007, 121 Stat. 1422.)

EDITORIAL NOTES

AMENDMENTS

2007—Subsec. (c). Pub. L. 110–134 added subsec. (c).

§9843. Technical assistance and training

(a) Secretarial training and technical assistance

(1) Authority

From the funds provided under section 9835(a)(2)(C)(i) of this title, the Secretary shall provide, directly or through grants, contracts, or other agreements or arrangements as the Secretary considers appropriate, technical assistance and training for Head Start programs for the purposes of improving program quality and helping prepare children to succeed in school.

(2) Process

The process for determining the technical assistance and training activities to be carried out under this section shall—

(A) ensure that the needs of local Head Start agencies and programs relating to improving program quality and to program expansion are addressed to the maximum extent practicable; and

(B) incorporate mechanisms to ensure responsiveness to local needs, including an ongoing procedure for obtaining input from the individuals and agencies carrying out Head Start programs.

(3) Activities

In providing training and technical assistance and for allocating resources for such assistance under this section, the Secretary shall—

(A) give priority consideration to—

(i) activities to correct program and management deficiencies identified through reviews carried out pursuant to section 9836a(c) of this title (including the provision of assistance to local programs in the development of quality improvement plans under section 9836a(d)(2) of this title);

(ii) assisting Head Start agencies in ensuring the school readiness of children; and

(iii) activities that supplement those funded with amounts provided under section 9835(a)(5)(B) of this title to address the training and career development needs of classroom staff (including instruction for providing services to children with disabilities [1] and non-classroom staff, including home visitors and other staff working directly with families, including training relating to increasing parent involvement and services designed to increase family literacy and improve parenting skills; and

(B) to the maximum extent practicable—

(i) assist Head Start agencies in the development of collaborative initiatives with States and other entities within the States, to foster effective professional development systems for early childhood education and development services;

(ii) provide technical assistance and training, either directly or through a grant, contract, or cooperative agreement with an entity that has experience in the development and operation of successful family literacy services programs, for the purpose of—

(I) assisting Head Start agencies providing family literacy services, in order to improve the quality of such family literacy services; and

(II) enabling those Head Start agencies that demonstrate effective provision of family literacy services, based on improved outcomes for children and their parents, to provide technical assistance and training to other Head Start agencies and to service providers that work in collaboration with such agencies to provide family literacy services;

(iii) assist Head Start agencies and programs in conducting and participating in communitywide strategic planning and needs assessments, including the needs of homeless children and their families, and in conducting self-assessments;

(iv) assist Head Start agencies and programs in developing and implementing full-working-day and full calendar year programs where community need is clearly identified and making the transition to such programs, with particular attention to involving parents and programming for children throughout the day, and assist the agencies and programs in expediting the sharing of information about innovative models for providing full-working-day, full calendar year services for children;

(v) assist Head Start agencies in better serving the needs of families with very young children, including providing support and program planning and implementation assistance for Head Start agencies that apply to serve or are serving additional infants and toddlers, in accordance with section 9840(a)(5) of this title;

(vi) assist Head Start agencies and programs in the development of sound management practices, including financial management procedures;

(vii) assist in efforts to secure and maintain adequate facilities for Head Start programs;

(viii) assist Head Start agencies in developing innovative program models, including mobile and home-based programs;

(ix) provide support for Head Start agencies (including policy councils and policy committees) that meet the standards described in section 9836a(a) of this title but that have, as documented by the Secretary through reviews conducted pursuant to section 9836a(c) of this title, programmatic, quality, and fiscal issues to address;

(x) assist Head Start agencies and programs in improving outreach to, increasing program participation of, and improving the quality of services available to meet the unique needs of—

(I) homeless children;

(II) limited English proficient children and their families, particularly in communities that have experienced a large percentage increase in the population of limited English proficient individuals, as measured by the Bureau of the Census; and

(III) children with disabilities, particularly if such program's enrollment opportunities or funded enrollment for children with disabilities is less than 10 percent;

(xi) assist Head Start agencies and programs to increase the capacity of classroom staff to meet the needs of eligible children in Head Start classrooms that are serving both children with disabilities and children without disabilities;

(xii) assist Head Start agencies and programs to address the unique needs of programs located in rural communities, including—

(I) removing barriers related to the recruitment and retention of Head Start teachers in rural communities;

(II) developing innovative and effective models of professional development for improving staff qualifications and skills for staff living in rural communities;

(III) removing barriers related to outreach efforts to eligible families in rural communities;

(IV) removing barriers to parent involvement in Head Start programs in rural communities;

(V) removing barriers to providing home visiting services in rural communities; and

(VI) removing barriers to obtaining health screenings for Head Start participants in rural communities;

(xiii) provide training and technical assistance to members of governing bodies, policy councils, and, as appropriate, policy committees, to ensure that the members can fulfill their functions;

(xiv) provide activities that help ensure that Head Start programs have qualified staff who can promote prevention of childhood obesity by integrating developmentally appropriate research-based initiatives that stress the importance of physical activity and healthy, nutritional choices in daily classroom and family routines;

(xv) assist Indian Head Start agencies to provide on-site and off-site training to staff, using approaches that identify and enhance the positive resources and strengths of Indian children and families, to improve parent and family engagement and staff development, particularly with regard to child and family development; and

(xvi) assisting Head Start agencies in selecting and using the measures described in section 9836a(b) of this title.

(b) Additional support

The Secretary shall provide, either directly or through grants, contracts or other arrangements, funds from section 9835(a)(2)(C)(i)(II)(cc) of this title to—

(1) support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood education and development programs; and

(2) support training for personnel—

(A) providing services to limited English proficient children and their families (including services to promote the acquisition of the English language);

(B) providing services to children determined to be abused or neglected or children referred by or receiving child welfare services;

(C) in helping children cope with community violence;

(D) to recognize common health, including mental health, problems in children for appropriate referral;

(E) to address the needs of children with disabilities and their families;

(F) to address the needs of migrant and seasonal farmworker families; and

(G) to address the needs of homeless families.

(c) Outreach

The Secretary shall develop and implement a program of outreach to recruit and train professionals from diverse backgrounds to become Head Start teachers in order to reflect the communities in which Head Start children live and to increase the provision of quality services and instruction to children with diverse backgrounds.

(d) Funds to agencies

Funds made available under section 9835(a)(2)(C)(i)(II)(aa) of this title shall be used by a Head Start agency to provide high-quality, sustained, and intensive training and technical assistance as follows:

(1) For 1 or more of the following:

(A) Activities that ensure that Head Start programs meet or exceed the standards described in section 9836a(a)(1) of this title.

(B) Activities that ensure that Head Start programs have adequate numbers of trained, qualified staff who have skills in working with children and families, including children and families who are limited English proficient and children with disabilities and their families.

(C) Activities to improve the management and implementation of Head Start services and systems, including direct training for expert consultants working with staff.

(D) Activities that help ensure that Head Start programs have qualified staff who can promote language skills and literacy growth of children and who can provide children with a variety of skills that have been identified as predictive of later reading achievement, school success, and the skills, knowledge, abilities, development, and progress described in section 9836a(a)(1)(B)(ii) of this title.

(E) Activities to improve staff qualifications and to assist with the implementation of career development programs and to encourage the staff to continually improve their skills and expertise, including developing partnerships with programs that recruit, train, place, and support college students in Head Start centers to deliver an innovative early learning program to preschool children.

(F) Activities that help local programs ensure that the arrangement, condition, and implementation of the learning environments in Head Start programs are conducive to providing effective program services to children and families.

(G) Activities to provide training necessary to improve the qualifications of Head Start staff and to support staff training, child counseling, health services, and other services necessary to address the needs of children enrolled in Head Start programs, including children from families in crises, children who experience chronic violence or homelessness, children who experience substance abuse in their families, and children under 3 years of age, where applicable.

(H) Activities to provide classes or in-service-type programs to improve or enhance parenting skills, job skills, and adult and family literacy, including financial literacy, or training to become a classroom aide or bus driver in a Head Start program.

(I) Additional activities deemed appropriate to the improvement of Head Start programs, as determined by the technical assistance and training plans of the Head Start agencies.

(2) To support enhanced early language and literacy development of children in Head Start

programs, and to provide the children with high-quality oral language skills and with environments that are rich in literature in which to acquire language and early literacy skills. Each Head Start agency, in consultation with the State-based training and technical assistance system, as appropriate, shall ensure that—

(A) all of the agency's Head Start teachers receive ongoing training in language and emergent literacy (referred to in this subsection as "literacy training"), including appropriate curricula and assessment to improve instruction and learning;

(B) such literacy training shall include training in methods to promote vocabulary development and phonological awareness (including phonemic awareness) in a developmentally, culturally, and linguistically appropriate manner and support children's development in their native language;

(C) the literacy training shall include training in how to work with parents to enhance positive language and early literacy development at home;

(D) the literacy training shall include specific methods to best address the needs of children who are limited English proficient;

(E) the literacy training shall include training on how to best address the language and literacy needs of children with disabilities, including training on how to work with specialists in language development; and

(F) the literacy training shall be tailored to the early childhood literacy background and experience of the teachers involved;

except that funds made available under section 9835(a)(2)(C)(i) of this title shall not be used for long-distance travel expenses for training activities available locally or regionally or for training activities substantially similar to locally or regionally available training activities.

(e) State-based training and technical assistance system

For the purposes of delivering a State-based training and technical assistance system (which may include a consortium of 2 or more States within a region) or a national system in the case of migrant or seasonal Head Start and Indian Head Start programs, as described in section 9835(a)(2)(C)(i)(II)(bb) of this title, that will meet the needs of local grantees, as determined by such grantees, and provide high-quality, sustained, and intensive training and technical assistance to Head Start agencies and programs in order to improve their capacity to deliver services that meet or exceed the standards described in section 9836a(a)(1) of this title, the Secretary shall—

(1) enter into contracts in each State with 1 or more entities that have a demonstrated expertise in supporting the delivery of high-quality early childhood education and development programs, except that contracts for a consortium of 2 or more States within a geographic region may be entered into if such a system is more appropriate to better meet the needs of local grantees within a region, as determined by such grantees;

(2) ensure that the entities described in subparagraph (1) determine the types of services to be provided through consultation with—

(A) local Head Start agencies (including Indian Head Start agencies and migrant or seasonal Head Start agencies, as appropriate);

(B) the State Head Start collaboration office; and

(C) the State Head Start Association;

(3) encourage States to supplement the funds authorized in section 9835(a)(2)(C)(i)(II)(bb) of this title with Federal, State, or local funds other than funds made available under this subchapter, to expand training and technical assistance activities beyond Head Start agencies to include other providers of other early childhood education and development programs within a State;

(4) provide a report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, not later than 90 days after the end of the fiscal year, summarizing the funding for such contracts and the activities carried out thereunder;

(5) periodically evaluate the effectiveness of the delivery of services in each State in promoting

program quality; and

(6) ensure that in entering into such contracts as described in paragraph (1), such entities will address the needs of grantees in both urban and rural communities.

(f) Indoor air quality

The Secretary shall consult with appropriate Federal agencies and other experts, as appropriate, on issues of air quality related to children's health and inform Head Start agencies of existing programs or combination of programs that provide methods for improving indoor air quality.

(g) Career advancement partnership program

(1) Authority

From amounts allocated under section 9835(a)(2)(C) of this title the Secretary is authorized to award demonstration grants, for a period of not less than 5 years, to historically Black colleges and universities, Hispanic-serving institutions, and Tribal Colleges and Universities—

(A) to implement education programs that increase the number of associate, baccalaureate, and graduate degrees in early childhood education and related fields that are earned by Head Start agency staff members, parents of children served by such agencies, and members of the communities involved;

(B) to provide assistance for stipends and costs related to tuition, fees, and books for enrolling Head Start agency staff members, parents of children served by such an agency, and members of the communities involved in courses required to complete the degree and certification requirement to become teachers in early childhood education and related fields;

(C) to develop program curricula to promote high-quality services and instruction to children with diverse backgrounds, including—

(i) in the case of historically Black colleges and universities, to help Head Start Agency staff members develop skills and expertise needed to teach in programs serving large numbers of African American children;

(ii) in the case of Hispanic-serving institutions, programs to help Head Start Agency staff members develop skills and expertise needed to teach in programs serving large numbers of Hispanic children, including programs to develop the linguistic skills and expertise needed to teach in programs serving a large number of children with limited English proficiency; and

(iii) in the case of Tribal Colleges and Universities, to help Head Start Agency staff members develop skills and expertise needed to teach in programs serving large numbers of Indian children, including programs concerning tribal culture and language;

(D) to provide other activities to upgrade the skills and qualifications of educational personnel to meet the professional standards in subsection (a) to better promote high-quality services and instruction to children and parents from populations served by historically Black colleges and universities, Hispanic-serving institutions, or Tribal Colleges and Universities;

(E) to provide technology literacy programs for Indian Head Start agency staff members and families of children served by such agency; and

(F) to develop and implement the programs described under subparagraph (A) in technology-mediated formats, including through such means as distance learning and use of advanced technology, as appropriate.

(2) Other assistance

The Secretary shall, using resources within the Department of Health and Human Services—

(A) provide appropriate technical assistance to historically Black colleges and universities, Hispanic-serving institutions, and Tribal Colleges and Universities receiving grants under this section, including coordinating with the White House Initiative on historically Black colleges and universities; and

(B) ensure that the American Indian Programs Branch of the Office of Head Start of the Administration for Children and Families of the Department of Health and Human Services can effectively administer the programs under this section and provide appropriate technical

assistance to Tribal Colleges and Universities under this section.

(3) Application

Each historically Black college or university, Hispanic-serving institution, or Tribal College or University desiring a grant under this section shall submit an application, in partnership with at least 1 Head Start agency enrolling large numbers of students from the populations served by historically Black colleges and universities, Hispanic-serving institutions, or Tribal Colleges and Universities, to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including a certification that the institution of higher education has established a formal partnership with 1 or more Head Start agencies for the purposes of conducting the activities described in paragraph (1).

(4) Definitions

In this subsection:

(A) The term "Hispanic-serving institution" has the meaning given such term in section 1101a of title 20.

(B) The term "historically Black college or university" has the meaning given the term "part B institution" in section 1061(2) of title 20.

(C) The term "Tribal College or University" has the meaning given such term in section 1059c(b) of title 20.

(5) Teaching requirement

A student at an institution receiving a grant under this subsection who receives assistance under a program funded under this subsection shall teach in a center-based Head Start program for a period of time equivalent to the period for which they received assistance or shall repay such assistance.

(Pub. L. 97–35, title VI, §648, Aug. 13, 1981, 95 Stat. 505; Pub. L. 98–558, title I, §106, Oct. 30, 1984, 98 Stat. 2879; Pub. L. 101–501, title I, §116(a), Nov. 3, 1990, 104 Stat. 1232; Pub. L. 102–586, §7(b), Nov. 4, 1992, 106 Stat. 5035; Pub. L. 103–252, title I, §114, May 18, 1994, 108 Stat. 642; Pub. L. 105–285, title I, §114, Oct. 27, 1998, 112 Stat. 2721; Pub. L. 110–134, §18, Dec. 12, 2007, 121 Stat. 1423; Pub. L. 114–95, title IX, §9215(nn)(5), Dec. 10, 2015, 129 Stat. 2177.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (a)(3)(A)(iii). Pub. L. 114–95 struck out ", and for activities described in section 6372(d) of title 20)," after "children with disabilities".

2007—Pub. L. 110–134 amended section generally. Prior to amendment, section related to, in subsec. (a), technical assistance and personnel training, in subsec. (b), consideration of local needs, in subsec. (c), prioritization of resource allocation, in subsec. (d), training in performing and visual arts and electronic media, and, in subsec. (e), child development and assessment program.

1998—Subsec. (b)(3). Pub. L. 105–285, §114(a)(1), added par. (3).

Subsec. (c)(1). Pub. L. 105–285, §114(a)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "give priority consideration to activities to correct program and management deficiencies identified through reviews pursuant to section 9836a(c) of this title (including the provision of assistance to local programs in the development of quality improvement plans under section 9836a(d)(2) of this title);".

Subsec. (c)(2). Pub. L. 105–285, §114(a)(2)(B), inserted "supplement amounts provided under section 9835(a)(3)(C)(ii) of this title in order to" after "(2)".

Subsec. (c)(3). Pub. L. 105–285, §114(a)(2)(G), added par. (3). Former par. (3) redesignated (5).

Subsec. (c)(4). Pub. L. 105–285, §114(a)(2)(G), added par. (4). Former par. (4) redesignated (6).

Pub. L. 105–285, §114(a)(2)(C), inserted "and implementing" after "developing" and substituted "the day, and assist the agencies and programs in expediting the sharing of information about innovative models for providing full-working-day, full calendar year services for children" for "a longer day" before semicolon.

Subsec. (c)(5), (6). Pub. L. 105–285, §114(a)(2)(F), redesignated pars. (3) and (4) as (5) and (6), respectively. Former pars. (5) and (6) redesignated (7) and (8), respectively.

Subsec. (c)(7). Pub. L. 105–285, §114(a)(2)(F), redesignated par. (5) as (7). Former par. (7) redesignated

(9).

Pub. L. 105–285, §114(a)(2)(D), struck out "and" at end.

Subsec. (c)(8). Pub. L. 105–285, §114(a)(2)(F), redesignated par. (6) as (8). Former par. (8) redesignated (10).

Pub. L. 105–285, §114(a)(2)(E), substituted "; and" for period at end.

Subsec. (c)(9), (10). Pub. L. 105–285, §114(a)(2)(F), redesignated pars. (7) and (8) as (9) and (10), respectively.

Subsec. (c)(11). Pub. L. 105–285, §114(a)(2)(H), added par. (11).

Subsec. (e). Pub. L. 105–285, §114(b), inserted "(including services to promote the acquisition of the English language)" after "non-English language background children".

1994—Pub. L. 103–252, §114(1), substituted "Technical assistance and training" for "Technical assistance, training, and staff qualifications" in section catchline.

Subsec. (a). Pub. L. 103–252, §114(3)(A), redesignated as subsec. (e) the last sentence which read as follows: "The Secretary shall provide, either directly or through grants or other arrangements, funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled children."

Pub. L. 103–252, §114(2), substituted "(2) training for specialized or other personnel needed in connection with Head Start programs, in accordance with the process, and the provisions for allocating resources, set forth in subsections (b) and (c) of this section. The Secretary shall provide, either directly or through grants or other arrangements," for "(2) training for specialized or other personnel needed in connection with Head Start programs, including".

Subsec. (b). Pub. L. 103–252, §114(4), (5), added subsec. (b) and struck out former subsec. (b) which related to teacher qualifications and waiver of same.

Subsec. (c). Pub. L. 103–252, §114(4), (5), added subsec. (c) and struck out former subsec. (c) which related to Secretary developing systematic approach to training Head Start personnel and reporting on such approach to Congress.

Subsec. (d). Pub. L. 103–252, §114(6), inserted at end "Special consideration shall be given to entities that have demonstrated effectiveness in educational programming for preschool children that includes components for parental involvement, care provider training, and developmentally appropriate related activities."

Subsec. (e). Pub. L. 103–252, §114(3), redesignated last sentence of subsec. (a) as (e).

1992—Subsec. (a)(2). Pub. L. 102–586, §7(b)(1), substituted "funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled" for "a centralized child development training and national assessment program which may be administered at the State or local level leading to recognized credentials for such personnel, training for personnel providing services to non-English language background children, and resource access projects for personnel of handicapped".

Subsecs. (c), (d). Pub. L. 102–586, §7(b)(2), added subsecs. (c) and (d).

1990—Pub. L. 101–501 substituted "Technical assistance, training, and staff qualifications" for "Technical assistance and training" in section catchline, designated existing provisions as subsec. (a), inserted "training for personnel providing services to non-English language background children," after "such personnel," in cl. (2), and added subsec. (b).

1984—Pub. L. 98–558 substituted "shall" for "may" and inserted provision including a centralized child development training and national assessment program.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

HEAD START TRAINING IMPROVEMENT

Pub. L. 102–586, §7(a), Nov. 4, 1992, 106 Stat. 5034, provided that: "It is the purpose of this section—

"(1) to promote continued access for Head Start and other early childhood staff to the Child Development Associate credential;

"(2) to increase the ability of Head Start staff to address the problems facing Head Start families;

"(3) to create a systematic approach to training, thereby improving the quality of Head Start instruction and using training funds more efficiently and effectively; and

"(4) to allow the use of training funds for creative approaches to learning for children."

[1] *So in original. Probably should be followed by a closing parenthesis.*

§9843a. Staff qualifications and development

(a) Classroom teachers

(1) Professional requirements

The Secretary shall ensure that each Head Start classroom in a center-based program is assigned 1 teacher who has demonstrated competency to perform functions that include—

(A) planning and implementing learning experiences that advance the intellectual and physical development of children, including improving the readiness of children for school by developing their literacy, phonemic, and print awareness, their understanding and use of language, their understanding and use of increasingly complex and varied vocabulary, their appreciation of books, their understanding of early math and early science, their problem-solving abilities, and their approaches to learning;

(B) establishing and maintaining a safe, healthy learning environment;

(C) supporting the social and emotional development of children; and

(D) encouraging the involvement of the families of the children in a Head Start program and supporting the development of relationships between children and their families.

(2) Degree requirements

(A) Head Start teachers

The Secretary shall ensure that not later than September 30, 2013, at least 50 percent of Head Start teachers nationwide in center-based programs have—

(i) a baccalaureate or advanced degree in early childhood education; or

(ii) a baccalaureate or advanced degree and coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children.

(B) Additional staff

The Secretary shall ensure that, not later than September 30, 2013, all—

(i) Head Start education coordinators, including those that serve as curriculum specialists, nationwide in center-based programs—

(I) have the capacity to offer assistance to other teachers in the implementation and

adaptation of curricula to the group and individual needs of children in a Head Start classroom; and

(II) have—

(aa) a baccalaureate or advanced degree in early childhood education; or

(bb) a baccalaureate or advanced degree and coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children; and

(ii) Head Start teaching assistants nationwide in center-based programs have—

(I) at least a child development associate credential;

(II) enrolled in a program leading to an associate or baccalaureate degree; or

(III) enrolled in a child development associate credential program to be completed within 2 years.

(C) Progress

(i) Implementation

The Secretary shall—

(I) require Head Start agencies to—

(aa) describe continuing progress each year toward achieving the goals described in subparagraphs (A) and (B); and

(bb) annually submit to the Secretary a report indicating the number and percentage of classroom personnel described in subparagraphs (A) and (B) in center-based programs with child development associate credentials or associate, baccalaureate, or advanced degrees;

(II) compile and submit a summary of all program reports described in subclause (I)(bb) to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate; and

(III) not impose any penalties or sanctions on any individual Head Start agency, program, or staff in the monitoring of local agencies and programs under this subchapter not meeting the requirements of subparagraph (A) or (B).

(D) Construction

In this paragraph a reference to a Head Start agency, or its program, services, facility, or personnel, shall not be considered to be a reference to an Early Head Start agency, or its program, services, facility, or personnel.

(3) Alternative credentialing and degree requirements

The Secretary shall ensure that, for center-based programs, each Head Start classroom that does not have a teacher who meets the qualifications described in clause (i) or (ii) of paragraph (2)(A) is assigned one teacher who has the following during the period specified:

(A) Through September 30, 2011—

(i) a child development associate credential that is appropriate to the age of children being served in center-based programs;

(ii) a State-awarded certificate for preschool teachers that meets or exceeds the requirements for a child development associate credential;

(iii) an associate degree in early childhood education;

(iv) an associate degree in a related field and coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children; or

(v) a baccalaureate degree and has been admitted into the Teach For America program, passed a rigorous early childhood content exam, such as the Praxis II, participated in a Teach For America summer training institute that includes teaching preschool children, and is receiving ongoing professional development and support from Teach For America's professional staff.

(B) As of October 1, 2011—

(i) an associate degree in early childhood education;

(ii) an associate degree in a related field and coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children; or

(iii) a baccalaureate degree and has been admitted into the Teach For America program, passed a rigorous early childhood content exam, such as the Praxis II, participated in a Teach For America summer training institute that includes teaching preschool children, and is receiving ongoing professional development and support from Teach For America's professional staff.

(4) Waiver

On request, the Secretary shall grant—

(A) through September 30, 2011, a 180-day waiver ending on or before September 30, 2011, of the requirements of paragraph (3)(A) for a Head Start agency that can demonstrate that the agency has attempted unsuccessfully to recruit an individual who has the qualifications described in any of clauses (i) through (iv) of paragraph (3)(A) with respect to an individual who—

(i) is enrolled in a program that grants a credential, certificate, or degree described in clauses (i) through (iv) of paragraph (3)(A); and

(ii) will receive such credential, certificate, or degree under the terms of such program not later than 180 days after beginning employment as a teacher with such agency; and

(B) as of October 1, 2011, a 3-year waiver of the requirements of paragraph (3)(B) for a Head Start agency that can demonstrate that—

(i) the agency has attempted unsuccessfully to recruit an individual who has the qualifications described in clause (i) or (ii) of such paragraph, with respect to an individual who is enrolled in a program that grants a degree described in clause (i) or (ii) of such paragraph and will receive such degree in a reasonable time; and

(ii) each Head Start classroom has a teacher who has, at a minimum—

(I) a child development associate credential that is appropriate to the age of children being served in center-based programs; or

(II) a State-awarded certificate for preschool teachers that meets or exceeds the requirements for a child development associate credential.

(5) Teacher in-service requirement

Each Head Start teacher shall attend not less than 15 clock hours of professional development per year. Such professional development shall be high-quality, sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction and the teacher's performance in the classroom, and regularly evaluated by the program for effectiveness.

(6) Service requirements

The Secretary shall establish requirements to ensure that, in order to enable Head Start agencies to comply with the requirements of paragraph (2)(A), individuals who receive financial assistance under this subchapter to pursue a degree described in paragraph (2)(A) shall—

(A) teach or work in a Head Start program for a minimum of 3 years after receiving the degree; or

(B) repay the total or a prorated amount of the financial assistance received based on the length of service completed after receiving the degree.

(7) Use of funds

The Secretary shall require that any Federal funds provided directly or indirectly to comply with paragraph (2)(A) shall be used toward degrees awarded by an institution of higher education, as defined by section 1001 or 1002 of title 20.

(b) Mentor teachers

(1) "Mentor teacher" defined; function

For purposes of this subsection, the term "mentor teacher" means an individual responsible for observing and assessing the classroom activities of a Head Start program and providing on-the-job guidance and training to the Head Start program staff and volunteers, in order to improve the qualifications and training of classroom staff, to maintain high quality education services, and to promote career development, in Head Start programs.

(2) Requirement

In order to assist Head Start agencies in establishing positions for mentor teachers, the Secretary shall—

(A) provide technical assistance and training to enable Head Start agencies to establish such positions;

(B) give priority consideration, in providing assistance pursuant to subparagraph (A), to Head Start programs that have substantial numbers of new classroom staff or that are experiencing difficulty in meeting applicable education standards;

(C) encourage Head Start programs to give priority consideration for such positions to Head Start teachers at the appropriate level of career advancement in such programs; and

(D) promote the development of model curricula, designed to ensure the attainment of appropriate competencies of mentor teachers in Head Start programs.

(c) Family service workers

To improve the quality and effectiveness of staff providing in-home and other services (including needs assessment, development of service plans, family advocacy, and coordination of service delivery) to families of children participating in Head Start programs, the Secretary, in coordination with concerned public and private agencies and organizations examining the issues of standards and training for family service workers, shall—

(1) review, and, as necessary, revise or develop new qualification standards for Head Start staff providing such services;

(2) review, and as necessary, revise or develop maximum caseload requirements, as suggested by best practices;

(3) promote the development of model curricula (on subjects including parenting training and family literacy) designed to ensure the attainment of appropriate competencies by individuals working or planning to work in the field of early childhood and family services;

(4) promote the establishment of a credential that indicates attainment of the competencies and that is accepted nationwide; and

(5) promote the use of appropriate strategies to meet the needs of special populations (including populations of limited English proficient children).

(d) Head Start Fellowships

(1) Authority

The Secretary may establish a program of fellowships, to be known as "Head Start Fellowships", in accordance with this subsection. The Secretary may award the fellowships to individuals, to be known as "Head Start Fellows", who are staff in local Head Start programs or other individuals working in the field of child development and family services.

(2) Purpose

The fellowship program established under this subsection shall be designed to enhance the ability of Head Start Fellows to make significant contributions to programs authorized under this subchapter, by providing opportunities to expand their knowledge and experience through exposure to activities, issues, resources, and new approaches, in the field of child development and family services.

(3) Assignments of Fellows

(A) Placement sites

Fellowship positions under the fellowship program may be located (subject to subparagraphs (B) and (C))—

(i) in agencies of the Department of Health and Human Services administering programs authorized under this subchapter (in national or regional offices of such agencies);

(ii) in local Head Start agencies and programs;

(iii) in institutions of higher education;

(iv) in public or private entities and organizations concerned with services to children and families; and

(v) in other appropriate settings.

(B) Limitation for Fellows other than Head Start employees

A Head Start Fellow who is not an employee of a local Head Start agency or program may be placed only in a fellowship position located in an agency or program specified in clause (i) or (ii) of subparagraph (A).

(C) No placement in lobbying organizations

Head Start Fellowship positions may not be located in any agency (including a center) whose primary purpose, or one of whose major purposes, is to influence Federal, State, or local legislation.

(4) Selection of Fellows

Head Start Fellowships shall be awarded on a competitive basis to individuals (other than Federal employees) selected from among applicants who are working, on the date of application, in local Head Start programs or otherwise working in the field of child development and children and family services.

(5) Duration

Head Start Fellowships shall be for terms of 1 year, and may be renewed for a term of 1 additional year.

(6) Authorized expenditures

From amounts made available under section 9835(a)(2)(E) of this title, the Secretary is authorized to make expenditures of not to exceed $1,000,000 for any fiscal year, for stipends and other reasonable expenses of the fellowship program.

(7) Status of Fellows

Except as otherwise provided in this paragraph, Head Start Fellows shall not be considered to be employees or otherwise in the service or employment of the Federal Government. Head Start Fellows shall be considered to be employees for purposes of compensation for injuries under chapter 81 of title 5. Head Start Fellows assigned to positions located in agencies specified in paragraph (3)(A)(i) shall be considered employees in the executive branch of the Federal Government for the purposes of chapter 11 of title 18 and for purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

(8) Regulations

The Secretary shall promulgate regulations to carry out this subsection.

(e) Model staffing plans

Not later than 1 year after May 18, 1994, the Secretary, in consultation with appropriate public agencies, private agencies, and organizations and with individuals with expertise in the field of children and family services, shall develop model staffing plans to provide guidance to local Head Start agencies and programs on the numbers, types, responsibilities, and qualifications of staff required to operate a Head Start program.

(f) Professional development plans

Each Head Start agency and program shall create, in consultation with an employee, a professional

development plan for all full-time Head Start employees who provide direct services to children and shall ensure that such plans are regularly evaluated for their impact on teacher and staff effectiveness. The agency and the employee shall implement the plan to the extent feasible and practicable.

(g) Staff recruitment and selection procedures

Before a Head Start agency employs an individual, such agency shall—

(1) conduct an interview of such individual;

(2) verify the personal and employment references provided by such individual; and

(3) obtain—

(A) a State, tribal, or Federal criminal record check covering all jurisdictions where the grantee provides Head Start services to children;

(B) a State, tribal, or Federal criminal record check as required by the law of the jurisdiction where the grantee provides Head Start services; or

(C) a criminal record check as otherwise required by Federal law.

(Pub. L. 97–35, title VI, §648A, as added Pub. L. 103–252, title I, §115, May 18, 1994, 108 Stat. 643; amended Pub. L. 105–285, title I, §115, Oct. 27, 1998, 112 Stat. 2722; Pub. L. 110–134, §19, Dec. 12, 2007, 121 Stat. 1430.)

EDITORIAL NOTES

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–134, §19(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to qualification and development requirements for Head Start teachers in center-based programs and gave Secretary limited authority to waive alternative credentialing requirements.

Subsec. (c). Pub. L. 110–134, §19(2), amended subsec. (c) generally. Prior to amendment, text of subsec. (c) read as follows: "In order to improve the quality and effectiveness of staff providing in-home and other services (including needs assessment, development of service plans, family advocacy, and coordination of service delivery) to families of children participating in Head Start programs, the Secretary, in coordination with concerned public and private agencies and organizations examining the issues of standards and training for family service workers, shall—

"(1) review and, as necessary, revise or develop new qualification standards for Head Start staff providing such services;

"(2) promote the development of model curricula (on subjects including parenting training and family literacy) designed to ensure the attainment of appropriate competencies by individuals working or planning to work in the field of early childhood and family services; and

"(3) promote the establishment of a credential that indicates attainment of the competencies and that is accepted nationwide."

Subsec. (d)(3)(C). Pub. L. 110–134, §19(3)(A), inserted "(including a center)" after "agency".

Subsec. (d)(6). Pub. L. 110–134, §19(3)(B), substituted "amounts made available under section 9835(a)(2)(E) of this title" for "amounts appropriated under this subchapter and allotted under section 9835(a)(2)(D) of this title".

Subsecs. (f), (g). Pub. L. 110–134, §19(4), added subsecs. (f) and (g).

1998—Subsec. (a). Pub. L. 105–285, §115(1), amended heading and text of subsec. (a) generally. Prior to amendment, subsec. (a) required Secretary to ensure that not later than Sept. 30, 1996, each Head Start classroom in a center-based program was assigned a teacher with certain specified credentials and gave Secretary limited authority to waive that requirement.

Subsec. (b)(2)(B). Pub. L. 105–285, §115(2), substituted "staff or that are" for "staff, that are" and struck out ", or that lack staff of a similar cultural background to that of the participating children and their families" before semicolon.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress,

Jan. 9, 2023.

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§9844. Research, demonstrations, and evaluation

(a) In general

(1) Requirement; general purposes

The Secretary shall carry out a continuing program of research, demonstration, and evaluation activities, in order to—

(A) foster continuous improvement in the quality of the Head Start programs under this subchapter and in their effectiveness in enabling participating children and their families to succeed in school and otherwise; and

(B) use the Head Start programs to develop, test, and disseminate new ideas based on existing scientifically valid research, for addressing the needs of low-income preschool children (including children with disabilities, homeless children, children who have been abused or neglected, and children in foster care) and their families and communities (including demonstrations of innovative non-center-based program models such as home-based and mobile programs), and otherwise to further the purposes of this subchapter.

(2) Plan

The Secretary shall develop, and periodically update, a plan governing the research, demonstration, and evaluation activities under this section.

(b) Conduct of research, demonstration, and evaluation activities

The Secretary, in order to conduct research, demonstration, and evaluation activities under this section—

(1) may carry out such activities directly, or through grants to, or contracts or cooperative agreements with, public or private entities;

(2) shall, to the extent appropriate, undertake such activities in collaboration with other Federal agencies, and with non-Federal agencies, conducting similar activities;

(3) shall ensure that evaluation of activities in a specific program or project is conducted by persons not directly involved in the operation of such program or project;

(4) may require Head Start agencies to provide for independent evaluations;

(5) may approve, in appropriate cases, community-based cooperative research and evaluation efforts to enable Head Start programs to collaborate with qualified researchers not directly involved in program administration or operation; and

(6) may collaborate with organizations with expertise in inclusive educational strategies for preschoolers with disabilities.

(c) Consultation and collaboration

In carrying out activities under this section, the Secretary shall—

(1) consult with—

(A) individuals from relevant academic disciplines;

(B) individuals who are involved in the operation of Head Start programs and individuals who are involved in the operation of other child and family service programs; and

(C) individuals from other Federal agencies, and individuals from organizations, involved with children and families, ensuring that the individuals described in this subparagraph reflect the multicultural nature of the children and families served by the Head Start programs and the multidisciplinary nature of the Head Start programs;

(2) whenever feasible and appropriate, obtain the views of persons participating in and served by programs and projects assisted under this subchapter with respect to activities under this section; and

(3) establish, to the extent appropriate, working relationships with the faculties of institutions of higher education, as defined in section 1001 of title 20, located in the area in which any evaluation under this section is being conducted, unless there is no such institution of higher education willing and able to participate in such evaluation.

(d) Specific objectives

The research, demonstration, and evaluation activities under this subchapter shall include components designed to—

(1) permit ongoing assessment of the quality and effectiveness of the programs under this subchapter;

(2) establish evaluation methods that measure the effectiveness and impact of family literacy services program models, including models for the integration of family literacy services with Head Start services;

(3) contribute to developing knowledge concerning factors associated with the quality and effectiveness of Head Start programs and in identifying ways in which services provided under this subchapter may be improved;

(4) assist in developing knowledge concerning the factors that promote or inhibit healthy development and effective functioning of children and their families both during and following participation in a Head Start program;

(5)(A) identify successful strategies that promote good oral health and provide effective linkages to quality dental services through pediatric dental referral networks, for infants and toddlers participating in Early Head Start programs and children participating in other Head Start programs; and

(B) identify successful strategies that promote good vision health through vision screenings for such infants, toddlers, and children, and referrals for appropriate followup care for those identified as having a vision problem;

(6) permit comparisons of children and families participating in Head Start programs with children and families receiving other child care, early childhood education and development or services [1] programs and with other appropriate control groups;

(7) contribute to understanding the characteristics and needs of population groups eligible for services provided under this subchapter and the impact of such services on the individuals served and the communities in which such services are provided;

(8) provide for disseminating and promoting the use of the findings from such research, demonstration, and evaluation activities;

(9) promote exploration of areas in which knowledge is insufficient, and that will otherwise contribute to fulfilling the purposes of this subchapter; and

(10)(A) contribute to understanding the impact of Head Start services delivered in classrooms which include both children with disabilities and children without disabilities, on all of the children; and

(B) disseminate promising practices for increasing the availability and quality of such services and such classrooms.

(e) Longitudinal studies

In developing priorities for research, demonstration, and evaluation activities under this section, the Secretary shall give special consideration to longitudinal studies that—

(1) examine the developmental progress of children and their families both during and following participation in a Head Start program, including the examination of factors that contribute to or detract from such progress;

(2) examine factors related to improving the quality of the Head Start programs and the preparation the programs provide for children and their families to function effectively in schools and other settings in the years following participation in such a program; and

(3) as appropriate, permit comparison of children and families participating in Head Start programs with children and families receiving other early childhood education and development services or programs, and with other appropriate control groups.

(f) Ownership of results

The Secretary shall take necessary steps to ensure that all studies, reports, proposals, and data produced or developed with Federal funds under this subchapter shall become the property of the United States.

(g) National Head Start impact research

(1) Expert panel

(A) In general

The Secretary shall appoint an independent panel consisting of experts in program evaluation and research, education, and early childhood programs—

(i) to review, and make recommendations on, the design and plan for the research (whether conducted as a single assessment or as a series of assessments) described in paragraph (2), within 1 year after October 27, 1998;

(ii) to maintain and advise the Secretary regarding the progress of the research; and

(iii) to comment, if the panel so desires, on the interim and final research reports submitted under paragraph (7).

(B) Travel expenses

The members of the panel shall not receive compensation for the performance of services for the panel, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the panel. Notwithstanding section 1342 of title 31, the Secretary may accept the voluntary and uncompensated services of members of the panel.

(2) General authority

After reviewing the recommendations of the expert panel, the Secretary shall make a grant to, or enter into a contract or cooperative agreement with, an organization to conduct independent research that provides a national analysis of the impact of Head Start programs. The Secretary shall ensure that the organization shall have expertise in program evaluation, and research, education, and early childhood programs.

(3) Designs and techniques

The Secretary shall ensure that the research uses rigorous methodological designs and techniques (based on the recommendations of the expert panel), including longitudinal designs, control groups, nationally recognized standardized measures, and random selection and assignment, as appropriate. The Secretary may provide that the research shall be conducted as a single comprehensive assessment or as a group of coordinated assessments designed to provide, when taken together, a national analysis of the impact of Head Start programs.

(4) Programs

The Secretary shall ensure that the research focuses primarily on Head Start programs that operate in the 50 States, the Commonwealth of Puerto Rico, or the District of Columbia and that do not specifically target special populations.

(5) Analysis

The Secretary shall ensure that the organization conducting the research—

(A)(i) determines if, overall, the Head Start programs have impacts consistent with their primary goal of increasing the social competence of children, by increasing the everyday effectiveness of the children in dealing with their present environments and future responsibilities, and increasing their school readiness;

(ii) considers whether the Head Start programs—

(I) enhance the growth and development of children in cognitive, emotional, and physical health areas;

(II) strengthen families as the primary nurturers of their children; and

(III) ensure that children attain school readiness; and

(iii) examines—

(I) the impact of the Head Start programs on increasing access of children to such services as educational, health, and nutritional services, and linking children and families to needed community services; and

(II) how receipt of services described in subclause (I) enriches the lives of children and families participating in Head Start programs;

(B) examines the impact of Head Start programs on participants on the date the participants leave Head Start programs, at the end of kindergarten and at the end of first grade (whether in public or private school), by examining a variety of factors, including educational achievement, referrals for special education or remedial course work, and absenteeism;

(C) makes use of random selection from the population of all Head Start programs described in paragraph (4) in selecting programs for inclusion in the research; and

(D) includes comparisons of individuals who participate in Head Start programs with control groups (including comparison groups) composed of—

(i) individuals who participate in other early childhood programs (such as public or private preschool programs and day care); and

(ii) individuals who do not participate in any other early childhood program.

(6) Consideration of sources of variation

In designing the research, the Secretary shall, to the extent practicable, consider addressing possible sources of variation in impact of Head Start programs, including variations in impact related to such factors as—

(A) Head Start program operations;

(B) Head Start program quality;

(C) the length of time a child attends a Head Start program;

(D) the age of the child on entering the Head Start program;

(E) the type of organization (such as a local educational agency or a community action agency) providing services for the Head Start program;

(F) the number of hours and days of program operation of the Head Start program (such as whether the program is a full-working-day, full calendar year program, a part-day program, or a part-year program); and

(G) other characteristics and features of the Head Start program (such as geographic location, location in an urban or a rural service area, or participant characteristics), as appropriate.

(7) Reports

(A) Submission of interim reports

The organization shall prepare and submit to the Secretary two interim reports on the research. The first interim report shall describe the design of the research, and the rationale for the design, including a description of how potential sources of variation in impact of Head Start programs have been considered in designing the research. The second interim report shall describe the status of the research and preliminary findings of the research, as appropriate.

(B) Submission of final report

The organization shall prepare and submit to the Secretary a final report containing the findings of the research.

(C) Transmittal of report to Congress

Not later than September 30, 2009, the Secretary shall transmit the final report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

(8) Definition

In this subsection, the term "impact", used with respect to a Head Start program, means a difference in an outcome for a participant in the program that would not have occurred without the participation in the program.

(h) Limited English proficient children

(1) Study

Not later than 1 year after December 12, 2007, the Secretary shall conduct a study on the status of limited English proficient children and their families participating in Head Start programs (including Early Head Start programs).

(2) Report

The Secretary shall prepare and submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, not later than September 30, 2010, a report containing the results of the study, including information on—

(A) the demographics of limited English proficient children from birth through age 5, including the number of such children receiving Head Start services and Early Head Start services, and the geographic distribution of children described in this subparagraph;

(B) the nature of the Head Start services and of the Early Head Start services provided to limited English proficient children and their families, including the types, content, duration, intensity, and costs of family services, language assistance, and educational services;

(C) procedures in Head Start programs and Early Head Start programs for the assessment of language needs and the transition of limited English proficient children to kindergarten, including the extent to which such programs meet the requirements of section 9837a of this title for limited English proficient children;

(D) the qualifications and training provided to Head Start teachers and Early Head Start teachers who serve limited English proficient children and their families;

(E) the languages in which Head Start teachers and Early Head Start teachers are fluent, in relation to the population, and instructional needs, of the children served;

(F) the rate of progress made by limited English proficient children and their families in Head Start programs and in Early Head Start programs, including—

(i) the rate of progress made by limited English proficient children toward meeting the additional educational standards described in section 9836a(a)(1)(B)(ii) of this title while enrolled in such programs;

(ii) a description of the type of assessment or assessments used to determine the rate of progress made by limited English proficient children;

(iii) the correlation between such progress and the type and quality of instruction and educational programs provided to limited English proficient children; and

(iv) the correlation between such progress and the health and family services provided by such programs to limited English proficient children and their families; and

(G) the extent to which Head Start programs and Early Head Start programs make use of funds under section 9835(a)(2)(D) of this title to improve the quality of such services provided to limited English proficient children and their families.

(i) Research and evaluation activities relevant to diverse communities

For purposes of conducting the study described in subsection (h), activities described in section 9835(l)(5)(A) of this title, and other research and evaluation activities relevant to limited English proficient children and their families, migrant and seasonal farmworker families, and other families

from diverse populations served by Head Start programs, the Secretary shall award, on a competitive basis, funds from amounts made available under section 9835(a)(2)(D) of this title to 1 or more organizations with a demonstrated capacity for serving and studying the populations involved.

(j) Review of assessments

(1) Application of study

When the study on Developmental Outcomes and Assessments for Young Children by the National Academy of Sciences is made available to the Secretary, the Secretary shall—

(A) integrate the results of the study, as appropriate and in accordance with paragraphs (2) and (3), into each assessment used in Head Start programs; and

(B) use the results of the study to develop, inform, and revise as appropriate the standards and measures described in section 9836a of this title, consistent with section 9836a(a)(2)(C)(ii) of this title.

(2) Inform and revise

In informing and revising any assessment used in the Head Start programs, the Secretary shall—

(A) receive recommendations from the Panel on Developmental Outcomes and Assessments for Young Children of the National Academy of Sciences; and

(B) with respect to the development or refinement of such assessment, ensure—

(i) consistency with relevant, nationally recognized professional and technical standards;

(ii) validity and reliability for all purposes for which assessments under this subchapter are designed and used;

(iii) developmental and linguistic appropriateness of such assessments for children assessed, including children who are limited English proficient; and

(iv) that the results can be used to improve the quality of, accountability of, and training and technical assistance in, Head Start programs.

(3) Additional requirements

The Secretary, in carrying out the process described in paragraph (2), shall ensure that—

(A) staff administering any assessments under this subchapter have received appropriate training to administer such assessments;

(B) appropriate accommodations for children with disabilities and children who are limited English proficient are made;

(C) the English and Spanish (and any other language, as appropriate) forms of such assessments are valid and reliable in the languages in which they are administered; and

(D) such assessments are not used to exclude children from Head Start programs.

(4) Suspended implementation of national reporting system

The Secretary shall suspend implementation and terminate further development and use of the National Reporting System.

(k) Indian Head Start study

The Secretary shall—

(1) work in collaboration with the Head Start agencies that carry out Indian Head Start programs, the Indian Head Start collaboration director, and other appropriate entities, including tribal governments and the National Indian Head Start Directors Association—

(A) to undertake a study or set of studies designed to focus on the American Indian and Alaska Native Head Start-eligible population, with a focus on issues such as curriculum development, availability and need for services, appropriate research methodologies and measures for these populations, and best practices for teaching and educating American Indian and Alaska Native Head Start Children;

(B) to accurately determine the number of children nationwide who are eligible to participate in Indian Head Start programs each year;

(C) to document how many of these children are receiving Head Start services each year;

(D) to the extent practicable, to ensure that access to Indian Head Start programs for eligible children is comparable to access to other Head Start programs for other eligible children; and

(E) to make the funding decisions required in section 9835(a)(4)(D)(ii) of this title, after completion of the studies required in that section, taking into account—

(i) the Federal government's [2] unique trust responsibility to American Indians and Alaska Natives;

(ii) limitations faced by tribal communities in accessing non-Federal sources of funding to supplement Federal funding for early childhood programs; and

(iii) other factors that uniquely and adversely impact children in American Indian and Alaska Native communities such as highly elevated poverty, unemployment and violent crime rates, as well as depressed levels of educational achievement and limited access to non-Federal health, social and educational resources;

(2) in carrying out paragraph (1), consult with the Secretary of Education about the Department of Education's systems for collecting and reporting data about, and maintaining records on, American Indian and Alaska Native students;

(3) not later than 9 months after the effective date of this subsection, publish in the Federal Register a notice of how the Secretary plans to carry out paragraph (1) and shall provide a period for public comment. To the extent practicable, the Secretary shall consider comments received before submitting a report to the Congress;

(4) not later than 1 year after the effective date of this subsection, submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, detailing how the Department of Health and Human Services plans to carry out paragraph (1);

(5) through regulation, ensure the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary, by Head Start agencies that carry out Indian Head Start programs, and by State Directors of Head Start Collaboration, by the Indian Head Start Collaboration Project Director and by other appropriate entities pursuant to this subsection (such regulations shall provide the policies, protections, and rights equivalent to those provided a parent, student, or educational agency or institution under section 1232g of title 20); and

(6) ensure that nothing in this subsection shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this subsection.

(l) Migrant and seasonal Head Start program study

(1) Data

In order to increase access to Head Start services for children of migrant and seasonal farmworkers, the Secretary shall work in collaboration with providers of migrant and seasonal Head Start programs, the Secretary of Agriculture, the Secretary of Labor, the Bureau of Migrant Health, and the Secretary of Education to—

(A) collect, report, and share data, within a coordinated system, on children of migrant and seasonal farmworkers and their families, including health records and educational documents of such children, in order to adequately account for the number of children of migrant and seasonal farmworkers who are eligible for Head Start services and determine how many of such children receive the services; and

(B) identify barriers that prevent children of migrant and seasonal farmworkers who are eligible for Head Start services from accessing Head Start services, and develop a plan for eliminating such barriers, including certain requirements relating to tracking, health records, and educational documents, and increasing enrollment.

(2) Publication of plan

Not later than 1 year after December 12, 2007, the Secretary shall publish in the Federal

Register a notice about how the Secretary plans to implement the activities identified in paragraph (1) and shall provide a period for public comment. To the extent practicable, the Secretary shall consider comments received before implementing any of the activities identified in paragraph (1).

(3) Report

Not later than 18 months after December 12, 2007, and annually thereafter, the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate detailing how the Secretary plans to implement the activities identified in paragraph (1), including the progress made in reaching out to and serving eligible children of migrant and seasonal farmworkers, and information on States where such children are still underserved.

(4) Protection of confidentiality

The Secretary shall, through regulation, ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary, by Head Start agencies that carry out migrant or seasonal Head Start programs, by the State director of Head Start Collaboration, and by the Migrant and Seasonal Farmworker Collaboration project Director (such regulations shall provide the policies, protections, and rights equivalent to those provided a parent, student, or educational agency or institution under section 1232g of title 20).

(5) Rule of construction

Nothing in this subsection shall be construed to authorize the development of a nationwide database of personally identifiable data, information, or records on individuals involved in studies or other collections of data under this subsection.

(m) Program emergency preparedness

(1) Purpose

The purpose of this subsection is to evaluate the emergency preparedness of the Head Start programs, including Early Head Start programs, and make recommendations for how Head Start shall enhance its readiness to respond to an emergency.

(2) Study

The Secretary shall evaluate the Federal, State, and local preparedness of Head Start programs, including Early Head Start programs, to respond appropriately in the event of a large-scale emergency, such as the hurricanes Katrina, Rita, and Wilma, the terrorist attacks of September 11, 2001, or other incidents where assistance may be warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(3) Report to Congress

Not later than 18 months after December 12, 2007, the Secretary shall prepare and submit to Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing the results of the evaluation required under paragraph (2), including—

(A) recommendations for improvements to Federal, State, and local preparedness and response capabilities to large-scale emergencies, including those that were developed in response to hurricanes Katrina, Rita, and Wilma, as they relate to Head Start programs, including Early Head Start programs, and the Secretary's plan to implement such recommendations;

(B) an evaluation of the procedures for informing families of children in Head Start programs about the program protocols for response to a large-scale emergency, including procedures for communicating with such families in the event of a large-scale emergency;

(C) an evaluation of such procedures for staff training on State and local evacuation and emergency protocols; and

(D) an evaluation of procedures for Head Start agencies and the Secretary to coordinate with appropriate Federal, State, and local emergency management agencies in the event of a large

scale emergency and recommendations to improve such procedures.

(Pub. L. 97–35, title VI, §649, Aug. 13, 1981, 95 Stat. 505; Pub. L. 98–558, title I, §107, Oct. 30, 1984, 98 Stat. 2880; Pub. L. 101–501, title I, §117(a), Nov. 3, 1990, 104 Stat. 1233; Pub. L. 103–252, title I, §116, May 18, 1994, 108 Stat. 646; Pub. L. 105–244, title I, §102(a)(13)(G), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 105–285, title I, §116, Oct. 27, 1998, 112 Stat. 2723; Pub. L. 110–134, §20, Dec. 12, 2007, 121 Stat. 1435.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (k)(3), (4), probably means the date of enactment of Pub. L. 110–134, which enacted subsec. (k) of this section and was approved Dec. 12, 2007.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (m)(2), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

2007—Subsec. (a)(1)(B). Pub. L. 110–134, §20(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "use the Head Start programs to develop, test, and disseminate new ideas and approaches for addressing the needs of low-income preschool children (including children with disabilities) and their families and communities (including demonstrations of innovative noncenter-based program models such as home-based and mobile programs), and otherwise to further the purposes of this subchapter."

Subsec. (d). Pub. L. 110–134, §20(2)(F), struck out concluding provisions which read as follows: "The Secretary shall ensure that an appropriate entity carries out a study described in paragraph (9), and prepares and submits to the appropriate committees of Congress a report containing the results of the study, not later than September 30, 2002."

Subsec. (d)(5). Pub. L. 110–134, §20(2)(E), added par. (5). Former par. (5) redesignated (6).

Pub. L. 110–134, §20(2)(C), substituted "early childhood education and development or services programs" for "early childhood education, or child development services".

Subsec. (d)(6), (7). Pub. L. 110–134, §20(2)(D), redesignated pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (d)(8). Pub. L. 110–134, §20(2)(D), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Pub. L. 110–134, §20(2)(A), inserted "and" at end.

Subsec. (d)(9). Pub. L. 110–134, §20(2)(B), (D), redesignated par. (8) as (9) and struck out former par. (9) which read as follows: "study the experiences of small, medium, and large States with Head Start programs in order to permit comparisons of children participating in the programs with eligible children who did not participate in the programs, which study—

"(A) may include the use of a data set that existed prior to the initiation of the study; and

"(B) shall compare the educational achievement, social adaptation, and health status of the participating children and the eligible nonparticipating children; and".

Subsec. (d)(10). Pub. L. 110–134, §20(2)(B), added par. (10) and struck out former par. (10) which provided for using the Survey of Income and Program Participation to conduct certain analyses, the National Longitudinal Survey of Youth to examine certain outcomes, and the Survey of Program Dynamics to begin certain annual reporting.

Subsec. (e)(3). Pub. L. 110–134, §20(3), substituted "early childhood education and development services or programs" for "child care, early childhood education, or child development services".

Subsec. (g)(7)(C). Pub. L. 110–134, §20(4), amended subpar. (C) generally. Prior to amendment, text read as follows:

"(i) IN GENERAL.—The Secretary shall transmit, to the committees described in clause (ii), the first interim report by September 30, 1999, the second interim report by September 30, 2001, and the final report by September 30, 2003.

"(ii) COMMITTEES.—The committees referred to in clause (i) are the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate."

Subsecs. (h) to (m). Pub. L. 110–134, §20(5), added subsecs. (h) to (m) and struck out former subsec. (h) which related to quality improvement study.

1998—Subsec. (c)(3). Pub. L. 105–244 substituted "section 1001" for "section 1141(a)".

Subsec. (d). Pub. L. 105–285, §116(1)(E), inserted concluding provisions.

Subsec. (d)(2) to (8). Pub. L. 105–285, §116(1)(C), (D), added par. (2) and redesignated former pars. (2) to (7) as (3) to (8), respectively.

Subsec. (d)(9), (10). Pub. L. 105–285, §116(1)(A), (B), (E), added pars. (9) and (10).

Subsecs. (g), (h). Pub. L. 105–285, §116(2), added subsecs. (g) and (h).

1994—Pub. L. 103–252 substituted "Research, demonstrations, and evaluation" for "Research, demonstration, pilot projects, studies, and reports" in section catchline and amended text generally, substituting provisions requiring Secretary to conduct a research, demonstration, and evaluation program to continually improve Head Start programs and develop innovative ways to further purposes of this subchapter, consult with others on the program, consider longitudinal studies in developing priorities for program, and ensure all products of program become United States property and defining objectives of program, for provisions authorizing the Secretary to provide financial assistance through contracts and grants for research, demonstration or pilot projects to develop new approaches to further purposes of this subchapter, directing Secretary to establish plan for approval of such projects, restricting combination of funds appropriated under this subchapter with other appropriations to make a single grant, requiring Secretary to conduct study of approaches to provide early, continuous, and comprehensive intervention to low-income or at-risk children and study of family day care in compliance with performance standards and to report results of studies to Congress.

1990—Pub. L. 101–501, §117(a)(1), substituted "Research, demonstration, pilot projects, studies, and reports" for "Research, demonstration, and pilot projects" in section catchline.

Subsecs. (d) to (f). Pub. L. 101–501, §117(a)(2), added subsecs. (d) to (f).

1984—Subsec. (c). Pub. L. 98–558 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

STUDY OF FULL-DAY AND FULL-YEAR HEAD START PROGRAMS

Pub. L. 103–252, title I, §126, May 18, 1994, 108 Stat. 650, directed Secretary of Health and Human Services to conduct a study of extent to which Head Start programs address the need for Head Start services during a full working day or full calendar year among eligible low-income families with preschool children and to submit a report to Congress not later than Jan. 31, 1997.

[1] So in original. Probably should be "services or".

[2] So in original. Probably should be capitalized.

§9845. Repealed. Pub. L. 103–252, title I, §117, May 18, 1994, 108 Stat. 648

Section, Pub. L. 97–35, title VI, §650, Aug. 13, 1981, 95 Stat. 505; Pub. L. 101–501, title I, §117(c), Nov. 3, 1990, 104 Stat. 1233, directed Secretary to make public announcement concerning grants or contracts for research, demonstrations, pilot projects, studies, or reports under this subchapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§9846. Reports

(a) Status of children

At least once during every 2-year period, the Secretary shall prepare and submit, to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, a report concerning the status of children (including children with disabilities, limited English proficient children, homeless children, children in foster care, and children participating in Indian Head Start programs and migrant or seasonal Head Start programs) in Head Start programs, including the number of children and the services being provided to such children. Such report shall include—

(1) a statement for the then most recently concluded fiscal year specifying—

(A) the amount of funds received by Head Start agencies designated under section 9836 of this title to provide Head Start services in a period before such fiscal year; and

(B) the amount of funds received by Head Start agencies newly designated under section 9836 of this title to provide such services in such fiscal year;

(2) a description of the distribution of Head Start services relative to the distribution of children who are eligible to participate in Head Start programs, including geographic distribution within States, and information on the number of children served under this subsection, disaggregated by type of eligibility criterion;

(3) a statement identifying how funds made available under section 9835(a) of this title were distributed and used at national, regional, and local levels;

(4) a statement specifying the amount of funds provided by the State, and by local sources, to carry out Head Start programs;

(5) cost per child and how such cost varies by region;

(6) a description of the level and nature of participation of parents in Head Start programs as volunteers and in other capacities;

(7) information concerning Head Start staff, including salaries, education, training, experience, and staff turnover;

(8) information concerning children participating in programs that receive Head Start funding, including information on family income, racial and ethnic background, homelessness, whether the child is in foster care or was referred by a child welfare agency, disability, and receipt of benefits under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.];

(9) the use and source of funds to extend Head Start services to operate full-day and year round;

(10) using data from the monitoring conducted under section 9836a(c) of this title—

(A) a description of the extent to which programs funded under this subchapter comply with performance standards and regulations in effect under this subchapter;

(B) a description of the types and condition of facilities in which such programs are located;

(C) the types of organizations that receive Head Start funds under such programs; and

(D) the number of children served under each program option;

(11) the information contained in the documents entitled "Program Information Report" and

"Head Start Cost Analyses System" (or any document similar to either), prepared with respect to Head Start programs;

(12) a description of the types of services provided to children and their families, both on-site and through referrals, including health, mental health, dental care, vision care, parenting education, physical fitness, and literacy training;

(13) a summary of information concerning the research, demonstration, and evaluation activities conducted under section 9844 of this title, including—

(A) a status report on ongoing activities; and

(B) results, conclusions, and recommendations, not included in any previous report, based on completed activities; and

(14) a study of the delivery of Head Start programs to Indian children living on and near Indian reservations, to children of Alaska Natives, and to children of migrant and seasonal farmworker families.

Promptly after submitting such report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, the Secretary shall publish in the Federal Register a notice indicating that such report is available to the public and specifying how such report may be obtained.

(b) Facilities

At least once during every 5-year period, the Secretary shall prepare and submit, to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, a report concerning the condition, location, and ownership of facilities used, or available to be used, by Indian Head Start agencies (including Alaska Native Head Start agencies) and Native Hawaiian Head Start agencies.

(c) Fiscal protocol

(1) In general

The Secretary shall conduct an annual review to assess whether the design and implementation of the triennial reviews described in section 9836a(c) of this title include compliance procedures that provide reasonable assurances that Head Start agencies are complying with applicable fiscal laws and regulations.

(2) Report

Not later than 30 days after the date the Secretary completes the annual review under paragraph (1), the Secretary shall report the findings and conclusions of the annual review to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

(d) Disability-related services

(1) In general

The Secretary shall track the provision of disability-related services for children, in order to—

(A) determine whether Head Start agencies are making timely referrals to the State or local agency responsible for providing services under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.);

(B) identify barriers to timely evaluations and eligibility determinations by the State or local agency responsible for providing services under section 619 or part C of the Individuals with Disabilities Education Act; and

(C) determine under what circumstances and for what length of time Head Start agencies are providing disability-related services for children who have not been determined under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) to be children with disabilities.

(2) Report

Not later than 1 year after December 12, 2007, the Secretary shall provide a report to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate on the activities described in paragraph (1).

(e) Evaluation and recommendations regarding obesity prevention

Not later than 1 year after December 12, 2007, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the Secretary's progress in assisting program efforts to prevent and reduce obesity in children who participate in Head Start programs, including progress on implementing initiatives within the Head Start program to prevent and reduce obesity in such children.

(Pub. L. 97–35, title VI, §650, formerly §651, Aug. 13, 1981, 95 Stat. 506; Pub. L. 98–558, title I, §108, Oct. 30, 1984, 98 Stat. 2880; Pub. L. 101–501, title I, §§118, 119, Nov. 3, 1990, 104 Stat. 1234; Pub. L. 102–401, §2(k)(5), Oct. 7, 1992, 106 Stat. 1959; renumbered §650 and amended Pub. L. 103–252, title I, §118, May 18, 1994, 108 Stat. 648; Pub. L. 105–285, title I, §117, Oct. 27, 1998, 112 Stat. 2727; Pub. L. 110–134, §21, Dec. 12, 2007, 121 Stat. 1441.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(8), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (d)(1), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–134, §21(1)(A), (G), substituted, in introductory provisions, "Education and Labor" for "Education and the Workforce", "Health, Education, Labor, and Pensions" for "Labor and Human Resources", and "(including children with disabilities, limited English proficient children, homeless children, children in foster care, and children participating in Indian Head Start programs and migrant or seasonal Head Start programs)" for "(including disabled and non-English language background children)" and, in concluding provisions, "Education and Labor" for "Education and the Workforce" and "Health, Education, Labor, and Pensions" for "Labor and Human Resources".

Subsec. (a)(2). Pub. L. 110–134, §21(1)(B), inserted ", and information on the number of children served under this subsection, disaggregated by type of eligibility criterion" before semicolon at end.

Subsec. (a)(3). Pub. L. 110–134, §21(1)(C), substituted "funds made available under section 9835(a) of this title" for "funds expended under section 9835(a)(2) of this title, and funds allotted under section 9835(a)(3) of this title,".

Subsec. (a)(8). Pub. L. 110–134, §21(1)(D), inserted "homelessness, whether the child is in foster care or was referred by a child welfare agency," after "background,".

Subsec. (a)(12). Pub. L. 110–134, §21(1)(E), inserted "vision care," after "dental care,".

Subsec. (a)(14). Pub. L. 110–134, §21(1)(F), substituted "Alaska Natives" for "Alaskan Natives" and "seasonal farmworker families" for "seasonal farmworkers".

Subsec. (b). Pub. L. 110–134, §21(2), substituted "Education and Labor" for "Education and the Workforce", "Health, Education, Labor, and Pensions" for "Labor and Human Resources", and "Alaska Native" for "Native Alaskan".

Subsecs. (c) to (e). Pub. L. 110–134, §21(3), added subsecs. (c) to (e).

1998—Pub. L. 105–285 designated existing provisions as subsec. (a), inserted heading, substituted "Education and the Workforce" for "Education and Labor" in introductory and concluding provisions, and added subsec. (b).

1994—Pub. L. 103–252, §118(a)(1), substituted "Reports" for "Evaluation" in section catchline.

Subsecs. (a) to (f). Pub. L. 103–252, §118(a)(1), struck out subsecs. (a) to (f) which related to evaluations of

programs under this subchapter to determine impact and effectiveness, adherence to Head Start performance standards, persons or entities assisting in evaluations, Secretary obtaining views of program participants, publication and submission of results to congressional committees, and all studies and evaluation material remaining property of the United States.

Subsec. (g). Pub. L. 103–252, §118(a)(2)–(4), struck out subsec. (g) designation, substituted "monitoring conducted under section 9836a(c) of this title" for "evaluations conducted under section 9836(c)(2) of this title" in par. (10), and added pars. (13) and (14).

1992—Subsec. (g). Pub. L. 102–401 struck out "(1)" before "At least" at beginning of subsec. and substituted "physical" for "physicial" in par. (12).

1990—Subsec. (c)(2). Pub. L. 101–501, §118, inserted at end "The Secretary is encouraged to provide funds for community-based cooperative research efforts to enable Head Start directors to conduct evaluations of their programs with the assistance of qualified researchers not directly involved in the administration of the program or project operation."

Subsec. (g). Pub. L. 101–501, §119, added subsec. (g).

1984—Subsec. (b). Pub. L. 98–558 substituted "not result in the elimination of nor any reduction in the scope or types of health, education, parental involvement, social or other services required to be provided under the standards" for "result in standards which are no less comprehensive than those" in second sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 4th item on page 79 identifies a reporting provision which, as subsequently amended, is contained in subsec. (a) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§§9846a, 9847. Repealed. Pub. L. 103–252, title I, §119, May 18, 1994, 108 Stat. 648

Section 9846a, Pub. L. 97–35, title VI, §651A, as added Pub. L. 101–501, title I, §120(a), Nov. 3, 1990, 104 Stat. 1235; amended Pub. L. 102–401, §2(k)(6), Oct. 7, 1992, 106 Stat. 1959, related to longitudinal study of Head Start participants.

Section 9847, Pub. L. 97–35, title VI, §652, Aug. 13, 1981, 95 Stat. 506; Pub. L. 101–501, title I, §121(a), (c), Nov. 3, 1990, 104 Stat. 1237, directed Secretary to annually determine poverty line to be used as criterion of eligibility for participation in Head Start programs.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§9848. Comparability of wages

(a) Comparability of wages

The Secretary shall take such action as may be necessary to assure that persons employed in carrying out programs financed under this subchapter shall not receive compensation at a rate which is (1) in excess of the average rate of compensation paid in the area where the program is carried out to a substantial number of the persons providing substantially comparable services, or in excess of the average rate of compensation paid to a substantial number of the persons providing substantially comparable services in the area of the person's immediately preceding employment, whichever is higher; or (2) less than the minimum wage rate prescribed in section 206(a)(1) of title 29. The Secretary shall encourage Head Start agencies to provide compensation according to salary scales that are based on training and experience.

(b) Limitation

(1) In general

Notwithstanding any other provision of law, no Federal funds may be used to pay any part of the compensation of an individual employed by a Head Start agency, if such compensation, including non-Federal funds, exceeds an amount equal to the rate payable for level II of the Executive Schedule under section 5313 of title 5.

(2) Compensation

In this subsection, the term "compensation"—

(A) includes salary, bonuses, periodic payments, severance pay, the value of any vacation time, the value of a compensatory or paid leave benefit not excluded by subparagraph (B), and the fair market value of any employee perquisite or benefit not excluded by subparagraph (B); and

(B) excludes any Head Start agency expenditure for a health, medical, life insurance, disability, retirement, or any other employee welfare or pension benefit.

(Pub. L. 97–35, title VI, §653, Aug. 13, 1981, 95 Stat. 507; Pub. L. 101–501, title I, §122, Nov. 3, 1990, 104 Stat. 1237; Pub. L. 110–134, §22, Dec. 12, 2007, 121 Stat. 1442.)

EDITORIAL NOTES

AMENDMENTS

2007—Pub. L. 110–134 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1990—Pub. L. 101–501 inserted at end "The Secretary shall encourage Head Start agencies to provide compensation according to salary scales that are based on training and experience."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

§9849. Nondiscrimination provisions

(a) Discrimination based on race, creed, color, etc., as basis for denial of financial assistance

The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(b) Sex discrimination; enforcement provisions applicable

No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 2000d–1 of this title. Section 2000d–2 of this title shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if such person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program, project, or activity receiving assistance under this subchapter.

(c) Discrimination based on handicapping condition as basis for denial of financial assistance

The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract relating to the financial assistance specifically provides that no person with responsibilities in the operation of the program, project, or activity will discriminate against any individual because of a handicapping condition in violation of section 794 of title 29.

(Pub. L. 97–35, title VI, §654, Aug. 13, 1981, 95 Stat. 507.)

§9850. Limitation with respect to certain unlawful activities

No individual employed or assigned by or in any Head Start agency or other agency assisted under this subchapter shall, pursuant to or during the performance of services rendered in connection with any program or activity conducted or assisted under this subchapter by such Head Start agency or such other agency, plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance.

(Pub. L. 97–35, title VI, §655, Aug. 13, 1981, 95 Stat. 507; Pub. L. 110–134, §23, Dec. 12, 2007, 121 Stat. 1443.)

EDITORIAL NOTES

AMENDMENTS

2007—Pub. L. 110–134 inserted "or in" after "assigned by".

§9851. Political activities

(a) State or local agency

For purposes of chapter 15 of title 5, any agency which assumes responsibility for planning, developing, and coordinating Head Start programs and receives assistance under this subchapter shall be deemed to be a State or local agency. For purposes of clauses (1) and (2) of section 1502(a) of such title, any agency receiving assistance under this subchapter shall be deemed to be a State or local agency.

(b) Restrictions

(1) In general

A program assisted under this subchapter, and any individual employed by, or assigned to or in, a program assisted under this subchapter (during the hours in which such individual is working on behalf of such program), shall not engage in—

(A) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; or

(B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election.

(2) Registration

No funds appropriated under this subchapter may be used to conduct voter registration activities. Nothing in this subchapter prohibits the availability of Head Start facilities during hours of operation for the use of any nonpartisan organization to increase the number of eligible citizens who register to vote in elections for Federal office.

(3) Rules and regulations

The Secretary, after consultation with the Director of the Office of Personnel Management, may issue rules and regulations to provide for the enforcement of this section, which may include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(Pub. L. 97–35, title VI, §656, Aug. 13, 1981, 95 Stat. 508; Pub. L. 110–134, §24, Dec. 12, 2007, 121 Stat. 1443.)

EDITORIAL NOTES

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–134, §24(1), inserted heading.

Subsec. (b). Pub. L. 110–134, §24(2), added subsec. (b) and struck out former subsec. (b) which read as follows: "Programs assisted under this subchapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity. The Secretary, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis."

§9852. Advance funding

For the purpose of affording adequate notice of funding available under this subchapter, appropriations for carrying out this subchapter are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(Pub. L. 97–35, title VI, §657, Aug. 13, 1981, 95 Stat. 508.)

§9852a. Parental consent requirement for nonemergency intrusive physical examinations

(a) Definition

The term "nonemergency intrusive physical examination" means, with respect to a child, a physical examination that—

(1) is not immediately necessary to protect the health or safety of the child involved or the health or safety of another individual; and

(2) requires incision or is otherwise invasive, or involves exposure of private body parts.

(b) Requirement

A Head Start agency shall obtain written parental consent before administration of any nonemergency intrusive physical examination of a child in connection with participation in a program under this subchapter.

(c) Rule of construction

Nothing in this section shall be construed to prohibit agencies from using established methods, for handling cases of suspected or known child abuse and neglect, that are in compliance with applicable Federal, State, or tribal law.

(Pub. L. 97–35, title VI, §657A, as added Pub. L. 110–134, §25, Dec. 12, 2007, 121 Stat. 1443.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9852a, Pub. L. 97–35, title VI, §657A, as added Pub. L. 103–252, title I, §123, May 18, 1994, 108 Stat. 650, related to consultation with Corporation for National and Community Service, prior to repeal by Pub. L. 105–285, title I, §118, Oct. 27, 1998, 112 Stat. 2727.

§9852b. Centers of Excellence in Early Childhood

(a) Definition

In this section, the term "center of excellence" means a Center of Excellence in Early Childhood designated under subsection (b).

(b) Designation and bonus grants

The Secretary shall, subject to the availability of funds under this section, establish a program under which the Secretary shall—

(1) designate not more than 200 exemplary Head Start agencies (including Early Head Start agencies, Indian Head Start agencies, and migrant and seasonal Head Start agencies) as Centers of Excellence in Early Childhood; and

(2) make bonus grants to the centers of excellence to carry out the activities described in subsection (d).

(c) Application and designation

(1) Application

(A) Nomination and submission

(i) In general

To be eligible to receive a designation as a center of excellence under subsection (b), except as provided in clause (ii), a Head Start agency in a State shall be nominated by the Governor of the State, after selection for nomination by such Governor through a competitive process, and shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(ii) Indian and migrant and seasonal Head Start programs

In the case of an Indian Head Start agency or a migrant or seasonal Head Start agency, to be eligible to receive a designation as a center of excellence under subsection (b), such an agency shall be nominated by the head of the appropriate regional office of the Department of Health and Human Services and shall submit an application to the Secretary in accordance with clause (i).

(B) Contents

At a minimum, the application shall include—

(i) evidence that the Head Start program carried out by the agency involved has significantly improved the school readiness of children who have participated in the program;

(ii) evidence that the program meets or exceeds standards described in section 9836a(a)(1) of this title, as evidenced by the results of monitoring reviews described in section 9836a(c) of this title, and has no findings of deficiencies in the preceding 3 years;

(iii) evidence that the program is making progress toward meeting the requirements described in section 9843a of this title;

(iv) an assurance that the Head Start agency will develop a collaborative partnership with the State (or a State agency) and other providers of early childhood education and development programs and services in the local community involved to conduct activities under subsection (d);

(v) a nomination letter from the Governor, or appropriate regional office, demonstrating the agency's ability to provide the coordination, transition, and training services of the program to be carried out under the bonus grant involved, including coordination of activities with State and local agencies that provide early childhood education and development to children and families in the community served by the agency, and carry out the activities described under subsection (d)(1); and

(vi) a description of how the center involved, in order to expand accessibility and continuity of quality early childhood education and development services and programs, will coordinate activities, as appropriate, assisted under this section with—

(I) programs carried out under subchapter II–B;

(II) the Early Head Start programs carried out under section 9840a of this title;

(III) preschool programs carried out under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

(IV) programs carried out under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.);

(V) State prekindergarten programs; and

(VI) other programs of early childhood education and development.

(2) Selection

In selecting agencies to designate as centers of excellence under subsection (b), the Secretary shall designate not less than 1 from each of the 50 States, the District of Columbia, an Indian Head Start program, a migrant or seasonal Head Start program, and the Commonwealth of Puerto Rico.

(3) Priority

In making bonus grant determinations under this section, the Secretary shall give priority to agencies that, through their applications, demonstrate that their programs are of exceptional quality and would serve as exemplary models for programs in the same geographic region. The Secretary may also consider the populations served by the applicants, such as agencies that serve large proportions of families of limited English proficient children or other underserved populations, and may make bonus grants to agencies that do an exceptional job meeting the needs of children in such populations.

(4) Term of designation

(A) In general

Subject to subparagraph (B), the Secretary shall designate a Head Start agency as a center of excellence for a 5-year term. During the period of that designation, subject to the availability of appropriations, the agency shall be eligible to receive a bonus grant under subsection (b).

(B) Revocation

The Secretary may revoke an agency's designation under subsection (b) if the Secretary determines that the agency is not demonstrating adequate performance or has had findings of deficiencies described in paragraph (1)(B)(ii).

(5) Amount of bonus grant

The Secretary shall base the amount of funding provided through a bonus grant made under subsection (b) to a center of excellence on the number of children eligible for Head Start services in the community involved. The Secretary shall, subject to the availability of funding, make such a bonus grant in an amount of not less than $200,000 per year.

(d) Use of funds

A center of excellence that receives a bonus grant under subsection (b)—

(1) shall use not less than 15 percent of the funds made available through the bonus grant to disseminate to other Head Start agencies in the State involved, best practices for achieving early academic success, including—

(A) best practices for achieving school readiness, including developing early literacy and mathematics skills, for children at risk for school difficulties;

(B) best practices for achieving the acquisition of the English language for limited English proficient children, if appropriate to the population served; and

(C) best practices for providing high-quality comprehensive services for eligible children and their families;

(2) may use the funds made available through the bonus grant—

(A) to provide Head Start services to additional eligible children;

(B) to better meet the needs of working families in the community served by the center by serving more children in existing Early Head Start programs (existing as of the date the center is designated under this section) or in full-working-day, full calendar year Head Start programs;

(C) to further coordinate early childhood education and development programs and services and social services available in the community served by the center for at-risk children (birth through age 8), their families, and pregnant women;

(D) to provide professional development for Head Start teachers and staff, including joint training for Head Start teachers and staff, child care providers, public and private preschool and elementary school teachers, and other providers of early childhood education and development programs;

(E) to provide effective transitions between Head Start programs and elementary schools and to facilitate ongoing communication between Head Start and elementary school teachers concerning children receiving Head Start services to improve the teachers' ability to work effectively with low-income, at-risk children and their families;

(F) to develop or maintain partnerships with institutions of higher education and nonprofit organizations, including community-based organizations, that recruit, train, place, and support college students to serve as mentors and reading partners to preschool children in Head Start programs; and

(G) to carry out other activities determined by the center to improve the overall quality of the Head Start program carried out by the agency and the program carried out under the bonus grant involved.

(e) Research and reports

(1) Research

The Secretary shall, subject to the availability of funds to carry out this subsection, award a grant or contract to an independent organization to conduct research on the ability of the centers of excellence to use the funds received under this section to improve the school readiness of children receiving Head Start services, and to positively impact school results in the earliest grades. The organization shall also conduct research to measure the success of the centers of excellence at encouraging the center's delegate agencies, additional Head Start agencies, and other providers of early childhood education and development programs in the communities involved to meet measurable improvement goals, particularly in the area of school readiness.

(2) Research report

Not later than 48 months after December 12, 2007, the organization shall prepare and submit to

the Secretary and Congress a report containing the results of the research described in paragraph (1).

(3) Reports to the Secretary

Each center of excellence shall submit an annual report to the Secretary, at such time and in such manner as the Secretary may require, that contains a description of the activities the center carried out with funds received under this section, including a description of how such funds improved services for children and families.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to make bonus grants to centers of excellence under subsection (b) to carry out activities described in subsection (d) and research and report activities described in subsection (e).

(Pub. L. 97–35, title VI, §657B, as added Pub. L. 110–134, §26, Dec. 12, 2007, 121 Stat. 1444; amended Pub. L. 114–95, title IX, §9215(nn)(6), Dec. 10, 2015, 129 Stat. 2177.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(1)(B)(vi)(III), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (c)(1)(B)(vi)(IV), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2015—Subsec. (c)(1)(B)(vi)(III) to (VII). Pub. L. 114–95 redesignated subcls. (IV) to (VII) as (III) to (VI), respectively, in subcl. (III) as redesignated, struck out "other" before "preschool programs" and substituted "the Elementary and Secondary Education Act of 1965" for "that Act", and struck out former subcl. (III) which read as follows: "Early Reading First and Even Start programs carried out under subparts 2 and 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6371 et seq., 6381 et seq.);".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

§9852c. General provisions

(a) Limitation

Nothing in this subchapter shall be construed to authorize or permit the Secretary or any employee or contractor of the Department of Health and Human Services to mandate, direct, or control, the selection of a curriculum, a program of instruction, or instructional materials, for a Head Start program.

(b) Special rule

Nothing in this subchapter shall be construed to authorize a Head Start program or a local educational agency to require the other to select or implement a specific curriculum or program of instruction.

(c) Definition

In this subchapter, the term "health", when used to refer to services or care provided to enrolled children, their parents, or their siblings, shall be interpreted to refer to both physical and mental health.

(Pub. L. 97–35, title VI, §657C, as added Pub. L. 110–134, §27, Dec. 12, 2007, 121 Stat. 1448.)

SUBCHAPTER II–A—HEAD START TRANSITION PROJECT

§§9855 to 9855g. Repealed. Pub. L. 105–285, title I, §119, Oct. 27, 1998, 112 Stat. 2728

Section 9855, Pub. L. 101–501, title I, §132, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103–382, title III, §391(v)(1), Oct. 20, 1994, 108 Stat. 4025, defined terms used in this subchapter.

Section 9855a, Pub. L. 101–501, title I, §133, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103–252, title I, §125(a), May 18, 1994, 108 Stat. 650, related to Head Start transition grants.

Section 9855b, Pub. L. 101–501, title I, §134, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103–382, title III, §391(v)(2), (3), Oct. 20, 1994, 108 Stat. 4025, related to eligibility for Head Start transition grants.

Section 9855c, Pub. L. 101–501, title I, §135, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 103–382, title III, §391(v)(4), Oct. 20, 1994, 108 Stat. 4025, related to requirements for awarding Head Start transition grants.

Section 9855d, Pub. L. 101–501, title I, §136, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 102–119, §26(d), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–382, title III, §391(v)(5)–(7), Oct. 20, 1994, 108 Stat. 4025, related to applications for Head Start transition grants.

Section 9855e, Pub. L. 101–501, title I, §137, Nov. 3, 1990, 104 Stat. 1241, related to evaluation of and report on programs assisted under Head Start transition project.

Section 9855f, Pub. L. 101–501, title I, §138, Nov. 3, 1990, 104 Stat. 1242, related to payments and Federal share of payments under Head Start transition project.

Section 9855g, Pub. L. 101–501, title I, §139, Nov. 3, 1990, 104 Stat. 1242, related to coordination with programs established under the Follow Through Act.

SUBCHAPTER II–B—CHILD CARE AND DEVELOPMENT BLOCK GRANT

EDITORIAL NOTES

CODIFICATION

Subchapter is based on subchapter C of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236, and amended by Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.

§9857. Short title and purposes

(a) Short title

This subchapter may be cited as the "Child Care and Development Block Grant Act of 1990".

(b) Purposes

The purposes of this subchapter are—

(1) to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within that State;

(2) to promote parental choice to empower working parents to make their own decisions regarding the child care services that best suit their family's needs;

(3) to encourage States to provide consumer education information to help parents make informed choices about child care services and to promote involvement by parents and family members in the development of their children in child care settings;

(4) to assist States in delivering high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance;

(5) to assist States in improving the overall quality of child care services and programs by implementing the health, safety, licensing, training, and oversight standards established in this subchapter and in State law (including State regulations);

(6) to improve child care and development of participating children; and

(7) to increase the number and percentage of low-income children in high-quality child care settings.

(Pub. L. 97–35, title VI, §658A, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §602, Aug. 22, 1996, 110 Stat. 2279; Pub. L. 113–186, §2, Nov. 19, 2014, 128 Stat. 1971.)

EDITORIAL NOTES

CODIFICATION

Subsection (a) of this section was formerly set out as a note under section 9801 of this title. Subsection (b) of this section was formerly set out as a note under section 9858 of this title.

AMENDMENTS

2014—Pub. L. 113–186 amended section generally. Prior to amendment, text read as follows:

"(a) SHORT TITLE.—This subchapter may be cited as the 'Child Care and Development Block Grant Act of 1990'.

"(b) GOALS.—The goals of this subchapter are—

"(1) to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State;

"(2) to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;

"(3) to encourage States to provide consumer education information to help parents make informed choices about child care;

"(4) to assist States to provide child care to parents trying to achieve independence from public assistance; and

"(5) to assist States in implementing the health, safety, licensing, and registration standards established in State regulations."

1996—Pub. L. 104–193 inserted "and goals" after "title" in section catchline, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

§9858. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter $2,360,000,000 for fiscal year 2015, $2,478,000,000 for fiscal year 2016, $2,539,950,000 for fiscal year 2017, $2,603,448,750 for fiscal year 2018, $2,668,534,969 for fiscal year 2019, and $2,748,591,018 for fiscal year 2020.

(Pub. L. 97–35, title VI, §658B, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §603(a), Aug. 22, 1996, 110 Stat. 2279; Pub. L. 113–186, §3, Nov. 19, 2014, 128 Stat. 1971.)

EDITORIAL NOTES

AMENDMENTS

2014—Pub. L. 113–186 substituted "subchapter $2,360,000,000 for fiscal year 2015, $2,478,000,000 for fiscal year 2016, $2,539,950,000 for fiscal year 2017, $2,603,448,750 for fiscal year 2018, $2,668,534,969 for fiscal year 2019, and $2,748,591,018 for fiscal year 2020" for "subchapter $1,000,000,000 for each of the fiscal years 1996 through 2002".

1996—Pub. L. 104–193 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out this subchapter, $750,000,000 for fiscal year 1991, $825,000,000 for fiscal year 1992, $925,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995."

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–193, title VI, §615, Aug. 22, 1996, 110 Stat. 2287, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this title [see Short title of 1996 Amendment note set out under section 9801 of this title] and the amendments made by this title shall take effect on October 1, 1996.

"(b) EXCEPTION.—The amendment made by section 603(a) [amending this section] shall take effect on the date of enactment of this Act [Aug. 22, 1996]."

CHILD CARE STABILIZATION

Pub. L. 117–2, title II, §2202, Mar. 11, 2021, 135 Stat. 31, provided that:

"(a) DEFINITIONS.—In this section:

"(1) COVID–19 PUBLIC HEALTH EMERGENCY.—The term 'COVID–19 public health emergency' means the public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to COVID–19, including any renewal of the declaration.

"(2) ELIGIBLE CHILD CARE PROVIDER.—The term 'eligible child care provider' means—

"(A) an eligible child care provider as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n); or

"(B) a child care provider that is licensed, regulated, or registered in the State, territory, or Indian Tribe on the date of enactment of this Act [Mar. 11, 2021] and meets applicable State and local health and safety requirements.

"(b) CHILD CARE STABILIZATION FUNDING.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $23,975,000,000, to remain available through September 30, 2021, for grants under this section in accordance with the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.].

"(c) GRANTS.—From the amounts appropriated to carry out this section and under the authority of section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m) and this section, the Secretary shall award to each lead agency a child care stabilization grant, without regard to the requirements in subparagraphs (C) and (E) of section 658E(c)(3), and in section 658G, of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(c)(3), 9858e). Such grant shall be allotted in accordance with section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m).

"(d) STATE RESERVATIONS AND SUBGRANTS.—

"(1) RESERVATION.—A lead agency for a State that receives a child care stabilization grant pursuant to subsection (c) shall reserve not more than 10 percent of such grant funds to administer subgrants, provide technical assistance and support for applying for and accessing the subgrant opportunity, publicize the availability of the subgrants, carry out activities to increase the supply of child care, and provide technical assistance to help child care providers implement policies as described in paragraph (2)(D)(i).

"(2) SUBGRANTS TO QUALIFIED CHILD CARE PROVIDERS.—

"(A) IN GENERAL.—The lead agency shall use the remainder of the grant funds awarded pursuant to subsection (c) to make subgrants to qualified child care providers described in subparagraph (B), regardless of such a provider's previous receipt of other Federal assistance, to support the stability of

the child care sector during and after the COVID–19 public health emergency.

"(B) QUALIFIED CHILD CARE PROVIDER.—To be qualified to receive a subgrant under this paragraph, a provider shall be an eligible child care provider that on the date of submission of an application for the subgrant, was either—

"(i) open and available to provide child care services; or

"(ii) closed due to public health, financial hardship, or other reasons relating to the COVID–19 public health emergency.

"(C) SUBGRANT AMOUNT.—The amount of such a subgrant to a qualified child care provider shall be based on the provider's stated current operating expenses, including costs associated with providing or preparing to provide child care services during the COVID–19 public health emergency, and to the extent practicable, cover sufficient operating expenses to ensure continuous operations for the intended period of the subgrant.

"(D) APPLICATION.—The lead agency shall—

"(i) make available on the lead agency's website an application for qualified child care providers that includes certifications that, for the duration of the subgrant—

"(I) the provider applying will, when open and available to provide child care services, implement policies in line with guidance from the corresponding State, Tribal, and local authorities, and in accordance with State, Tribal, and local orders, and, to the greatest extent possible, implement policies in line with guidance from the Centers for Disease Control and Prevention;

"(II) for each employee, the provider will pay not less than the full compensation, including any benefits, that was provided to the employee as of the date of submission of the application for the subgrant (referred to in this subclause as 'full compensation'), and will not take any action that reduces the weekly amount of the employee's compensation below the weekly amount of full compensation, or that reduces the employee's rate of compensation below the rate of full compensation, including the involuntary furloughing of any employee employed on the date of submission of the application for the subgrant; and

"(III) the provider will provide relief from copayments and tuition payments for the families enrolled in the provider's program, to the extent possible, and prioritize such relief for families struggling to make either type of payment; and

"(ii) accept and process applications submitted under this subparagraph on a rolling basis, and provide subgrant funds in advance of provider expenditures, except as provided in subsection (e)(2).

"(E) OBLIGATION.—The lead agency shall notify the Secretary if it is unable to obligate at least 50 percent of the funds received pursuant to subsection (c) that are available for subgrants described in this paragraph within 9 months of the date of enactment of this Act [Mar. 11, 2021].

"(e) USES OF FUNDS.—

"(1) IN GENERAL.—A qualified child care provider that receives funds through such a subgrant shall use the funds for at least one of the following:

"(A) Personnel costs, including payroll and salaries or similar compensation for an employee (including any sole proprietor or independent contractor), employee benefits, premium pay, or costs for employee recruitment and retention.

"(B) Rent (including rent under a lease agreement) or payment on any mortgage obligation, utilities, facility maintenance or improvements, or insurance.

"(C) Personal protective equipment, cleaning and sanitization supplies and services, or training and professional development related to health and safety practices.

"(D) Purchases of or updates to equipment and supplies to respond to the COVID–19 public health emergency.

"(E) Goods and services necessary to maintain or resume child care services.

"(F) Mental health supports for children and employees.

"(2) REIMBURSEMENT.—The qualified child care provider may use the subgrant funds to reimburse the provider for sums obligated or expended before the date of enactment of this Act for the cost of a good or service described in paragraph (1) to respond to the COVID–19 public health emergency.

"(f) SUPPLEMENT NOT SUPPLANT.—Amounts made available to carry out this section shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide child care services for eligible individuals."

SMALL BUSINESS CHILD CARE GRANT PROGRAM

Pub. L. 110–28, title VIII, §8303, May 25, 2007, 121 Stat. 206, provided that:

"(a) ESTABLISHMENT.—The Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall establish a program to award grants to States, on a competitive basis, to assist States in providing funds to encourage the establishment and operation of employer-operated child care programs.

"(b) APPLICATION.—To be eligible to receive a grant under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including an assurance that the funds required under subsection (e) will be provided.

"(c) AMOUNT AND PERIOD OF GRANT.—The Secretary shall determine the amount of a grant to a State under this section based on the population of the State as compared to the population of all States receiving grants under this section. The Secretary shall make the grant for a period of 3 years.

"(d) USE OF FUNDS.—

"(1) IN GENERAL.—A State shall use amounts provided under a grant awarded under this section to provide assistance to small businesses (or consortia formed in accordance with paragraph (3)) located in the State to enable the small businesses (or consortia) to establish and operate child care programs. Such assistance may include—

"(A) technical assistance in the establishment of a child care program;

"(B) assistance for the startup costs related to a child care program;

"(C) assistance for the training of child care providers;

"(D) scholarships for low-income wage earners;

"(E) the provision of services to care for sick children or to provide care to school-aged children;

"(F) the entering into of contracts with local resource and referral organizations or local health departments;

"(G) assistance for care for children with disabilities;

"(H) payment of expenses for renovation or operation of a child care facility; or

"(I) assistance for any other activity determined appropriate by the State.

"(2) APPLICATION.—In order for a small business or consortium to be eligible to receive assistance from a State under this section, the small business involved shall prepare and submit to the State an application at such time, in such manner, and containing such information as the State may require.

"(3) PREFERENCE.—

"(A) IN GENERAL.—In providing assistance under this section, a State shall give priority to an applicant that desires to form a consortium to provide child care in a geographic area within the State where such care is not generally available or accessible.

"(B) CONSORTIUM.—For purposes of subparagraph (A), a consortium shall be made up of 2 or more entities that shall include small businesses and that may include large businesses, nonprofit agencies or organizations, local governments, or other appropriate entities.

"(4) LIMITATIONS.—With respect to grant funds received under this section, a State may not provide in excess of $500,000 in assistance from such funds to any single applicant.

"(e) MATCHING REQUIREMENT.—To be eligible to receive a grant under this section, a State shall provide assurances to the Secretary that, with respect to the costs to be incurred by a covered entity receiving assistance in carrying out activities under this section, the covered entity will make available (directly or through donations from public or private entities) non-Federal contributions to such costs in an amount equal to—

"(1) for the first fiscal year in which the covered entity receives such assistance, not less than 50 percent of such costs ($1 for each $1 of assistance provided to the covered entity under the grant);

"(2) for the second fiscal year in which the covered entity receives such assistance, not less than 662/3 percent of such costs ($2 for each $1 of assistance provided to the covered entity under the grant); and

"(3) for the third fiscal year in which the covered entity receives such assistance, not less than 75 percent of such costs ($3 for each $1 of assistance provided to the covered entity under the grant).

"(f) REQUIREMENTS OF PROVIDERS.—To be eligible to receive assistance under a grant awarded under this section, a child care provider—

"(1) who receives assistance from a State shall comply with all applicable State and local licensing and regulatory requirements and all applicable health and safety standards in effect in the State; and

"(2) who receives assistance from an Indian tribe or tribal organization shall comply with all applicable regulatory standards.

"(g) STATE-LEVEL ACTIVITIES.—A State may not retain more than 3 percent of the amount described in subsection (c) for State administration and other State-level activities.

"(h) ADMINISTRATION.—

"(1) STATE RESPONSIBILITY.—A State shall have responsibility for administering a grant awarded for the State under this section and for monitoring covered entities that receive assistance under such grant.

"(2) AUDITS.—A State shall require each covered entity receiving assistance under the grant awarded under this section to conduct an annual audit with respect to the activities of the covered entity. Such audits shall be submitted to the State.

"(3) MISUSE OF FUNDS.—

"(A) REPAYMENT.—If the State determines, through an audit or otherwise, that a covered entity receiving assistance under a grant awarded under this section has misused the assistance, the State shall notify the Secretary of the misuse. The Secretary, upon such a notification, may seek from such a covered entity the repayment of an amount equal to the amount of any such misused assistance plus interest.

"(B) APPEALS PROCESS.—The Secretary shall by regulation provide for an appeals process with respect to repayments under this paragraph.

"(i) REPORTING REQUIREMENTS.—

"(1) 2-YEAR STUDY.—

"(A) IN GENERAL.—Not later than 2 years after the date on which the Secretary first awards grants under this section, the Secretary shall conduct a study to determine—

"(i) the capacity of covered entities to meet the child care needs of communities within States;

"(ii) the kinds of consortia that are being formed with respect to child care at the local level to carry out programs funded under this section; and

"(iii) who is using the programs funded under this section and the income levels of such individuals.

"(B) REPORT.—Not later than 28 months after the date on which the Secretary first awards grants under this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the results of the study conducted in accordance with subparagraph (A).

"(2) FOUR-YEAR STUDY.—

"(A) IN GENERAL.—Not later than 4 years after the date on which the Secretary first awards grants under this section, the Secretary shall conduct a study to determine the number of child care facilities that are funded through covered entities that received assistance through a grant awarded under this section and that remain in operation, and the extent to which such facilities are meeting the child care needs of the individuals served by such facilities.

"(B) REPORT.—Not later than 52 months after the date on which the Secretary first awards grants under this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the results of the study conducted in accordance with subparagraph (A).

"(j) DEFINITIONS.—In this section:

"(1) COVERED ENTITY.—The term 'covered entity' means a small business or a consortium formed in accordance with subsection (d)(3).

"(2) INDIAN COMMUNITY.—The term 'Indian community' means a community served by an Indian tribe or tribal organization.

"(3) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms 'Indian tribe' and 'tribal organization' have the meanings given the terms in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n).

"(4) SMALL BUSINESS.—The term 'small business' means an employer who employed an average of at least 2 but not more than 50 employees on the business days during the preceding calendar year.

"(5) STATE.—The term 'State' has the meaning given the term in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n).

"(k) APPLICATION TO INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—In this section:

"(1) IN GENERAL.—Except as provided in subsection (f)(1), and in paragraphs (2) and (3), the term 'State' includes an Indian tribe or tribal organization.

"(2) GEOGRAPHIC REFERENCES.—The term 'State' includes an Indian community in subsections (c) (the second and third place the term appears), (d)(1) (the second place the term appears), (d)(3)(A) (the second place the term appears), and (i)(1)(A)(i).

"(3) STATE-LEVEL ACTIVITIES.—The term 'State-level activities' includes activities at the tribal level.

"(l) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $50,000,000 for the period of fiscal years 2008 through 2012.

"(2) STUDIES AND ADMINISTRATION.—With respect to the total amount appropriated for such period in accordance with this subsection, not more than $2,500,000 of that amount may be used for

expenditures related to conducting studies required under, and the administration of, this section.

"(m) TERMINATION OF PROGRAM.—The program established under subsection (a) shall terminate on September 30, 2012."

GOALS OF SUBCHAPTER

Pub. L. 97–35, title VI, subtitle A, ch. 8, subch. C, §658A(b), as added by Pub. L. 104–193, title VI, §602(3), Aug. 22, 1996, 110 Stat. 2279, and amended by Pub. L. 113–186, §2, Nov. 19, 2014, 128 Stat. 1971, which provided the goals of this subchapter and was formerly set out as a note under this section, was amended generally by Pub. L. 113–186 and subsequently transferred to section 9857(b) of this title.

§9858a. Establishment of block grant program

The Secretary is authorized to make grants to States in accordance with the provisions of this subchapter.

(Pub. L. 97–35, title VI, §658C, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

§9858b. Lead agency

(a) Designation

The Governor of a State desiring to receive a grant under this subchapter shall designate an agency (which may be an appropriate collaborative agency), or establish a joint interagency office, that complies with the requirements of subsection (b) to serve as the lead agency for the State under this subchapter.

(b) Duties

(1) In general

The lead agency shall—

(A) administer, directly or through other governmental or nongovernmental agencies, the financial assistance received under this subchapter by the State;

(B) develop the State plan to be submitted to the Secretary under section 9858c(a) of this title;

(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the State with sufficient time and Statewide distribution of the notice of such hearing, to provide to the public an opportunity to comment on the provision of child care services under the State plan;

(D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs; and

(E) at the option of an Indian tribe or tribal organization in the State, collaborate and coordinate with such Indian tribe or tribal organization in the development of the State plan in a timely manner.

(2) Development of plan

In the development of the State plan described in paragraph (1)(B), the lead agency shall consult with appropriate representatives of units of general purpose local government.

(Pub. L. 97–35, title VI, §658D, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat.

1388–236; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §604, Aug. 22, 1996, 110 Stat. 2281; Pub. L. 113–186, §4, Nov. 19, 2014, 128 Stat. 1972.)

EDITORIAL NOTES

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–186, §4(a), substituted "Governor" for "chief executive officer" and "designate an agency (which may be an appropriate collaborative agency), or establish a joint interagency office, that complies with the requirements of subsection (b) to serve as the lead agency for the State under this subchapter" for "designate, in an application submitted to the Secretary under section 9858c of this title, an appropriate State agency that complies with the requirements of subsection (b) of this section to act as the lead agency".

Subsec. (b)(1)(E). Pub. L. 113–186, §4(b), added subpar. (E).

1996—Subsec. (b)(1)(A). Pub. L. 104–193, §604(1)(A), substituted "governmental or nongovernmental agencies" for "State agencies".

Subsec. (b)(1)(C). Pub. L. 104–193, §604(1)(B), inserted "with sufficient time and Statewide distribution of the notice of such hearing," after "hearing in the State".

Subsec. (b)(2). Pub. L. 104–193, §604(2), struck out at end "Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages."

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title

§9858c. Application and plan

(a) Application

To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including—

(1) an assurance that the State will comply with the requirements of this subchapter; and

(2) a State plan that meets the requirements of subsection (c).

(b) Period covered by plan

The State plan contained in the application under subsection (a) shall be designed to be implemented during a 3-year period.

(c) Requirements of a plan

(1) Lead agency

The State plan shall identify the lead agency designated or established under section 9858b of this title.

(2) Policies and procedures

The State plan shall: [1]

(A) Parental choice of providers

Provide assurances that—

(i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter are given the option either—

(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

(II) to receive a child care certificate as defined in section 9858n(2) of this title;

(ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

(iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.

(B) Unlimited parental access

Certify that procedures are in effect within the State to ensure that child care providers who provide services for which assistance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers, and provide a detailed description of such procedures.

(C) Parental complaints

Certify that the State maintains a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request and provide a detailed description of how such record is maintained and is made available.

(D) Monitoring and inspection reports

The plan shall include a certification that the State, not later than 1 year after the State has in effect the policies and practices described in subparagraph (K)(i), will make public by electronic means, in a consumer-friendly and easily accessible format, organized by provider, the results of monitoring and inspection reports, including those due to major substantiated complaints about failure to comply with this subchapter and State child care policies, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible child care providers within the State. The results shall also include information on the date of such an inspection, and, where applicable, information on corrective action taken.

(E) Consumer and provider education information

The plan shall include a certification that the State will collect and disseminate (which dissemination may be done, except as otherwise specified in this subparagraph, through resource and referral organizations or other means as determined by the State) to parents of eligible children, the general public, and, where applicable, providers—

(i) information about the availability of the full diversity of child care services that will promote informed child care choices and that concerns—

(I) the availability of child care services provided through programs authorized by this subchapter and, if feasible, other child care services and other programs provided in the State for which the family may be eligible, as well as the availability of financial assistance to obtain child care services in the State;

(II) if available, information about the quality of providers, as determined by the State, that can be provided through a Quality Rating and Improvement System;

(III) information, made available through a State Web site, describing the State process for licensing child care providers, the State processes for conducting background checks,

and monitoring and inspections, of child care providers, and the offenses that prevent individuals and entities from serving as child care providers in the State;

(IV) other programs for which families that receive child care services for which financial assistance is provided under this subchapter may be eligible, including the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), Head Start and Early Head Start programs carried out under the Head Start Act (42 U.S.C. 9831 et seq.), the program carried out under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.), the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), the special supplemental nutrition program for women, infants, and children established under section 1786 of this title, the child and adult care food program established under section 1766 of this title, and the Medicaid and State children's health insurance programs under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.);

(V) programs carried out under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.);

(VI) research and best practices concerning children's development, including social and emotional development, early childhood development, and meaningful parent and family engagement, and physical health and development (particularly healthy eating and physical activity); and

(VII) the State policies regarding the social-emotional behavioral health of young children, which may include positive behavioral intervention and support models, and policies on expulsion of preschool-aged children, in early childhood programs receiving assistance under this subchapter; and

(ii) information on developmental screenings, including—

(I) information on existing (as of the date of submission of the application containing the plan) resources and services the State can deploy, including the coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment program under the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and developmental screening services available under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.), in conducting developmental screenings and providing referrals to services, when appropriate, for children who receive assistance under this subchapter; and

(II) a description of how a family or eligible child care provider may utilize the resources and services described in subclause (I) to obtain developmental screenings for children who receive assistance under this subchapter who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

(F) Compliance with State licensing requirements

(i) In general

The plan shall include a certification that the State involved has in effect licensing requirements applicable to child care services provided within the State, and provide a detailed description of such requirements and of how such requirements are effectively enforced.

(ii) License exemption

If the State uses funds received under this subchapter to support a child care provider that is exempt from the corresponding licensing requirements described in clause (i), the plan shall include a description stating why such licensing exemption does not endanger the health, safety, or development of children who receive services from child care providers who are exempt from such requirements.

(G) Training and professional development requirements

(i) In general

The plan shall describe the training and professional development requirements that are in effect within the State designed to enable child care providers to promote the social, emotional, physical, and cognitive development of children and to improve the knowledge and skills of the child care workforce. Such requirements shall be applicable to child care providers that provide services for which assistance is provided in accordance with this subchapter.

(ii) Requirements

The plan shall provide an assurance that such training and professional development—

(I) shall be conducted on an ongoing basis, provide for a progression of professional development (which may include encouraging the pursuit of postsecondary education), reflect current research and best practices relating to the skills necessary for the child care workforce to meet the developmental needs of participating children, and improve the quality of, and stability within, the child care workforce;

(II) shall be developed in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))), and may engage training providers in aligning training opportunities with the State's training framework;

(III) incorporates [2] knowledge and application of the State's early learning and developmental guidelines (where applicable), the State's health and safety standards, and incorporates social-emotional behavior intervention models, which may include positive behavior intervention and support models;

(IV) shall be accessible to providers supported through Indian tribes or tribal organizations that receive assistance under this subchapter; and

(V) to the extent practicable, are appropriate for a population of children that includes—

(aa) different age groups;

(bb) English learners;

(cc) children with disabilities; and

(dd) Native Americans, including Indians, as the term is defined in section 5304 of title 25 (including Alaska Natives within the meaning of that term), and Native Hawaiians (as defined in section 7517 of title 20).

(iii) Information

The plan shall include the number of hours of training required for eligible providers and caregivers to engage in annually, as determined by the State.

(iv) Construction

The Secretary shall not require an individual or entity that provides child care services for which assistance is provided in accordance with this subchapter to acquire a credential to provide such services. Nothing in this section shall be construed to prohibit a State from requiring a credential.

(H) Child-to-provider ratio standards

(i) Standards

The plan shall describe child care standards for child care services for which assistance is made available in accordance with this subchapter, appropriate to the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address—

(I) group size limits for specific age populations, as determined by the State;

(II) the appropriate ratio between the number of children and the number of providers, in terms of the age of the children in child care, as determined by the State; and

(III) required qualifications for such providers, as determined by the State.

(ii) Construction

The Secretary may offer guidance to States on child-to-provider ratios described in clause (i) according to setting and age group, but shall not require that the State maintain specific group size limits for specific age populations or child-to-provider ratios for providers who receive assistance in accordance with subchapter.[3]

(I) Health and safety requirements

The plan shall include a certification that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available in accordance with this subchapter. Such requirements—

(i) shall relate to matters including health and safety topics consisting of—

(I) the prevention and control of infectious diseases (including immunization) and the establishment of a grace period that allows homeless children and children in foster care to receive services under this subchapter while their families (including foster families) are taking any necessary action to comply with immunization and other health and safety requirements;

(II) prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) the administration of medication, consistent with standards for parental consent;

(IV) the prevention of and response to emergencies due to food and allergic reactions;

(V) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) prevention of shaken baby syndrome and abusive head trauma;

(VII) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 5195a(a)(1) of this title;

(VIII) the handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(IX) for providers that offer transportation, if applicable, appropriate precautions in transporting children;

(X) first aid and cardiopulmonary resuscitation; and

(XI) minimum health and safety training, to be completed pre-service or during an orientation period in addition to ongoing training, appropriate to the provider setting involved that addresses each of the requirements relating to matters described in subclauses (I) through (X); and

(ii) may include requirements relating to nutrition, access to physical activity, or any other subject area determined by the State to be necessary to promote child development or to protect children's health and safety.

(J) Compliance with state and local health and safety requirements

The plan shall include a certification that procedures are in effect to ensure that child care providers within the State, that provide services for which assistance is made available in accordance with this subchapter, comply with all applicable State and local health and safety requirements as described in subparagraph (I).

(K) Enforcement of licensing and other regulatory requirements

(i) Certification

The plan shall include a certification that the State, not later than 2 years after November 19, 2014, shall have in effect policies and practices, applicable to licensing or regulating child care providers that provide services for which assistance is made available in accordance with this subchapter and the facilities of those providers, that—

(I) ensure that individuals who are hired as licensing inspectors in the State are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements, and are trained in all aspects of the State's licensure requirements;

(II) require licensing inspectors (or qualified inspectors designated by the lead agency) of those child care providers and facilities to perform inspections, with—

(aa) not less than 1 prelicensure inspection, for compliance with health, safety, and fire standards, of each such child care provider and facility in the State; and

(bb) not less than annually, an inspection (which shall be unannounced) of each such child care provider and facility in the State for compliance with all child care licensing standards, which shall include an inspection for compliance with health, safety, and fire standards (inspectors may inspect for compliance with all 3 standards at the same time);

(III) require the ratio of licensing inspectors to such child care providers and facilities in the State to be maintained at a level sufficient to enable the State to conduct inspections of such child care providers and facilities on a timely basis in accordance with Federal, State, and local law; and

(IV) require licensing inspectors (or qualified inspectors designated by the lead agency) of child care providers and facilities to perform an annual inspection of each license-exempt provider in the State receiving funds under this subchapter (unless the provider is an eligible child care provider as described in section 9858n(6)(B) of this title) for compliance with health, safety, and fire standards, at a time to be determined by the State.

(ii) Construction

The Secretary may offer guidance to a State, if requested by the State, on a research-based minimum standard regarding ratios described in clause (i)(III) and provide technical assistance to the State on meeting the minimum standard within a reasonable time period, but shall not prescribe a particular ratio.

(L) Compliance with child abuse reporting requirements

The plan shall include a certification that child care providers within the State will comply with the child abuse reporting requirements of section 5106a(b)(2)(B)(i) of this title.

(M) Meeting the needs of certain populations

The plan shall describe how the State will develop and implement strategies (which may include alternative reimbursement rates to child care providers, the provision of direct contracts or grants to community-based organizations, offering child care certificates to parents, or other means determined by the State) to increase the supply and improve the quality of child care services for—

(i) children in underserved areas;

(ii) infants and toddlers;

(iii) children with disabilities, as defined by the State; and

(iv) children who receive care during nontraditional hours.

(N) Protection for working parents

(i) Minimum period

(I) 12-month period

The plan shall demonstrate that each child who receives assistance under this subchapter in the State will be considered to meet all eligibility requirements for such assistance and will receive such assistance, for not less than 12 months before the State or designated local entity redetermines the eligibility of the child under this subchapter, regardless of a temporary change in the ongoing status of the child's parent as working or attending a job training or educational program or a change in family income for the child's family, if that

family income does not exceed 85 percent of the State median income for a family of the same size.

(II) Fluctuations in earnings

The plan shall demonstrate how the State's or designated local entity's processes for initial determination and redetermination of such eligibility take into account irregular fluctuations in earnings.

(ii) Redetermination process

The plan shall describe the procedures and policies that are in place to ensure that working parents (especially parents in families receiving assistance under the program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirements for redetermination of eligibility for assistance provided in accordance with this subchapter.

(iii) Period before termination

At the option of the State, the plan shall demonstrate that the State will not terminate assistance provided to carry out this subchapter based on a factor consisting of a parent's loss of work or cessation of attendance at a job training or educational program for which the family was receiving the assistance, without continuing the assistance for a reasonable period of time, of not less than 3 months, after such loss or cessation in order for the parent to engage in a job search and resume work, or resume attendance at a job training or educational program, as soon as possible.

(iv) Graduated phaseout of care

The plan shall describe the policies and procedures that are in place to allow for provision of continued assistance to carry out this subchapter, at the beginning of a new eligibility period under clause (i)(I), for children of parents who are working or attending a job training or educational program and whose family income exceeds the State's income limit to initially qualify for such assistance, if the family income for the family involved does not exceed 85 percent of the State median income for a family of the same size.

(O) Coordination with other programs

(i) In general

The plan shall describe how the State, in order to expand accessibility and continuity of care, and assist children enrolled in early childhood programs to receive full-day services, will efficiently, and to the extent practicable, coordinate the services supported to carry out this subchapter with programs operating at the Federal, State, and local levels for children in preschool programs, tribal early childhood programs, and other early childhood programs, including those serving infants and toddlers with disabilities, homeless children, and children in foster care.

(ii) Optional use of combined funds

If the State elects to combine funding for the services supported to carry out this subchapter with funding for any program described in clause (i), the plan shall describe how the State will combine the multiple sets of funding and use the combined funding.

(iii) Rule of construction

Nothing in clause (i) shall be construed to affect the priority of children described in clause (i) to receive full-day prekindergarten or Head Start program services.

(P) Public-private partnerships

The plan shall demonstrate how the State encourages partnerships among State agencies, other public agencies, Indian tribes and tribal organizations, and private entities, including faith-based and community-based organizations, to leverage existing service delivery systems

(as of the date of the submission of the application containing the plan) for child care and development services and to increase the supply and quality of child care services for children who are less than 13 years of age, such as by implementing voluntary shared services alliance models.

(Q) Priority for low-income populations

The plan shall describe the process the State proposes to use, with respect to investments made to increase access to programs providing high-quality child care and development services, to give priority for those investments to children of families in areas that have significant concentrations of poverty and unemployment and that do not have such programs.

(R) Consultation

The plan shall include a certification that the State has developed the plan in consultation with the State Advisory Council on Early Childhood Education and Care designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)).

(S) Payment practices

The plan shall include—

(i) a certification that the payment practices of child care providers in the State that serve children who receive assistance under this subchapter reflect generally accepted payment practices of child care providers in the State that serve children who do not receive assistance under this subchapter, so as to provide stability of funding and encourage more child care providers to serve children who receive assistance under this subchapter; and

(ii) an assurance that the State will, to the extent practicable, implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider reimbursement rates from an eligible child's occasional absences due to holidays or unforseen [4] circumstances such as illness.

(T) Early learning and developmental guidelines

(i) In general

The plan shall include an assurance that the State will maintain or implement early learning and developmental guidelines (or develop such guidelines if the State does not have such guidelines as of November 19, 2014) that are appropriate for children from birth to kindergarten entry, describing what such children should know and be able to do, and covering the essential domains of early childhood development for use statewide by child care providers. Such guidelines shall—

(I) be research-based, developmentally appropriate, and aligned with entry to kindergarten;

(II) be implemented in consultation with the state [5] educational agency and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) [6] of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)); [7] and

(III) be updated as determined by the State.

(ii) Prohibition on use of funds

The plan shall include an assurance that funds received by the State to carry out this subchapter will not be used to develop or implement an assessment for children that—

(I) will be the sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter;

(II) will be used as the primary or sole basis to provide a reward or sanction for an individual provider;

(III) will be used as the primary or sole method for assessing program effectiveness; or

(IV) will be used to deny children eligibility to participate in the program carried out

under this subchapter.

(iii) Exceptions

Nothing in this subchapter shall preclude the State from using a single assessment as determined by the State for children for—

(I) supporting learning or improving a classroom environment;

(II) targeting professional development to a provider;

(III) determining the need for health, mental health, disability, developmental delay, or family support services;

(IV) obtaining information for the quality improvement process at the State level; or

(V) conducting a program evaluation for the purposes of providing program improvement and parent information.

(iv) No Federal control

Nothing in this section shall be construed to authorize an officer or employee of the Federal Government to—

(I) mandate, direct, control, or place conditions (outside of what is required by this subchapter) around adopting a State's early learning and developmental guidelines developed in accordance with this section;

(II) establish any criterion that specifies, defines, prescribes, or places conditions (outside of what is required by this subchapter) on a State adopting standards or measures that a State uses to establish, implement, or improve such guidelines, related accountability systems, or alignment of such guidelines with education standards; or

(III) require a State to submit such guidelines for review.

(U) Disaster preparedness

(i) In general

The plan shall demonstrate the manner in which the State will address the needs of children in child care services provided through programs authorized under this subchapter, including the need for safe child care, for the period before, during, and after a state of emergency declared by the Governor or a major disaster or emergency (as such terms are defined in section 5122 of this title).

(ii) Statewide child care disaster plan

Such plan shall include a statewide child care disaster plan for coordination of activities and collaboration, in the event of an emergency or disaster described in clause (i), among the State agency with jurisdiction over human services, the agency with jurisdiction over State emergency planning, the State lead agency, the State agency with jurisdiction over licensing of child care providers, the local resource and referral organizations, the State resource and referral system, and the State Advisory Council on Early Childhood Education and Care as provided for under section 642B(b) of the Head Start Act (42 U.S.C. 9837b(b)).

(iii) Disaster plan components

The components of the disaster plan, for such an emergency or disaster, shall include—

(I) evacuation, relocation, shelter-in-place, and lock-down procedures, and procedures for communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;

(II) guidelines for the continuation of child care services in the period following the emergency or disaster, which may include the provision of emergency and temporary child care services, and temporary operating standards for child care providers during that period; and

(III) procedures for staff and volunteer emergency preparedness training and practice drills.

(V) Business technical assistance

The plan shall describe how the State will develop and implement strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services.

(3) Use of block grant funds

(A) General requirement

The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter in accordance with subparagraphs (B) through (D).

(B) Child care services and related activities

(i) In general

The State shall use amounts provided to the State for each fiscal year under this subchapter for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, activities that improve access to child care services, including the use of procedures to permit enrollment (after an initial eligibility determination) of homeless children while required documentation is obtained, training and technical assistance on identifying and serving homeless children and their families, and specific outreach to homeless families, and any other activity that the State determines to be appropriate to meet the purposes of this subchapter (which may include an activity described in clause (ii)), with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs.

(ii) Report by the Assistant Secretary for Children and Families

(I) In general

Not later than September 30 of the first full fiscal year after November 19, 2014, and September 30 of each fiscal year thereafter, the Secretary (acting through the Assistant Secretary for Children and Families of the Department of Health and Human Services) shall prepare a report that contains a determination about whether each State uses amounts provided to such State for the fiscal year involved under this subchapter in accordance with the priority for services described in clause (i).

(II) Penalty for noncompliance

For any fiscal year that the report of the Secretary described in subclause (I) indicates that a State has failed to give priority for services in accordance with clause (i), the Secretary shall—

(aa) inform the State that the State has until the date that is 6 months after the Secretary has issued such report to fully comply with clause (i);

(bb) provide the State an opportunity to modify the State plan of such State, to make the plan consistent with the requirements of clause (i), and resubmit such State plan to the Secretary not later than the date described in item (aa); and

(cc) if the State does not fully comply with clause (i) and item (bb), by the date described in item (aa), withhold 5 percent of the funds that would otherwise be allocated to that State in accordance with this subchapter for the first full fiscal year after that date.

(III) Waiver for extraordinary circumstances

Notwithstanding subclause (II) the Secretary may grant a waiver to a State for one year to the penalty applied in subclause (II) if the Secretary determines there are extraordinary circumstances, such as a natural disaster, that prevent the State from complying with clause (i). If the Secretary does grant a waiver to a State under this section, the Secretary shall, within 30 days of granting such waiver, submit a report to the appropriate congressional

committees on the circumstances of the waiver including the stated reason from the State on the need for a waiver, the expected impact of the waiver on children served under this program, and any such other relevant information the Secretary deems necessary.

(iii) Child care resource and referral system

(I) In general

A State may use amounts described in clause (i) to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined appropriate by the State, by a statewide public or private nonprofit, community-based or regionally based, lead child care resource and referral organization.

(II) Local or regional organizations

The local or regional child care resource and referral organizations supported as described in subclause (I) shall—

(aa) provide parents in the State with consumer education information referred to in paragraph (2)(E) (except as otherwise provided in that paragraph), concerning the full range of child care options (including faith-based and community-based child care providers), analyzed by provider, including child care provided during nontraditional hours and through emergency child care centers, in their political subdivisions or regions;

(bb) to the extent practicable, work directly with families who receive assistance under this subchapter to offer the families support and assistance, using information described in item (aa), to make an informed decision about which child care providers they will use, in an effort to ensure that the families are enrolling their children in the most appropriate child care setting to suit their needs and one that is of high quality (as determined by the State);

(cc) collect data and provide information on the coordination of services and supports, including services under section 619 and part C of the Individuals with Disabilities Education Act [20 U.S.C. 1419, 1431 et seq.], for children with disabilities (as defined in section 602 of such Act (20 U.S.C. 1401));

(dd) collect data and provide information on the supply of and demand for child care services in political subdivisions or regions within the State and submit such information to the State;

(ee) work to establish partnerships with public agencies and private entities, including faith-based and community-based child care providers, to increase the supply and quality of child care services in the State; and

(ff) as appropriate, coordinate their activities with the activities of the State lead agency and local agencies that administer funds made available in accordance with this subchapter.

(C) Limitation on administrative costs

Not more than 5 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter. As used in the preceding sentence, the term "administrative costs" shall not include the costs of providing direct services.

(D) Assistance for certain families

A State shall ensure that a substantial portion of the amounts available (after the State has complied with the requirement of section 418(b)(2) of the Social Security Act [42 U.S.C. 618(b)(2)] with respect to each of the fiscal years 2015 through 2020 [8] to the State to carry out activities under this subchapter in each fiscal year is used to provide assistance to low-income working families including or in addition to families with children described in clause (i), (ii), (iii), or (iv) of paragraph (2)(M).

(E) Direct services

From amounts provided to a State for a fiscal year to carry out this subchapter, the State shall—

(i) reserve the minimum amount required to be reserved under section 9858e of this title, and the funds for costs described in subparagraph (C); and

(ii) from the remainder, use not less than 70 percent to fund direct services (provided by the State) in accordance with paragraph (2)(A).

(4) Payment rates

(A) In general

The State plan shall certify that payment rates for the provision of child care services for which assistance is provided in accordance with this subchapter are sufficient to ensure equal access for eligible children to child care services that are comparable to child care services in the State or substate area involved that are provided to children whose parents are not eligible to receive assistance under this subchapter or to receive child care assistance under any other Federal or State program, and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access.

(B) Survey

The State plan shall—

(i) demonstrate that the State has, after consulting with the State Advisory Council on Early Childhood Education and Care designated or established in section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)), local child care program administrators, local child care resource and referral agencies, and other appropriate entities, developed and conducted (not earlier than 2 years before the date of the submission of the application containing the State plan) a statistically valid and reliable survey of the market rates for child care services in the State (that reflects variations in the cost of child care services by geographic area, type of provider, and age of child) or an alternative methodology, such as a cost estimation model, that has been developed by the State lead agency;

(ii) demonstrate that the State prepared a detailed report containing the results of the State market rates survey or alternative methodology conducted pursuant to clause (i), and made the results of the survey or alternative methodology widely available (not later than 30 days after the completion of such survey or alternative methodology) through periodic means, including posting the results on the Internet;

(iii) describe how the State will set payment rates for child care services, for which assistance is provided in accordance with this subchapter—

(I) in accordance with the results of the market rates survey or alternative methodology conducted pursuant to clause (i);

(II) taking into consideration the cost of providing higher quality child care services than were provided under this subchapter before November 19, 2014; and

(III) without, to the extent practicable, reducing the number of families in the State receiving such assistance to carry out this subchapter, relative to the number of such families on November 19, 2014; and

(iv) describe how the State will provide for timely payment for child care services provided under this subchapter.

(C) Construction

(i) No private right of action

Nothing in this paragraph shall be construed to create a private right of action if the State acted in accordance with this paragraph.

(ii) No prohibition of certain different rates

Nothing in this subchapter shall be construed to prevent a State from differentiating the

payment rates described in subparagraph (B)(iii) on the basis of such factors as—

(I) geographic location of child care providers (such as location in an urban or rural area);

(II) the age or particular needs of children (such as the needs of children with disabilities and children served by child protective services);

(III) whether the providers provide child care services during weekend and other nontraditional hours; or

(IV) the State's determination that such differentiated payment rates may enable a parent to choose high-quality child care that best fits the parent's needs.

(5) Sliding fee scale

The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing (that is not a barrier to families receiving assistance under this subchapter) by the families that receive child care services for which assistance is provided under this subchapter.

(d) Approval of application

The Secretary shall approve an application that satisfies the requirements of this section.

(Pub. L. 97–35, title VI, §658E, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–237; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §605, Aug. 22, 1996, 110 Stat. 2281; Pub. L. 105–33, title V, §5602(1), Aug. 5, 1997, 111 Stat. 645; Pub. L. 113–186, §5(a), (b), Nov. 19, 2014, 128 Stat. 1972; Pub. L. 114–95, title IX, §9215(p)(1), Dec. 10, 2015, 129 Stat. 2170.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(E)(i)(IV), (ii)(I), (N)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Head Start Act, referred to in subsec. (c)(2)(E)(i)(IV), is subchapter B (§635 et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Low-Income Home Energy Assistance Act of 1981, referred to in subsec. (c)(2)(E)(i)(IV), is title XXVI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 893, which is classified principally to subchapter II (§8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of this title and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (c)(2)(E)(i)(IV), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (c)(2)(E)(i)(V), (ii)(I), (3)(B)(iii)(II)(cc), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2015—Subsec. (c)(2)(G)(ii)(V)(dd). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to section 7517 of title 20.

2014—Subsec. (b). Pub. L. 113–186, §5(a), substituted "3-year" for "2-year".

Subsec. (c)(1). Pub. L. 113–186, §5(b)(1), inserted "or established" after "designated".

Subsec. (c)(2)(B). Pub. L. 113–186, §5(b)(2)(A), inserted a comma after "care of such providers".

Subsec. (c)(2)(D) to (V). Pub. L. 113–186, §5(b)(2)(B), (C), added subpars. (D) to (V) and struck out

former subpars. (D) to (H) which related to consumer education information, compliance with State licensing requirements, establishment of health and safety requirements, compliance with State and local health and safety requirements, and meeting the needs of certain populations, respectively.

Subsec. (c)(3)(A). Pub. L. 113–186, §5(b)(3)(A), substituted "in accordance with" for "as required under".

Subsec. (c)(3)(B). Pub. L. 113–186, §5(b)(3)(B), designated existing provisions as cl. (i), inserted heading, substituted "activities that improve access to child care services, including the use of procedures to permit enrollment (after an initial eligibility determination) of homeless children while required documentation is obtained, training and technical assistance on identifying and serving homeless children and their families, and specific outreach to homeless families, and any other activity that the State determines to be appropriate to meet the purposes of this subchapter (which may include an activity described in clause (ii))" for "and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b)", and added cls. (ii) and (iii).

Subsec. (c)(3)(D). Pub. L. 113–186, §5(b)(3)(C), substituted "2015 through 2020" for "1997 through 2002)" and "including or in addition to families with children described in clause (i), (ii), (iii), or (iv) of paragraph (2)(M)" for "other than families described in paragraph (2)(H)".

Subsec. (c)(3)(E). Pub. L. 113–186, §5(b)(3)(D), added subpar. (E).

Subsec. (c)(4). Pub. L. 113–186, §5(b)(4), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows:

"(A) IN GENERAL.—The State plan shall certify that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access.

"(B) CONSTRUCTION.—Nothing in this paragraph shall be construed to create a private right of action."

Subsec. (c)(5). Pub. L. 113–186, §5(b)(5), inserted "(that is not a barrier to families receiving assistance under this subchapter)" after "cost sharing".

1997—Subsec. (c)(2)(E)(ii). Pub. L. 105–33 substituted "tribal organizations receiving" for "tribal organization receiving".

1996—Subsec. (b). Pub. L. 104–193, §605(1), substituted "implemented during a 2-year period" for "implemented—

"(1) during a 3-year period for the initial State plan; and

"(2) during a 2-year period for subsequent State plans".

Subsec. (c)(2)(A). Pub. L. 104–193, §605(2)(A)(i)(II), in closing provisions, substituted "and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph." for "except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992."

Subsec. (c)(2)(A)(i). Pub. L. 104–193, §605(2)(A)(i)(I), struck out ", other than through assistance provided under paragraph (3)(C)," after "provided under this subchapter" in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 104–193, §605(2)(A)(ii), substituted "Certify that procedures are in effect" for "Provide assurances that procedures are in effect" and inserted before period at end "and provide a detailed description of such procedures".

Subsec. (c)(2)(C). Pub. L. 104–193, §605(2)(A)(iii), substituted "Certify that the State maintains" for "Provide assurances that the State maintains" and inserted before period at end "and provide a detailed description of how such record is maintained and is made available".

Subsec. (c)(2)(D). Pub. L. 104–193, §605(2)(A)(iv), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "Provide assurances that consumer education information will be made available to parents and the general public within the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State."

Subsec. (c)(2)(E). Pub. L. 104–193, §605(2)(A)(v), amended heading and text of subpar. (E) generally, substituting provisions relating to compliance with State licensing requirements for provisions relating to compliance with State and local regulatory requirements.

Subsec. (c)(2)(F), (G). Pub. L. 104–193, §605(2)(A)(vi), (vii), substituted "Certify" for "Provide assurances".

Subsec. (c)(2)(H). Pub. L. 104–193, §605(2)(A)(viii), added subpar. (H) and struck out heading and text of former subpar. (H). Text read as follows: "Provide assurances that if the State reduces the level of standards

applicable to child care services provided in the State on November 5, 1990, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 9858i of this title."

Subsec. (c)(2)(I). Pub. L. 104–193, §605(2)(A)(viii), struck out heading and text of subpar. (I). Text read as follows: "Provide assurances that not later than 18 months after the date of the submission of the application under this section, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on November 5, 1990."

Subsec. (c)(2)(J). Pub. L. 104–193, §605(2)(A)(viii), struck out heading and text of subpar. (J). Text read as follows: "Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State."

Subsec. (c)(3)(A). Pub. L. 104–193, §605(2)(B)(i), substituted "subparagraphs (B) through (D)" for "subparagraphs (B) and (C)".

Subsec. (c)(3)(B). Pub. L. 104–193, §605(2)(B)(ii), inserted "and related activities" after "services" in heading, substituted "The" for "Subject to the reservation contained in subparagraph (C), the", substituted "for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b)" for "for—

"(i) child care services, that meet the requirements of this subchapter, that are provided to eligible children in the State on a sliding fee scale basis using funding methods provided for in subsection (c)(2)(A) of this section", substituted "special needs." for "special needs; and", and struck out cl. (ii) which read as follows: "activities designed to improve the availability and quality of child care."

Subsec. (c)(3)(C). Pub. L. 104–193, §605(2)(B)(iii), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 9858e of this title) and to provide before- and after-school and early childhood development services (as described in section 9858f of this title)."

Subsec. (c)(3)(D). Pub. L. 104–193, §605(2)(B)(iv), added subpar. (D).

Subsec. (c)(4)(A). Pub. L. 104–193, §605(2)(C), substituted "State plan shall certify" for "State plan shall provide assurances", inserted "and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access" after "Federal or State programs", and struck out at end "Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs."

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

[1] So in original. Subpars. (D) and following do not continue from introductory provisions.

[2] *So in original. Probably should be "incorporate".*

[3] *So in original. Probably should be "with this subchapter."*

[4] *So in original. Probably should be "unforeseen".*

[5] *So in original. Probably should be capitalized.*

[6] *So in original. Probably should be "642B(b)(1)(A)(i)".*

[7] *So in original. Another closing parenthesis probably should precede the semicolon.*

[8] *So in original. A closing parenthesis probably should appear.*

§9858d. Limitations on State allotments

(a) No entitlement to contract or grant

Nothing in this subchapter shall be construed—

(1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

(2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

(b) Construction of facilities

(1) In general

Except as provided for in section 9858m(c)(6) of this title, no funds made available under this subchapter shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

(2) Sectarian agency or organization

In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 9858c(c)(2)(I) of this title.

(Pub. L. 97–35, title VI, §658F, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–240; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §606, Aug. 22, 1996, 110 Stat. 2283; Pub. L. 113–186, §5(c), Nov. 19, 2014, 128 Stat. 1987.)

EDITORIAL NOTES

AMENDMENTS

2014—Subsec. (b)(2). Pub. L. 113–186 substituted "section 9858c(c)(2)(I)" for "section 9858c(c)(2)(F)".

1996—Subsec. (b)(1). Pub. L. 104–193 substituted "Except as provided for in section 9858m(c)(6) of this title, no funds" for "No funds".

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a

note under section 9858 of this title.

§9858e. Activities to improve the quality of child care

(a) Reservation

(1) Reservation for activities relating to the quality of child care services

A State that receives funds to carry out this subchapter for a fiscal year referred to in paragraph (2) shall reserve and use a portion of such funds, in accordance with paragraph (2), for activities provided directly, or through grants or contracts with local child care resource and referral organizations or other appropriate entities, that are designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care, and is in alignment with a Statewide assessment of the State's needs to carry out such services and care, provided in accordance with this subchapter.

(2) Amount of reservations

Such State shall reserve and use—

(A) to carry out the activities described in paragraph (1), not less than—

(i) 7 percent of the funds described in paragraph (1), for the first and second full fiscal years after November 19, 2014;

(ii) 8 percent of such funds for the third and fourth full fiscal years after November 19, 2014; and

(iii) 9 percent of such funds for the fifth and each succeeding full fiscal year after November 19, 2014; and

(B) in addition to the funds reserved under subparagraph (A), 3 percent of the funds described in paragraph (1) received not later than the second full fiscal year after November 19, 2014, and received for each succeeding full fiscal year, to carry out the activities described in paragraph (1) and subsection (b)(4), as such activities relate to the quality of care for infants and toddlers.

(3) State reservation amount

Nothing in this subsection shall preclude the State from reserving a larger percentage of funds to carry out the activities described in paragraph (1) and subsection (b).

(b) Activities

Funds reserved under subsection (a) shall be used to carry out no fewer than one of the following activities that will improve the quality of child care services provided in the State:

(1) Supporting the training and professional development of the child care workforce through activities such as those included under section 9858c(c)(2)(G) of this title, in addition to—

(A) offering training and professional development opportunities for child care providers that relate to the use of scientifically-based, developmentally-appropriate and age-appropriate strategies to promote the social, emotional, physical, and cognitive development of children, including those related to nutrition and physical activity, and offering specialized training for child care providers caring for those populations prioritized in section 9858c(c)(2)(Q) of this title, and children with disabilities;

(B) incorporating the effective use of data to guide program improvement;

(C) including effective behavior management strategies and training, including positive behavior interventions and support models, that promote positive social and emotional development and reduce challenging behaviors, including reducing expulsions of preschool-aged children for such behaviors;

(E) [1] providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development;

(F) providing training corresponding to the nutritional and physical activity needs of children

to promote healthy development;

(G) providing training or professional development for child care providers regarding the early neurological development of children; and

(H) connecting child care staff members of child care providers with available Federal and State financial aid, or other resources, that would assist child care staff members in pursuing relevant postsecondary training.

(2) Improving upon the development or implementation of the early learning and developmental guidelines described in section 9858c(c)(2)(T) of this title by providing technical assistance to eligible child care providers that enhances the cognitive, physical, social and emotional development, including early childhood development, of participating preschool and school-aged children and supports their overall well-being.

(3) Developing, implementing, or enhancing a tiered quality rating system for child care providers and services, which may—

(A) support and assess the quality of child care providers in the State;

(B) build on State licensing standards and other State regulatory standards for such providers;

(C) be designed to improve the quality of different types of child care providers and services;

(D) describe the safety of child care facilities;

(E) build the capacity of State early childhood programs and communities to promote parents' and families' understanding of the State's early childhood system and the ratings of the programs in which the child is enrolled;

(F) provide, to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services; and

(G) accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings, community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development.

(4) Improving the supply and quality of child care programs and services for infants and toddlers through activities, which may include—

(A) establishing or expanding high-quality community or neighborhood-based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families and to help eligible child care providers improve their capacity to offer high-quality, age-appropriate care to infants and toddlers from low-income families;

(B) establishing or expanding the operation of community or neighborhood-based family child care networks;

(C) promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers through training and professional development; coaching and technical assistance on this age group's unique needs from statewide networks of qualified infant-toddler specialists; and improved coordination with early intervention specialists who provide services for infants and toddlers with disabilities under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.);

(D) if applicable, developing infant and toddler components within the State's quality rating system described in paragraph (3) for child care providers for infants and toddlers, or the development of infant and toddler components in a State's child care licensing regulations or early learning and development guidelines;

(E) improving the ability of parents to access transparent and easy to understand consumer information about high-quality infant and toddler care; and

(F) carrying out other activities determined by the State to improve the quality of infant and toddler care provided in the State, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical

development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation) for providers and caregivers.

(5) Establishing or expanding a statewide system of child care resource and referral services.

(6) Facilitating compliance with State requirements for inspection, monitoring, training, and health and safety, and with State licensing standards.

(7) Evaluating and assessing the quality and effectiveness of child care programs and services offered in the State, including evaluating how such programs positively impact children.

(8) Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high quality.

(9) Supporting State or local efforts to develop or adopt high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development.

(10) Carrying out other activities determined by the State to improve the quality of child care services provided in the State, and for which measurement of outcomes relating to improved provider preparedness, child safety, child well-being, or entry to kindergarten is possible.

(c) Certification

Beginning with fiscal year 2016, at the beginning of each fiscal year, the State shall annually submit to the Secretary a certification containing an assurance that the State was in compliance with subsection (a) during the preceding fiscal year and a description of how the State used funds received under this subchapter to comply with subsection (a) during that preceding fiscal year.

(d) Reporting requirements

Each State receiving funds under this subchapter shall prepare and submit an annual report to the Secretary, which shall include information about—

(1) the amount of funds that are reserved under subsection (a);

(2) the activities carried out under this section; and

(3) the measures that the State will use to evaluate the State's progress in improving the quality of child care programs and services in the State.

(e) Technical assistance

The Secretary shall offer technical assistance, in accordance with section 9858g(a)(3) of this title, which may include technical assistance through the use of grants or cooperative agreements, to States for the activities described in subsection (b) at the request of the State.

(f) Construction

Nothing in this section shall be construed as providing the Secretary the authority to regulate, direct, dictate, or place conditions (outside of what is required by this subchapter) on a State adopting specific State child care quality activities or progress in implementing those activities.

(Pub. L. 97–35, title VI, §658G, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–241; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §607, Aug. 22, 1996, 110 Stat. 2283; Pub. L. 113–186, §6, Nov. 19, 2014, 128 Stat. 1987.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(4)(C), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2014—Pub. L. 113–186 amended section generally. Prior to amendment, text read as follows: "A State that

receives funds to carry out this subchapter for a fiscal year, shall use not less than 4 percent of the amount of such funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care (such as resource and referral services)."

1996—Pub. L. 104–193 reenacted section catchline without change and amended text generally, substituting current provisions for provisions requiring State receiving financial assistance under this subchapter to utilize not less than 20 percent of such assistance for one or more of following: resource and referral programs, grants or loans to assist in meeting State and local standards, monitoring of compliance with licensing and regulatory requirements, training, or improving salaries or other compensation to staff.

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

[1] So in original. No subpar. (D) has been enacted.

§9858f. Criminal background checks

(a) In general

A State that receives funds to carry out this subchapter shall have in effect—

(1) requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of child care providers described in subsection (c)(1); and

(2) licensing, regulation, and registration requirements, as applicable, that prohibit the employment of child care staff members as described in subsection (c).

(b) Requirements

A criminal background check for a child care staff member under subsection (a) shall include—

(1) a search of the State criminal and sex offender registry or repository in the State where the child care staff member resides, and each State where such staff member resided during the preceding 5 years;

(2) a search of State-based child abuse and neglect registries and databases in the State where the child care staff member resides, and each State where such staff member resided during the preceding 5 years;

(3) a search of the National Crime Information Center;

(4) a Federal Bureau of Investigation fingerprint check using the Integrated Automated Fingerprint Identification System; and

(5) a search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.).[1]

(c) Prohibitions

(1) Child care staff members

A child care staff member shall be ineligible for employment by a child care provider that is receiving assistance under this subchapter if such individual—

(A) refuses to consent to the criminal background check described in subsection (b);

(B) knowingly makes a materially false statement in connection with such criminal background check;

(C) is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and

Safety Act of 2006 (42 U.S.C. 16901 et seq.); [1] or

(D) has been convicted of a felony consisting of—

(i) murder, as described in section 1111 of title 18;

(ii) child abuse or neglect;

(iii) a crime against children, including child pornography;

(iv) spousal abuse;

(v) a crime involving rape or sexual assault;

(vi) kidnapping;

(vii) arson;

(viii) physical assault or battery; or

(ix) subject to subsection (e)(4), a drug-related offense committed during the preceding 5 years; or

(E) has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

(2) Child care providers

A child care provider described in subsection (i)(1) shall be ineligible for assistance provided in accordance with this subchapter if the provider employs a staff member who is ineligible for employment under paragraph (1).

(d) Submission of requests for background checks

(1) In general

A child care provider covered by subsection (c) shall submit a request, to the appropriate State agency designated by a State, for a criminal background check described in subsection (b), for each child care staff member (including prospective child care staff members) of the provider.

(2) Staff members

Subject to paragraph (4), in the case of an individual who became a child care staff member before November 19, 2014, the provider shall submit such a request—

(A) prior to the last day described in subsection (j)(1); and

(B) not less often than once during each 5-year period following the first submission date under this paragraph for that staff member.

(3) Prospective staff members

Subject to paragraph (4), in the case of an individual who is a prospective child care staff member on or after November 19, 2014, the provider shall submit such a request—

(A) prior to the date the individual becomes a child care staff member of the provider; and

(B) not less than once during each 5-year period following the first submission date under this paragraph for that staff member.

(4) Background check for another child care provider

A child care provider shall not be required to submit a request under paragraph (2) or (3) for a child care staff member if—

(A) the staff member received a background check described in subsection (b)—

(i) within 5 years before the latest date on which such a submission may be made; and

(ii) while employed by or seeking employment by another child care provider within the State;

(B) the State provided to the first provider a qualifying background check result, consistent with this subchapter, for the staff member; and

(C) the staff member is employed by a child care provider within the State, or has been separated from employment from a child care provider within the State for a period of not more than 180 consecutive days.

(e) Background check results and appeals

(1) Background check results

The State shall carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which such request was submitted, and shall provide the results of the criminal background check to such provider and to the current or prospective staff member.

(2) Privacy

(A) In general

The State shall provide the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in subsection (c), without revealing any disqualifying crime or other related information regarding the individual.

(B) Ineligible staff member

If the child care staff member is ineligible for such employment due to the background check, the State will, when providing the results of the background check, include information related to each disqualifying crime, in a report to the staff member or prospective staff member.

(C) Public release of results

No State shall publicly release or share the results of individual background checks, except States may release aggregated data by crime as listed under subsection (c)(1)(D) from background check results, as long as such data is not personally identifiable information.

(3) Appeals

(A) In general

The State shall provide for a process by which a child care staff member (including a prospective child care staff member) may appeal the results of a criminal background check conducted under this section to challenge the accuracy or completeness of the information contained in such member's criminal background report.

(B) Appeals process

The State shall ensure that—

(i) each child care staff member shall be given notice of the opportunity to appeal;

(ii) a child care staff member will receive instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of the information contained in such member's criminal background report; and

(iii) the appeals process is completed in a timely manner for each child care staff member.

(4) Review

The State may allow for a review process through which the State may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in subsection (c)(1)(D)(ix) is eligible for employment described in subsection (c)(1), notwithstanding subsection (c). The review process shall be consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).

(5) No private right of action

Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) Fees for background checks

Fees that a State may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs to the State for the processing and administration.

(g) Transparency

The State must ensure that the policies and procedures under this section are published on the Web site (or otherwise publicly available venue in the absence of a Web site) of the State and the Web sites of local lead agencies.

(h) Construction

(1) Disqualification for other crimes

Nothing in this section shall be construed to prevent a State from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Rights and remedies

Nothing in this section shall be construed to alter or otherwise affect the rights and remedies provided for child care staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

(i) Definitions

In this section—

(1) the term "child care provider" means a center-based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that—

(A) is not an individual who is related to all children for whom child care services are provided; and

(B) is licensed, regulated, or registered under State law or receives assistance provided under this subchapter; and

(2) the term "child care staff member" means an individual (other than an individual who is related to all children for whom child care services are provided)—

(A) who is employed by a child care provider for compensation; or

(B) whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider.

(j) Effective date

(1) In general

A State that receives funds under this subchapter shall meet the requirements of this section for the provision of criminal background checks for child care staff members described in subsection (d)(1) not later than the last day of the second full fiscal year after November 19, 2014.

(2) Extension

The Secretary may grant a State an extension of time, of not more than 1 fiscal year, to meet the requirements of this section if the State demonstrates a good faith effort to comply with the requirements of this section.

(3) Penalty for noncompliance

Except as provided in paragraphs (1) and (2), for any fiscal year that a State fails to comply substantially with the requirements of this section, the Secretary shall withhold 5 percent of the funds that would otherwise be allocated to that State in accordance with this subchapter for the following fiscal year.

(Pub. L. 97–35, title VI, §658H, as added Pub. L. 113–186, §7, Nov. 19, 2014, 128 Stat. 1990.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Adam Walsh Child Protection and Safety Act of 2006, referred to in subsecs. (b)(5) and (c)(1)(C), is

Pub. L. 109–248, July 27, 2006, 120 Stat. 587, which was classified principally to chapter 151 (§16901 et seq.) of this title, prior to editorial reclassification and renumbering as chapter 209 (§20901 et seq.) of Title 34, Crime Control and Law Enforcement. For complete classification of this Act to the Code, see Short Title of 2006 Act note set out under section 10101 of Title 34 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (e)(4), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

PRIOR PROVISIONS

A prior section 9858f, Pub. L. 97–35, title VI, §658H, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–241; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, related to early childhood development and before- and after-school services, prior to repeal by Pub. L. 104–193, title VI, §608, Aug. 22, 1996, 110 Stat. 2284.

[1] *See References in Text note below.*

§9858g. Administration and enforcement

(a) Administration

The Secretary shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

(2) collect, publish, and make available to the public a listing of State child care standards at least once every 3 years;

(3) provide technical assistance, such as business technical assistance, as described in section 9858c(c)(2)(V) of this title, to States (which may include providing assistance on a reimbursable basis) which shall be provided by qualified experts on practices grounded in scientifically valid research, where appropriate, to carry out this subchapter;

(4) disseminate, for voluntary informational purposes, information on practices that scientifically valid research indicates are most successful in improving the quality of programs that receive assistance with this subchapter; and

(5) after consultation with the heads of any other Federal agencies involved, issue guidance and disseminate information on best practices regarding the use of funding combined by States as described in section 9858c(c)(2)(O)(ii) of this title, consistent with laws other than this subchapter.

(b) Enforcement

(1) Review of compliance with State plan

The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 9858c(c) of this title for the State.

(2) Noncompliance

(A) In general

If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 9858c(c) of this title for the State; or

(ii) in the operation of any program for which assistance is provided under this subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the

State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options.

(B) Additional sanctions

In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subchapter, and disqualification from the receipt of financial assistance under this subchapter.

(C) Notice

The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

(3) Issuance of rules

The Secretary shall establish by rule procedures for—

(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

(B) imposing sanctions under this section.

(c) Request for relief

(1) In general

The Secretary may waive for a period of not more than three years any provision under this subchapter or sanctions imposed upon a State in accordance with subsection (b)(2) upon the State's request for such a waiver if the Secretary finds that—

(A) the request describes one or more conflicting or duplicative requirements preventing the effective delivery of child care services to justify a waiver, extraordinary circumstances, such as natural disaster or financial crisis, or an extended period of time for a State legislature to enact legislation to implement the provisions of this subchapter;

(B) such circumstances included in the request prevent the State from complying with any statutory or regulatory requirements of this subchapter;

(C) the waiver will, by itself, contribute to or enhance the State's ability to carry out the purposes of this subchapter; and,[1]

(D) the waiver will not contribute to inconsistency with the objectives of this law.

(2) Contents

Such request shall be provided to the Secretary in writing and will—

(A) detail each sanction or provision within this subchapter that the State seeks relief from;

(B) describe how a waiver from that sanction or provision of this subchapter will, by itself, improve delivery of child care services for children in the State; and

(C) certify that the health, safety, and well-being of children served through assistance received under this subchapter will not be compromised as a result of the waiver.

(3) Approval

Within 90 days after the receipt of a State's request under this subsection, the Secretary shall inform the State of approval or disapproval of the request. If the plan is disapproved, the Secretary shall, at this time, inform the State, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate of the reasons for the disapproval and give the State the opportunity to amend the request. In the case of approval, the Secretary shall, within 30 days of granting such waiver, notify and submit a report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate on the circumstances of the waiver including each specific sanction or provision waived, the reason as given by the State of the need for a waiver, and the expected impact of the waiver on children served under this program.

(4) External conditions

The Secretary shall not require or impose any new or additional requirements in exchange for receipt of a waiver if such requirements are not specified in this subchapter.

(5) Duration

The Secretary may approve a request under this subsection for a period not to exceed three years, unless a renewal is granted under paragraph (7).

(6) Termination

The Secretary shall terminate approval of a request for a waiver authorized under this subsection if the Secretary determines, after notice and opportunity for a hearing, that the performance of a State granted relief under this subsection has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

(7) Renewal

The Secretary may approve or disapprove a request from a State for renewal of an existing waiver under this subchapter for a period no longer than one year. A State seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State shall re-certify in its extension request the provisions in paragraph (2) of this subchapter, and shall also explain the need for additional time of relief from such sanction(s) or provisions approved under this law as provided in this subchapter.

(8) Restrictions

Nothing in this subchapter shall be construed as providing the Secretary the authority to permit States to alter the eligibility requirements for eligible children, including work requirements, job training, or educational program participation, that apply to the parents of eligible children under this subchapter. Nothing in this subsection shall be construed to allow the Secretary to waive anything related to his or her authority under this subchapter.

(Pub. L. 97–35, title VI, §658I, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–242; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §609, Aug. 22, 1996, 110 Stat. 2284; Pub. L. 113–186, §8(a), (b), Nov. 19, 2014, 128 Stat. 1994, 1995.)

EDITORIAL NOTES

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113–186, §8(a)(1), inserted a comma after "publish" and struck out "and" at end.

Subsec. (a)(3). Pub. L. 113–186, §8(a)(2), added par. (3) and struck out former par. (3) which read as follows: "provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis."

Subsec. (a)(4), (5). Pub. L. 113–186, §8(a)(3), added pars. (4) and (5).

Subsec. (c). Pub. L. 113–186, §8(b), added subsec. (c).

1996—Subsec. (b)(1). Pub. L. 104–193, §609(1), struck out ", and shall have the power to terminate payments to the State in accordance with paragraph (2)" before period at end.

Subsec. (b)(2)(A). Pub. L. 104–193, §609(2), in closing provisions, substituted before period at end "finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options" for "finding and that no further payments may be made to such State under this subchapter (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected".

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

[1] *So in original. The comma probably should not appear.*

§9858h. Payments

(a) In general

Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 9858c(d) of this title shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 9858m of this title for such fiscal year.

(b) Method of payment

(1) In general

Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) Limitation

The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 9858c(c)(3) of this title.

(c) Spending of funds by State

Payments to a State from the allotment under section 9858m of this title for any fiscal year may be obligated by the State in that fiscal year or in the succeeding fiscal year.

(Pub. L. 97–35, title VI, §658J, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–243; amended Pub. L. 102–27, title III, §310, Apr. 10, 1991, 105 Stat. 153; Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(a), (c)(1), Nov. 4, 1992, 106 Stat. 5035, 5036; Pub. L. 103–171, §8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104–193, title VI, §610, Aug. 22, 1996, 110 Stat. 2284.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–193 substituted "obligated" for "expended" and "succeeding fiscal year" for "succeeding 3 fiscal years".

1993—Subsec. (c). Pub. L. 103–171 made technical correction to directory language of Pub. L. 102–586, §8(a). See 1992 Amendment note below.

1992—Pub. L. 102–401 and Pub. L. 102–586, §8(c)(1), made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

Subsec. (c). Pub. L. 102–586, §8(a), as amended by Pub. L. 103–171, substituted "expended" for "obligated" and "succeeding 3 fiscal years" for "succeeding fiscal year".

1991—Subsec. (c). Pub. L. 102–27 substituted "obligated" for "expended".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a

note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–586, §8(d), Nov. 4, 1992, 106 Stat. 5036, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 9858q of this title and amending this section and section 9858n of this title] shall take effect on the date of enactment of this Act [Nov. 4, 1992].

"(2) APPLICATION.—The amendments made by this section shall not apply with respect to fiscal years beginning before October 1, 1992."

§9858i. Reports and audits

(a) Reports

(1) Collection of information by States

(A) In general

A State that receives funds to carry out this subchapter shall collect the information described in subparagraph (B) on a monthly basis.

(B) Required information

The information required under this subparagraph shall include, with respect to a family unit receiving assistance under this subchapter [1] information concerning—

(i) family income;
(ii) county of residence;
(iii) the gender, race, and age of children receiving such assistance;
(iv) whether the head of the family unit is a single parent;
(v) the sources of family income, including—
(I) employment, including self-employment;
(II) cash or other assistance under—
(aa) the temporary assistance for needy families program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and
(bb) a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act (42 U.S.C. 609(a)(7));

(III) housing assistance;
(IV) assistance under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.]; and
(V) other assistance programs;

(vi) the number of months the family has received benefits;
(vii) the type of child care in which the child was enrolled (such as family child care, home care, or center-based child care);
(viii) whether the child care provider involved was a relative;
(ix) the cost of child care for such families;
(x) the average hours per month of such care; and
(xi) whether the children receiving assistance under this subchapter are homeless children;

during the period for which such information is required to be submitted.

(C) Submission to Secretary

A State described in subparagraph (A) shall, on a quarterly basis, submit the information required to be collected under subparagraph (B) to the Secretary.

(D) Use of samples

(i) Authority

A State may comply with the requirement to collect the information described in subparagraph (B) through the use of disaggregated case record information on a sample of families selected through the use of scientifically acceptable sampling methods approved by the Secretary.

(ii) Sampling and other methods

The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid samples of the information described in subparagraph (B). The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

(E) Prohibition

Reports submitted to the Secretary under subparagraph (C) shall not contain personally identifiable information.

(2) Annual reports

Not later than 1 year after November 19, 2014, and annually thereafter,,[2] a State described in paragraph (1)(A) shall prepare and submit to the Secretary a report that includes aggregate data concerning—

(A) the number of child care providers that received funding under this subchapter as separately identified based on the types of providers listed in section 9858n(6) of this title;

(B) the monthly cost of child care services, and the portion of such cost that is paid for with assistance provided under this subchapter, listed by the type of child care services provided;

(C) the number of payments made by the State through vouchers, contracts, cash, and disregards under public benefit programs, listed by the type of child care services provided;

(D) the manner in which consumer education information was provided to parents and the number of parents to whom such information was provided; and

(E) the total number (without duplication) of children and families served under this subchapter; and

(F) the number of child fatalities occurring among children while in the care and facility of child care providers receiving assistance under this subchapter, listed by type of child care provider and indicating whether the providers (excluding child care providers described in section 9858n(6)(B) of this title) are licensed or license-exempt.[3]

during the period for which such report is required to be submitted.

(b) Audits

(1) Requirement

A State shall, after the close of each program period covered by an application approved under section 9858c(d) of this title audit its expenditures during such program period from amounts received under this subchapter.

(2) Independent auditor

Audits under this subsection shall be conducted by an entity that is independent of the State that receives assistance under this subchapter and be in accordance with generally accepted auditing principles.

(3) Submission

Not later than 30 days after the completion of an audit under this subsection, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

(4) Repayment of amounts

Each State shall repay to the United States any amounts determined through an audit under this subsection not to have been expended in accordance with this subchapter, or the Secretary may

offset such amounts against any other amount to which the State is or may be entitled under this subchapter.

(Pub. L. 97–35, title VI, §658K, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–243; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §611, Aug. 22, 1996, 110 Stat. 2284; Pub. L. 105–33, title V, §5602(2), Aug. 5, 1997, 111 Stat. 646; Pub. L. 110–234, title IV, §4002(b)(1)(B), (2)(FF), May 22, 2008, 122 Stat. 1096, 1098; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(B), (2)(FF), June 18, 2008, 122 Stat. 1664, 1857, 1859; Pub. L. 113–186, §8(c), (e), Nov. 19, 2014, 128 Stat. 1996, 1998.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(B)(v)(II)(aa), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (a)(1)(B)(v)(IV), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2014—Subsec. (a)(1)(B)(xi). Pub. L. 113–186, §8(c)(1), which directed amendment of par. (1)(B) by adding cl. (xi) "at the end", was executed by adding cl. (xi) after cl. (x), to reflect the probable intent of Congress and the presence of concluding provisions in par. (1)(B).

Subsec. (a)(1)(E). Pub. L. 113–186, §8(e), added subpar. (E).

Subsec. (a)(2). Pub. L. 113–186, §8(c)(2)(A), substituted "1 year after November 19, 2014, and annually thereafter," for "December 31, 1997, and every 12 months thereafter" in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 113–186, §8(c)(2)(B), substituted "section 9858n(6)" for "section 9858n(5)".

Subsec. (a)(2)(E). Pub. L. 113–186, §8(c)(2)(C), which directed substitution of "; and" for period at end, was executed by making the substitution for semicolon at end, to reflect the probable intent of Congress.

Subsec. (a)(2)(F). Pub. L. 113–186, §8(c)(2)(D), which directed amendment of par. (2) by adding subpar. (F) "at the end", was executed by adding subpar. (F) after subpar. (E), to reflect the probable intent of Congress and the presence of concluding provisions in par. (2).

2008—Subsec. (a)(1)(B)(v)(IV). Pub. L. 110–246, §4002(b)(1)(B), (2)(FF), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

1997—Subsec. (a)(1)(B)(iv). Pub. L. 105–33, §5602(2)(A)(i)(I), added cl. (iv) and struck out former cl. (iv) which read as follows: "whether the family includes only one parent;".

Subsec. (a)(1)(B)(v). Pub. L. 105–33, §5602(2)(A)(i)(II)(aa), substituted "including—" for "including the amount obtained from (and separately identified)—" in introductory provisions.

Subsec. (a)(1)(B)(v)(II). Pub. L. 105–33, §5602(2)(A)(i)(II)(bb), added subcl. (II) and struck out former subcl. (II) which read as follows: "cash or other assistance under part A of title IV of the Social Security Act;".

Subsec. (a)(1)(B)(x). Pub. L. 105–33, §5602(2)(A)(i)(III), substituted "month" for "week".

Subsec. (a)(1)(D). Pub. L. 105–33, §5602(2)(A)(ii), added subpar. (D) and struck out heading and text of former subpar. (D). Text read as follows: "The Secretary may disapprove the information collected by a State under this paragraph if the State uses sampling methods to collect such information."

Subsec. (a)(2). Pub. L. 105–33, §5602(2)(B), substituted "Annual" for "Biannual" in heading and "12" for "6" in introductory provisions of text.

1996—Pub. L. 104–193, §611(1), substituted "Reports" for "Annual report" in section catchline.

Subsec. (a). Pub. L. 104–193, §611(2), amended heading and text of subsec. (a) generally. Prior to amendment, text related to requirement of reports by Dec. 31, 1992, and annually thereafter, which include specification of expenditures under section 9858c(c)(3) of this title, data on fulfillment of child care needs, description of improvements in affordability and availability, description of review of State licensing and

regulatory requirements and policies and results of review, explanation of any reductions in child care standards, and description of standards and health and safety requirements applicable to providers.

Subsec. (b)(1). Pub. L. 104–193, §611(2)[(3)](A), substituted "an application approved" for "a application approved".

Subsec. (b)(2). Pub. L. 104–193, §611(2)[(3)](B), substituted "the State that receives" for "any agency administering activities that receive".

Subsec. (b)(4). Pub. L. 104–193, §611(2)[(3)](C), substituted "entitled under this subchapter" for "entitles under this subchapter".

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (2)(FF) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

[1] So in original. Probably should be followed by a comma.

[2] So in original.

[3] So in original. The period probably should be a semicolon.

§9858j. Reports, hotline, and Web site

(a) Report by Secretary

Not later than July 31, 2016, and biennially thereafter, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report that contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 9858i of this title. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States. Such report shall contain a determination around whether each State that uses amounts provided under this subchapter has complied with the priority for services described in sections 9858c(c)(2)(Q) and 9858c(c)(3)(B) of this title.

(b) National toll-free hotline and Web site

(1) In general

The Secretary shall operate, directly or through the use of grants or contracts, a national toll-free hotline and Web site, to—

(A) develop and disseminate publicly available child care consumer education information

for parents and help parents access safe and quality child care services in their community, with a range of price options, that best suits [1] their family's needs; and

(B) to allow persons to report (anonymously if desired) suspected child abuse or neglect, or violations of health and safety requirements, by an eligible child care provider that receives assistance under this subchapter or a member of the provider's staff.

(2) Requirements

The Secretary shall ensure that the hotline and Web site meet the following requirements:

(A) Referral to local child care providers

The Web site shall be hosted by "childcare.gov". The Web site shall enable a child care consumer to enter a zip code and obtain a referral to local child care providers described in subparagraph (B) within a specified search radius.

(B) Information

The Web site shall provide to consumers, directly or through linkages to State databases, at a minimum—

(i) a localized list of all eligible child care providers, differentiating between licensed and license-exempt providers;

(ii) any provider-specific information from a Quality Rating and Improvement System or information about other quality indicators, to the extent the information is publicly available and to the extent practicable;

(iii) any other provider-specific information about compliance with licensing, and health and safety requirements to the extent the information is publicly available and to the extent practicable;

(iv) referrals to local resource and referral organizations from which consumers can find more information about child care providers; and

(v) State information about child care subsidy programs and other financial supports available to families.

(C) Nationwide capacity

The Web site and hotline shall have the capacity to help families in every State and community in the Nation.

(D) Information at all hours

The Web site shall provide, to parents and families, access to information about child care services 24 hours a day.

(E) Services in different languages

The Web site and hotline shall ensure the widest possible access to services for families who speak languages other than English.

(F) High-quality consumer education and referral

The Web site and hotline shall ensure that families have access to easy-to-understand child care consumer education and referral services.

(3) Prohibition

Nothing in this subsection shall be construed to allow the Secretary to compel States to provide additional data and information that is currently (as of November 19, 2014) not publicly available, or is not required by this subchapter, unless such additional data are related to the purposes and scope of this subchapter, and are subject to a notice and comment period of no less than 90 days.

(Pub. L. 97–35, title VI, §658L, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–244; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §612, Aug. 22, 1996, 110 Stat. 2285; Pub. L. 105–33, title V, §5602(3), Aug. 5, 1997, 111 Stat. 646; Pub. L. 113–186, §8(d), Nov. 19, 2014, 128 Stat. 1997.)

EDITORIAL NOTES

AMENDMENTS

2014—Pub. L. 113–186 substituted "Reports, hotline, and Web site" for "Report by Secretary" in section catchline, designated existing provisions as subsec. (a), inserted heading, substituted "2016" for "1998" and "to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate" for "to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate", inserted at end of subsec. (a) "Such report shall contain a determination around whether each State that uses amounts provided under this subchapter has complied with the priority for services described in sections 9858c(c)(2)(Q) and 9858c(c)(3)(B) of this title.", and added subsec. (b).

1997—Pub. L. 105–33 substituted "1998" for "1997".

1996—Pub. L. 104–193 substituted "July 31, 1997, and biennially thereafter" for "July 31, 1993, and annually thereafter" and "Committee on Economic and Educational Opportunities" for "Committee on Education and Labor".

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

[1] *So in original. Probably should be "suit".*

§9858k. Limitations on use of financial assistance for certain purposes

(a) Sectarian purposes and activities

No financial assistance provided under this subchapter, pursuant to the choice of a parent under section 9858c(c)(2)(A)(i)(I) of this title or through any other grant or contract under the State plan, shall be expended for any sectarian purpose or activity, including sectarian worship or instruction.

(b) Tuition

With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subchapter shall be expended for—

(1) any services provided to such students during the regular school day;

(2) any services for which such students receive academic credit toward graduation; or

(3) any instructional services which supplant or duplicate the academic program of any public or private school.

(Pub. L. 97–35, title VI, §658M, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–244; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

§9858*l*. Nondiscrimination

(a) Religious nondiscrimination

(1) Construction

(A) In general

Except as provided in subparagraph (B), nothing in this section shall be construed to modify or affect the provisions of any other Federal law or regulation that relates to discrimination in employment on the basis of religion.

(B) Exception

A sectarian organization may require that employees adhere to the religious tenets and teachings of such organization, and such organization may require that employees adhere to rules forbidding the use of drugs or alcohol.

(2) Discrimination against child

(A) In general

A child care provider (other than a family child care provider) that receives assistance under this subchapter shall not discriminate against any child on the basis of religion in providing child care services.

(B) Non-funded child care slots

Nothing in this section shall prohibit a child care provider from selecting children for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(3) Employment in general

(A) Prohibition

A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

(B) Qualified applicants

If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

(C) Present employees

This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed with the provider on November 5, 1990.

(4) Employment and admission practices

Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that receives such assistance, the Secretary shall not permit such provider to receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or

activity of the provider will discriminate against any individual in employment, if such employee's primary responsibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

(b) Effect on State law

Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

(Pub. L. 97–35, title VI, §658N, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–245; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

§9858m. Amounts reserved; allotments

(a) Amounts reserved

(1) Territories and possessions

The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(2) Indians [1] tribes

(A) In general

The Secretary shall reserve not less than 2 percent of the amount appropriated under section 9858 of this title in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c).

(B) Limitations

Notwithstanding subparagraph (A), the Secretary shall only reserve an amount that is greater than 2 percent of the amount appropriated under section 9858 of this title, for payments described in subparagraph (A), for a fiscal year (referred to in this subparagraph as the "reservation year") if—

(i) the amount appropriated under section 9858 of this title for the reservation year is greater than the amount appropriated under section 9858 of this title for fiscal year 2014; and

(ii) the Secretary ensures that the amount allotted to States under subsection (b) for the reservation year is not less than the amount allotted to States under subsection (b) for fiscal year 2014.

(3) National toll-free hotline and Web site

The Secretary shall reserve up to $1,500,000 of the amount appropriated under this subchapter for each fiscal year for the operation of a national toll-free hotline and Web site, under section 9858j(b) of this title.

(4) Technical assistance

The Secretary shall reserve up to ½ of 1 percent of the amount appropriated under this subchapter for each fiscal year to support technical assistance and dissemination activities under

paragraphs (3) and (4) of section 9858g(a) of this title.

(5) Research, demonstration, and evaluation

The Secretary may reserve ½ of 1 percent of the amount appropriated under this subchapter for each fiscal year to conduct research and demonstration activities, as well as periodic external, independent evaluations of the impact of the program described by this subchapter on increasing access to child care services and improving the safety and quality of child care services, using scientifically valid research methodologies, and to disseminate the key findings of those evaluations widely and on a timely basis.

(b) State allotment

(1) General rule

From the amounts appropriated under section 9858 of this title for each fiscal year remaining after reservations under subsection (a), the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

The term "young child factor" means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

The term "school lunch factor" means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the States as determined annually by the Department of Agriculture.

(4) Allotment percentage

(A) In general

The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A)—

(i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and

(ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) Payments for benefit of Indian children

(1) General authority

From amounts reserved under subsection (a)(2), the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

(2) Applications and requirements

An application for a grant or contract under this section shall provide that:

(A) Coordination

The applicant will coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

(B) Services on reservations

In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

(C) Reports and audits

The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

(D) Licensing and standards

In lieu of any licensing and regulatory requirements applicable under State or local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter. Such standards shall appropriately reflect Indian tribe and tribal organization needs and available resources, and shall include standards requiring a publicly available application, health and safety standards, and standards requiring a reservation of funds for activities to improve the quality of child care services provided to Indian children.

(3) Consideration of secretarial approval

In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration—

(A) the availability of child care services provided in accordance with this subchapter by the State or States in which the applicant proposes to carry out a program to provide child care services; and

(B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

(4) Three-year limit

Grants or contracts under this section shall be for periods not to exceed 3 years.

(5) Dual eligibility of Indian children

The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out under a grant to the State or States under this subchapter.

(6) Construction or renovation of facilities

(A) Request for use of funds

An Indian tribe or tribal organization may submit to the Secretary a request to use amounts provided under this subsection for construction or renovation purposes.

(B) Determination

With respect to a request submitted under subparagraph (A), and except as provided in

subparagraph (C), upon a determination by the Secretary that adequate facilities are not otherwise available to an Indian tribe or tribal organization to enable such tribe or organization to carry out child care programs in accordance with this subchapter, and that the lack of such facilities will inhibit the operation of such programs in the future, the Secretary may permit the tribe or organization to use assistance provided under this subsection to make payments for the construction or renovation of facilities that will be used to carry out such programs.

(C) Limitation

(i) In general

Except as provided in clause (ii), the Secretary may not permit an Indian tribe or tribal organization to use amounts provided under this subsection for construction or renovation if the use will result in a decrease in the level of child care services provided by the Indian tribe or tribal organization as compared to the level of child care services provided by the Indian tribe or tribal organization in the fiscal year preceding the year for which the determination under subparagraph (B) is being made.

(ii) Waiver

The Secretary shall waive the limitation described in clause (i) if—

(I) the Secretary determines that the decrease in the level of child care services provided by the Indian tribe or tribal organization is temporary; and

(II) the Indian tribe or tribal organization submits to the Secretary a plan that demonstrates that after the date on which the construction or renovation is completed—

(aa) the level of child care services will increase; or

(bb) the quality of child care services will improve.

(D) Uniform procedures

The Secretary shall develop and implement uniform procedures for the solicitation and consideration of requests under this paragraph.

(d) Data and information

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

(e) Reallotments

(1) In general

Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 9858c(d) of this title, in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) Limitations

(A) Reduction

The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 9858c(d) of this title.

(B) Reallotments

The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) Amounts reallotted

For purposes of any other section of this subchapter, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

(4) Indian tribes or tribal organizations

Any portion of a grant or contract made to an Indian tribe or tribal organization under

subsection (c) that the Secretary determines is not being used in a manner consistent with the provision of this subchapter in the period for which the grant or contract is made available, shall be allotted by the Secretary to other tribes or organizations that have submitted applications under subsection (c) in accordance with their respective needs.

(f) "State" defined

For the purposes of this section, the term "State" includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 97–35, title VI, §658O, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–246; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104–193, title VI, §613, Aug. 22, 1996, 110 Stat. 2286; Pub. L. 105–33, title V, §5602(4), Aug. 5, 1997, 111 Stat. 646; Pub. L. 106–78, title VII, §752(b)(17), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 113–186, §9, Nov. 19, 2014, 128 Stat. 1998.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(3), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113–186, §9(1)(A), designated existing provisions as subpar. (A), inserted heading, substituted "2 percent" for "1 percent, and not more than 2 percent,", and added subpar. (B).

Subsec. (a)(3) to (5). Pub. L. 113–186, §9(1)(B), added pars. (3) to (5).

Subsec. (c)(2)(D). Pub. L. 113–186, §9(2)(A), added subpar. (D).

Subsec. (c)(6)(C). Pub. L. 113–186, §9(2)(B), added subpar. (C) and struck out former subpar. (C). Prior to amendment, text read as follows: "The Secretary may not permit an Indian tribe or tribal organization to use amounts provided under this subsection for construction or renovation if such use will result in a decrease in the level of child care services provided by the tribe or organization as compared to the level of such services provided by the tribe or organization in the fiscal year preceding the year for which the determination under subparagraph (B) is being made."

1999—Subsec. (b)(3). Pub. L. 106–78 substituted "Richard B. Russell National School Lunch Act" for "National School Lunch Act".

1997—Subsec. (c)(6)(C). Pub. L. 105–33 substituted "subparagraph (B)" for "subparagraph (A)".

1996—Subsec. (a)(1). Pub. L. 104–193, §613(1)(A), made technical amendment to heading, inserted "and" before "the Commonwealth of the Northern Marianna Islands", and struck out ", and the Trust Territory of the Pacific Islands" before "to be allotted in accordance".

Subsec. (a)(2). Pub. L. 104–193, §613(1)(B), substituted "less than 1 percent, and not more than 2 percent," for "more than 3 percent".

Subsec. (c)(5). Pub. L. 104–193, §613(2)(A), substituted "activities carried out" for "activities carried our".

Subsec. (c)(6). Pub. L. 104–193, §613(2)(B), added par. (6).

Subsec. (e)(4). Pub. L. 104–193, §613(3), added par. (4).

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

[1] *So in original. Probably should be "Indian".*

§9858n. Definitions

As used in this subchapter:

(1) Caregiver

The term "caregiver" means an individual who provides a service directly to an eligible child on a person-to-person basis.

(2) Child care certificate

The term "child care certificate" means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider. Nothing in this subchapter shall preclude the use of such certificates for sectarian child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

(3) Child with a disability

The term "child with a disability" means—

(A) a child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401);

(B) a child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.);

(C) a child who is less than 13 years of age and who is eligible for services under section 794 of title 29; and

(D) a child with a disability, as defined by the State involved.

(4) Eligible child

The term "eligible child" means an individual—

(A) who is less than 13 years of age;

(B) whose family income does not exceed 85 percent of the State median income for a family of the same size, and whose family assets do not exceed $1,000,000 (as certified by a member of such family); and

(C) who—

(i) resides with a parent or parents who are working or attending a job training or educational program; or

(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

(5) English learner

The term "English learner" means an individual who is an English learner, as defined in section 7801 of title 20, or who is limited English proficient, as defined in section 9832 of this title.

(6) Eligible child care provider

The term "eligible child care provider" means—

(A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

(i) is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(F) of this title; and

(ii) satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(I) of this title;

applicable to the child care services it provides; or

(B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, if such provider complies with any applicable requirements that govern child care provided by the relative involved.

(7) Family child care provider

The term "family child care provider" means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

(8) Indian tribe

The term "Indian tribe" has the meaning given it in section 5304(e) of title 25.

(9) Lead agency

The term "lead agency" means the agency designated or established under section 9858b(a) of this title.

(10) Parent

The term "parent" includes a legal guardian, foster parent, or other person standing in loco parentis.

(11) Scientifically valid research

The term "scientifically valid research" includes applied research, basic research, and field-initiated research, for which the rationale, design, and interpretation are soundly developed in accordance with principles of scientific research.

(12) Secretary

The term "Secretary" means the Secretary of Health and Human Services unless the context specifies otherwise.

(13) Sliding fee scale

The term "sliding fee scale" means a system of cost sharing by a family based on income and size of the family.

(14) State

The term "State" means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(15) Tribal organization

(A) In general

The term "tribal organization" has the meaning given it in section 5304(l) of title 25.

(B) Other organizations

Such term includes a Native Hawaiian Organization, as defined in section 4909(4) [1] of title 20 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

(Pub. L. 97–35, title VI, §658P, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–248; amended Pub. L. 102–401, §3, Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 103–171, §8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104–193, title VI, §614, Aug. 22, 1996, 110 Stat. 2287; Pub. L. 105–33, title V, §5602(5), Aug. 5, 1997, 111 Stat. 646; Pub. L. 113–186, §10, Nov. 19, 2014, 128 Stat. 2000; Pub. L. 114–95, title IX, §9215(p)(2), Dec. 10, 2015, 129 Stat. 2170.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in par. (3)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Section 4909 of title 20, referred to in par. (15)(B), was repealed by Pub. L. 103–382, title III, §363, Oct. 20, 1994, 108 Stat. 3975.

AMENDMENTS

2015—Par. (5). Pub. L. 114–95 substituted "an individual who is an English learner, as defined in section 7801 of title 20, or who is limited English proficient, as defined in section 9832 of this title" for "an individual who is limited English proficient, as defined in section 7801 of title 20 or section 9832 of this title".

2014—Pars. (3), (4). Pub. L. 113–186, §10(1), added pars. (3) and (4) and struck out former par. (4) which defined "eligible child".

Par. (5). Pub. L. 113–186, §10(3), added par. (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 113–186, §10(2), (4), redesignated par. (5) as (6) and substituted "9858c(c)(2)(F)" for "9858c(c)(2)(E)" in subpar. (A)(i) and "9858c(c)(2)(I)" for "9858c(c)(2)(F)" in subpar. (A)(ii). Former par. (6) redesignated (7).

Pars. (7), (8). Pub. L. 113–186, §10(2), redesignated pars. (6) and (7) as (7) and (8), respectively. Former pars. (7) and (8) redesignated (8) and (9), respectively.

Par. (9). Pub. L. 113–186, §10(2), (5), redesignated par. (8) as (9) and substituted "designated or established under section 9858b(a)" for "designated under section 9858(a)". Former par. (9) redesignated (10).

Par. (10). Pub. L. 113–186, §10(2), (6), redesignated par. (9) as (10) and inserted ", foster parent," after "guardian".

Pars. (11) to (15). Pub. L. 113–186, §10(7), (8), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively.

1997—Par. (13). Pub. L. 105–33 substituted "and" for "or" after "American Samoa,".

1996—Par. (2). Pub. L. 104–193, §614(1), in first sentence, inserted "or as a deposit for child care services if such a deposit is required of other children being cared for by the provider" after "payment for child care services".

Par. (3). Pub. L. 104–193, §614(2), struck out heading and text of par. (3). Text read as follows: "The term 'elementary school' means a day or residential school that provides elementary education, as determined under State law."

Par. (4)(B). Pub. L. 104–193, §614(3), substituted "85 percent" for "75 percent".

Par. (5)(B). Pub. L. 104–193, §614(4), inserted "great grandchild, sibling (if such provider lives in a separate residence)," after "grandchild,", struck out "is registered and" after "such provider", and substituted "any applicable requirements" for "any State requirements".

Par. (10). Pub. L. 104–193, §614(5), struck out heading and text of par. (10). Text read as follows: "The term 'secondary school' means a day or residential school which provides secondary education, as determined under State law."

Par. (13). Pub. L. 104–193, §614(6), inserted "or" after "Samoa," and struck out ", and the Trust Territory of the Pacific Islands" after "Northern Mariana Islands".

Par. (14). Pub. L. 104–193, §614(7), designated existing text as subpar. (A), inserted heading, and added subpar. (B).

1993—Pars. (7), (14). Pub. L. 103–171 made technical correction to directory language of Pub. L. 102–586, §8(c)(2). See 1992 Amendment note below.

1992—Pub. L. 102–401, §3(a), and Pub. L. 102–586, §8(c)(1), made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

Par. (7). Pub. L. 102–586, §8(c)(2)(A), as amended by Pub. L. 103–171, which directed the amendment of par. (7) by substituting "section 5304(e) of title 25" for "section 5304(b) of title 25", could not be executed because the words "section 5304(b) of title 25" did not appear subsequent to execution of the amendment by Pub. L. 102–401, §3(b)(1). See below.

Pub. L. 102–401, §3(b)(1), substituted "section 5304(e) of title 25" for "section 5304(b) of title 25".

Par. (14). Pub. L. 102–586, §8(c)(2)(B), as amended by Pub. L. 103–171, which directed the amendment of par. (14) by substituting "section 5304(l) of title 25" for "section 5304(c) of title 25", could not be executed because the words "section 5304(c) of title 25" did not appear subsequent to execution of the amendment by Pub. L. 102–401, §3(b)(2). See below.

Pub. L. 102–401, §3(b)(2), substituted "section 5304(l) of title 25" for "section 5304(c) of title 25".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5603 of Pub. L. 105–33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as a note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–586 effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 8(d) of Pub. L. 102–586, set out as a note under section 9858h of this title.

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

[1] *See References in Text note below.*

§9858*o*. Parental rights and responsibilities

(a) In general

Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

(b) Parental rights to use child care certificates

Nothing in this subchapter shall be construed in a manner—

(1) to favor or promote the use of grants and contracts for the receipt of child care services under this subchapter over the use of child care certificates; or

(2) to disfavor or discourage the use of such certificates for the purchase of child care services, including those services provided by private or nonprofit entities, such as faith-based providers.

(Pub. L. 97–35, title VI, §658Q, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–249; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 113–186, §11, Nov. 19, 2014, 128 Stat. 2001.)

EDITORIAL NOTES

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–186 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

§9858p. Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held

invalid, the invalidity shall not affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.

(Pub. L. 97–35, title VI, §658R, as added Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–249; amended Pub. L. 102–401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102–586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–401 and Pub. L. 102–586 made identical technical corrections to directory language of Pub. L. 101–508, §5082(2), which added this section.

§9858q. Miscellaneous provisions

Notwithstanding any other law, the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need.

(Pub. L. 97–35, title VI, §658S, as added Pub. L. 102–586, §8(b), Nov. 4, 1992, 106 Stat. 5035; amended Pub. L. 103–171, §8, Dec. 2, 1993, 107 Stat. 1994.)

EDITORIAL NOTES

AMENDMENTS

1993—Pub. L. 103–171 made technical correction to directory language of Pub. L. 102–586, §8(b), which added this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 8(d) of Pub. L. 102–586, set out as an Effective Date of 1992 Amendment note under section 9858h of this title.

§9858r. Studies on waiting lists

(a) Study

The Comptroller General of the United States shall conduct studies to determine, for each State, the number of families that—

(1) are eligible to receive assistance under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.];

(2) have applied for the assistance, identified by the type of assistance requested; and

(3) have been placed on a waiting list for the assistance.

(b) Report

The Comptroller General shall prepare a report containing the results of each study and shall submit the report to the Committee on Health, Education, Labor and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives—

(1) not later than 2 years after November 19, 2014; and

(2) every 2 years thereafter.

(c) Definition

In this section, the term "State" has the meaning given the term in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n).

(Pub. L. 113–186, §12, Nov. 19, 2014, 128 Stat. 2001.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (a)(1), is subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388–236, which is classified generally to this subchapter. For complete classification of this Act to the Code, see section 9857(a) of this title and Tables.

CODIFICATION

Section was enacted as part of the Child Care and Development Block Grant Act of 2014, and not as part of the Child Care and Development Block Grant Act of 1990, which comprises this subchapter.

SUBCHAPTER II–C—CHILD CARE SAFETY AND HEALTH GRANTS

EDITORIAL NOTES

CODIFICATION

This subchapter was enacted as part of title XIV of div. A of the Children's Health Act of 2000, and not as part of chapter 8 of subtitle A of title VI of Pub. L. 97–35 which comprises this chapter.

§9859. Definitions

In this subchapter:

(1) Child with a disability; infant or toddler with a disability

The terms "child with a disability" and "infant or toddler with a disability" have the meanings given the terms in sections 1401 and 1431 of title 20.

(2) Eligible child care provider

The term "eligible child care provider" means a provider of child care services for compensation, including a provider of care for a school-age child during non-school hours, that—

(A) is licensed, regulated, registered, or otherwise legally operating, under State and local law; and

(B) satisfies the State and local requirements,

applicable to the child care services the provider provides.

(3) Secretary

The term "Secretary" means the Secretary of Health and Human Services.

(4) State

The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 106–310, div. A, title XIV, §1401, Oct. 17, 2000, 114 Stat. 1143.)

§9859a. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $200,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year.

(Pub. L. 106–310, div. A, title XIV, §1402, Oct. 17, 2000, 114 Stat. 1143.)

§9859b. Programs

The Secretary shall make allotments to eligible States under section 9859c of this title. The Secretary shall make the allotments to enable the States to establish programs to improve the health and safety of children receiving child care outside the home, by preventing illnesses and injuries associated with that care and promoting the health and well-being of children receiving that care.

(Pub. L. 106–310, div. A, title XIV, §1403, Oct. 17, 2000, 114 Stat. 1143.)

§9859c. Amounts reserved; allotments

(a) Amounts reserved

The Secretary shall reserve not more than one-half of 1 percent of the amount appropriated under section 9859a of this title for each fiscal year to make allotments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(b) State allotments

(1) General rule

From the amounts appropriated under section 9859a of this title for each fiscal year and remaining after reservations are made under subsection (a), the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

In this subsection, the term "young child factor" means the ratio of the number of children under 5 years of age in a State to the number of such children in all States, as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

In this subsection, the term "school lunch factor" means the ratio of the number of children who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) in the State to the number of such children in all States, as determined annually by the Department of Agriculture.

(4) Allotment percentage

(A) In general

For purposes of this subsection, the allotment percentage for a State shall be determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A) for a State—

(i) is more than 1.2 percent, the allotment percentage of the State shall be considered to be 1.2 percent; and

(ii) is less than 0.8 percent, the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning after the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce on the date such determination is made.

(c) Data and information

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

(d) Definition

In this section, the term "State" includes only the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 106–310, div. A, title XIV, §1404, Oct. 17, 2000, 114 Stat. 1143.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National School Lunch Act, referred to in subsec. (b)(3), probably means the Richard B. Russell National School Lunch Act, act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

§9859d. State applications

To be eligible to receive an allotment under section 9859c of this title, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The application shall contain information assessing the needs of the State with regard to child care health and safety, the goals to be achieved through the program carried out by the State under this subchapter, and the measures to be used to assess the progress made by the State toward achieving the goals.

(Pub. L. 106–310, div. A, title XIV, §1405, Oct. 17, 2000, 114 Stat. 1145.)

§9859e. Use of funds

(a) In general

A State that receives an allotment under section 9859c of this title shall use the funds made available through the allotment to carry out two or more activities consisting of—

(1) providing training and education to eligible child care providers on preventing injuries and illnesses in children, and promoting health-related practices;

(2) strengthening licensing, regulation, or registration standards for eligible child care providers;

(3) assisting eligible child care providers in meeting licensing, regulation, or registration standards, including rehabilitating the facilities of the providers, in order to bring the facilities into compliance with the standards;

(4) enforcing licensing, regulation, or registration standards for eligible child care providers, including holding increased unannounced inspections of the facilities of those providers;

(5) providing health consultants to provide advice to eligible child care providers;

(6) assisting eligible child care providers in enhancing the ability of the providers to serve children with disabilities and infants and toddlers with disabilities;

(7) conducting criminal background checks for eligible child care providers and other individuals who have contact with children in the facilities of the providers;

(8) providing information to parents on what factors to consider in choosing a safe and healthy child care setting; or

(9) assisting in improving the safety of transportation practices for children enrolled in child care programs with eligible child care providers.

(b) Supplement, not supplant

Funds appropriated pursuant to the authority of this subchapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services for eligible individuals.

(Pub. L. 106–310, div. A, title XIV, §1406, Oct. 17, 2000, 114 Stat. 1145.)

§9859f. Reports

Each State that receives an allotment under section 9859c of this title shall annually prepare and submit to the Secretary a report that describes—

(1) the activities carried out with funds made available through the allotment; and

(2) the progress made by the State toward achieving the goals described in the application submitted by the State under section 9859d of this title.

(Pub. L. 106–310, div. A, title XIV, §1407, Oct. 17, 2000, 114 Stat. 1145.)

SUBCHAPTER III—FOLLOW THROUGH PROGRAMS

PART I—DIRECT SERVICES

§§9861, 9862. Repealed. Pub. L. 103–382, title III, §391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9861, Pub. L. 97–35, title VI, §662, Aug. 13, 1981, 95 Stat. 508; Pub. L. 101–501, title II, §202, Nov. 3, 1990, 104 Stat. 1243, authorized financial assistance for Follow Through programs.

Section 9862, Pub. L. 97–35, title VI, §663, as added Pub. L. 101–501, title II, §203, Nov. 3, 1990, 104 Stat. 1244; amended Pub. L. 102–119, §26(c), Oct. 7, 1991, 105 Stat. 607, related to consideration of applications.

A prior section 9862, Pub. L. 97–35, title VI, §663, Aug. 13, 1981, 95 Stat. 509; Pub. L. 98–558, title III, §301, Oct. 30, 1984, 98 Stat. 2887; Pub. L. 99–425, title II, §201(a), Sept. 30, 1986, 100 Stat. 966, related to funding requirements, prior to repeal by Pub. L. 101–501, title II, §203, Nov. 3, 1990, 104 Stat. 1244.

PART II—PROGRAM IMPROVEMENT

§§9863 to 9865. Repealed. Pub. L. 103–382, title III, §391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9863, Pub. L. 97–35, title VI, §664, as added Pub. L. 101–501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1245, authorized financial assistance for research regarding Follow Through programs and approaches.

A prior section 9863, Pub. L. 97–35, title VI, §664, Aug. 13, 1981, 95 Stat. 509, related to grants or contracts for research, demonstration, and pilot projects, prior to repeal by Pub. L. 101–501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1245.

Section 9863a, Pub. L. 97–35, title VI, §664A, as added Pub. L. 101–501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1245, related to technical assistance and training.

Section 9863b, Pub. L. 97–35, title VI, §664B, as added Pub. L. 101–501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1246, authorized grants to entities which operate, or previously operated, effective Follow Through programs.

Section 9863c, Pub. L. 97–35, title VI, §664C, as added Pub. L. 101–501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1246, related to grant to establish national clearinghouse on Follow Through programs.

Section 9864, Pub. L. 97–35, title VI, §665, Aug. 13, 1981, 95 Stat. 510; Pub. L. 101–501, title II, §205, Nov. 3, 1990, 104 Stat. 1246, related to announcement of research and evaluation contracts.

Section 9865, Pub. L. 97–35, title VI, §666, Aug. 13, 1981, 95 Stat. 510; Pub. L. 101–501, title II, §206, Nov. 3, 1990, 104 Stat. 1247, related to continuing evaluation of programs under this subchapter.

PART III—GENERAL AND ADMINISTRATIVE PROVISIONS

§§9866 to 9869. Repealed. Pub. L. 103–382, title III, §391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9866, Pub. L. 97–35, title VI, §667, as added Pub. L. 101–501, title II, §207(a), Nov. 3, 1990, 104 Stat. 1247, related to authorization of appropriations to carry out this subchapter.

A prior section 9866, Pub. L. 97–35, title VI, §667, Aug. 13, 1981, 95 Stat. 511, provided for technical assistance and training, prior to repeal by Pub. L. 101–501, title II, §204(b), Nov. 3, 1990, 104 Stat. 1246.

Section 9867, Pub. L. 97–35, title VI, §668, Aug. 13, 1981, 95 Stat. 511; Pub. L. 99–425, title II, §201(b), Sept. 30, 1986, 100 Stat. 967; Pub. L. 101–501, title II, §§201(2), 209, Nov. 3, 1990, 104 Stat. 1243, 1248, related to special conditions on financial assistance.

Section 9868, Pub. L. 97–35, title VI, §669, Aug. 13, 1981, 95 Stat. 511, related to applicability of other provisions to administration of this subchapter.

Section 9869, Pub. L. 97–35, title VI, §669A, as added Pub. L. 101–501, title II, §208, Nov. 3, 1990, 104 Stat. 1248, related to participation of entities that receive funds under this subchapter in other Federal educational activities and programs.

SUBCHAPTER IV—GRANTS TO STATES FOR PLANNING AND DEVELOPMENT OF DEPENDENT CARE PROGRAMS AND FOR OTHER PURPOSES

EDITORIAL NOTES

CODIFICATION

Subchapter is based on subchapter E, formerly D, of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 98–558, title I, §109, Oct. 30, 1984, 98 Stat. 2880, and amended and redesignated.

§9871. Authorization of appropriations

For the purpose of making allotments to States to carry out the activities described in section 9874 of this title, there is authorized to be appropriated $13,000,000 for fiscal year 1995.

(Pub. L. 97–35, title VI, §670A, as added Pub. L. 98–558, title I, §109, Oct. 30, 1984, 98 Stat. 2880; amended Pub. L. 99–425, title III, §301, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101–501, title III, §301, Nov. 3, 1990, 104 Stat. 1248; Pub. L. 103–252, title I, §122, May 18, 1994, 108 Stat. 650.)

EDITORIAL NOTES

AMENDMENTS

1994—Pub. L. 103–252 substituted "is authorized to be appropriated $13,000,000 for fiscal year 1995" for "are authorized to be appropriated $20,000,000 for each of the fiscal years 1990 and 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994".

1990—Pub. L. 101–501 substituted "are authorized" for "is authorized", struck out "1987, 1988, 1989, and" before "1990", and inserted "and 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994" after "1990".

1986—Pub. L. 99–425 amended section generally. Prior to amendment, section read as follows: "For the purpose of allotments to States to carry out the activities described in section 9874 of this title, there are authorized to be appropriated $20,000,000 for each of the fiscal years 1985 and 1986."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

SHORT TITLE

For short title of this subchapter as the "State Dependent Care Development Grants Act", see section 670H of Pub. L. 97–35, set out as a note under section 9801 of this title.

§9872. Allotments

(a) From the amounts appropriated under section 9871 of this title for each fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the total amount appropriated under such section for such fiscal year as the population of the State bears to the population of all States, except that no State may receive less than $50,000 in each fiscal year.

(b) For the purpose of the exception contained in subsection (a), the term "State" does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97–35, title VI, §670B, as added Pub. L. 98–558, title I, §109, Oct. 30, 1984, 98 Stat. 2880.)

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§9873. Payments under allotments to States

The Secretary shall make payments, as provided by section 6503(a) of title 31, to each State from its allotments under section 9872 of this title from amounts appropriated under section 9871 of this title.

(Pub. L. 97–35, title VI, §670C, as added Pub. L. 98–558, title I, §109, Oct. 30, 1984, 98 Stat. 2880.)

§9874. Use of allotments

(a) Referral systems; information; contents

(1) Subject to the provisions of subsections (c) and (d), amounts paid to a State under section 9873 of this title from its allotment under section 9872 of this title may be used for the planning, development, establishment, operation, expansion, or improvement by the States, directly or by grant or contract with public or private entities, of State and local resource and referral systems to provide information concerning the availability, types, costs, and locations of dependent care services. The information provided by any such system may include—

(A) the types of dependent care services available, including services provided by individual homes, religious organizations, community organizations, employers, private industry, and public and private institutions;

(B) the costs of available dependent care services;

(C) the locations in which dependent care services are provided;

(D) the forms of transportation available to such locations;

(E) the hours during which such dependent care services are available;

(F) the dependents eligible to enroll for such dependent care services; and

(G) any resource and referral system planned, developed, established, expanded, or improved with amounts paid to a State under this subchapter.

(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

(A) provide assurances that no information will be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided; and

(B) provide assurances that the information provided will be the latest information available and will be kept up to date.

(b) School-age child care services; assurances; estimates

(1) Subject to the provisions of subsections (c) and (d), amounts paid to a State under section 9873 of this title from its allotment under section 9872 of this title may be used for the planning, development, establishment, operation, expansion, or improvement by the States, directly, or by grant or contract, with public agencies or private nonprofit organizations of programs to furnish school-age child care services before and after school. Amounts so paid to a State and used for the operation of such child care services shall be designed to enable children, whose families lack adequate financial resources, to participate in before or after school child care programs.

(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

(A) provide assurances, in the case of an applicant that is not a State or local educational agency, that the applicant has or will enter into an agreement with the State or local educational agency, institution of higher education or community center containing provisions for—

(i) the use of facilities for the provision of before or after school child care services (including such use during holidays and vacation periods),

(ii) the restrictions, if any, on the use of such space, and

(iii) the times when the space will be available for the use of the applicant;

(B) provide an estimate of the costs of the establishment of the child care service program in the facilities;

(C) provide assurances that the parents of school-age children will be involved in the development and implementation of the program for which assistance is sought under this Act; [1]

(D) provide assurances that the applicant is able and willing to seek to enroll racially, ethnically, and economically diverse school-age children, as well as handicapped school-age children, in the child care service program for which assistance is sought under this Act; [1]

(E) provide assurances that the child care program is in compliance with State and local child care licensing laws and regulations governing day care services for school-age children to the extent that such regulations are appropriate to the age group served; and

(F) provide such other assurances as the chief executive officer of the State may reasonably require to carry out this Act.[1]

(c) Percentage of allotment; waiver

(1) Except as provided in paragraph (2), of the allotment to each State in each fiscal year—

(A) 40 percent shall be available for the activities described in subsection (a);

(B) 60 percent shall be available for the activities described in subsection (b).

(2) For any fiscal year the Secretary may waive the percentage requirements specified in paragraph (1) on the request of a State if such State demonstrates to the satisfaction of the Secretary—

(A) that the amount of funds available as a result of one of such percentage requirements is not needed in such fiscal year for the activities for which such amount is so made available; and

(B) the adequacy of the alternative percentages, relative to need, the State specifies the State will apply with respect to all of the activities referred to in paragraph (1) if such waiver is granted.

(d) Prohibition; use of amounts

A State may not use amounts paid to it under this subchapter to—

(1) make cash payments to intended recipients of dependent care services including child care services;

(2) pay for construction or renovation; or

(3) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

(e) Federal share; cost of administration

(1) The Federal share of any project supported under this subchapter shall be not more than 75 percent.

(2) Not more than 10 percent of the allotment of each State under this subchapter may be available for the cost of administration.

(f) Duplication of services

Projects supported under this section to plan, develop, establish, expand, operate, or improve a State or local resource and referral system or before or after school child care program shall not duplicate any services which are provided before October 30, 1984, by the State or locality which will be served by such system.

(g) Technical assistance to States; planning and operational activities

The Secretary may provide technical assistance to States in planning and carrying out activities under this subchapter.

(Pub. L. 97–35, title VI, §670D, as added Pub. L. 98–558, title I, §109, Oct. 30, 1984, 98 Stat. 2880; amended Pub. L. 99–425, title III, §302, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101–501, title III, §§302, 303, 305(a), Nov. 3, 1990, 104 Stat. 1249, 1250.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2)(C), (D), (F), is Pub. L. 97–35, known as the Omnibus Budget Reconciliation Act of 1981, but probably should have been "this subchapter", meaning subchapter E of chapter 8 of subtitle A of title VI of Pub. L. 97–35, known as the State Dependent Care Development Grants Act, which is classified to this subchapter.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–501, §§303(a)(1), 305(a)(1), inserted "operation," after "establishment," and struck out "for fiscal year 1985 and fiscal year 1986" before "may be used".

Subsec. (b)(1). Pub. L. 101–501, §§303(a)(2), (3), 305(a)(2), struck out "for fiscal year 1985 and fiscal year 1986" before "may be used", inserted "operation," after "establishment,", struck out "in public or private school facilities or in community centers in communities" after "before and after school", and inserted at end "Amounts so paid to a State and used for the operation of such child care services shall be designed to enable children, whose families lack adequate financial resources, to participate in before or after school child care programs."

Subsec. (b)(2)(D). Pub. L. 101–501, §305(a)(3)(A), inserted "school-age children," after "diverse" and inserted comma after last reference to "children".

Subsec. (b)(2)(F). Pub. L. 101–501, §305(a)(3)(B), substituted "chief executive officer of the State" for "Governor" and struck out "the provisions of" before "this Act".

Subsec. (c). Pub. L. 101–501, §302, designated existing provision as par. (1), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively, substituted "Except as provided in paragraph (2), of" for "Of", and added par. (2).

Subsec. (d). Pub. L. 101–501, §303(b), redesignated pars. (2), (4), and (5) as (1), (2), and (3), respectively, and struck out former pars. (1) and (3) which read as follows:

"(1) pay the costs of operation of any resource and referral system or before or after school child care program established, expanded, or improved under subsection (a) of this section;

"(3) subsidize the direct provision of dependent care services including child care services;".

Subsec. (d)(1). Pub. L. 101–501, §305(a)(4), which directed the substitution of "subsections (a) and (b) of this section" for "subsection (a) of this section", could not be executed because of the intervening amendment by Pub. L. 101–501, §303(b), see above.

Subsec. (f). Pub. L. 101–501, §§303(a)(4), 305(a)(5), inserted "operate," after "expand," and substituted "which are provided before October 30, 1984," for ", which prior to October 30, 1984, are provided".

Subsec. (g). Pub. L. 101–501, §305(a)(6), substituted "carrying out activities" for "operating activities to be carried out".

1986—Subsec. (a). Pub. L. 99–425, §302(a), designated existing provisions as par. (1), substituted "system may include" for "system shall include", redesignated cls. (1) to (7) as (A) to (G), respectively, struck out last sentence which read as follows: "In carrying out clause (7) of the previous sentence, no information shall be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided", and added par. (2).

Subsec. (b)(1). Pub. L. 99–425, §302(b)(1), struck out "where school facilities are not available" after "centers in communities".

Subsec. (b)(2)(E). Pub. L. 99–425, §302(b)(2), inserted "child care" before "licensing laws".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

[1] *So in original. Probably should be "subchapter".*

§9875. Application and description of activities; requirements

(a) Applications

(1) In order to receive an allotment under section 9872 of this title, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require.

(2) Each application required under paragraph (1) for an allotment under section 9872 of this title shall contain assurances that the State will meet the requirements of subsection (b).

(b) Certifications

As part of the annual application required by subsection (a), the chief executive officer of each State shall—

(1) certify that the State agrees to use the funds allotted to it under section 9872 of this title in accordance with the requirements of this subchapter; and

(2) certify that the State agrees that Federal funds made available under section 9873 of this title for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

The Secretary may not prescribe for a State the manner of compliance with the requirements of this subsection.

(c) Description; intended use of payments; comments; revision

(1) The chief executive officer of a State shall, as part of the application required by subsection (a), also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 9873 of this title, including information on the programs and activities to be supported. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) until September 30, 1991, as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this subchapter, and any revision shall be subject to the requirements of the preceding sentence.

(2) The chief executive officer of each State shall include in such a description of—

(A) the number of children who participated in before and after school child care programs assisted under this subchapter;

(B) the characteristics of the children so served including age levels, handicapped condition, income level of families in such programs;

(C) the salary level and benefits paid to employees in such child care programs; and

(D) the number of clients served in resource and referral systems assisted under this subchapter, and the types of assistance they requested.

(d) Application to Public Health Service Act

Except where inconsistent with the provisions of this subchapter, the provisions of section 1903(b) [42 U.S.C. 300w–2(b)], paragraphs (1) through (5) of section 1906(a) [1] [42 U.S.C. 300w–5(a)], and sections 1906(b), 1907, 1908, and 1909 [42 U.S.C. 300w–5(b), 300w–6, 300w–7, 300w–8] of the Public Health Service Act shall apply to this subchapter in the same manner as such provisions apply to part A of title XIX of such Act [42 U.S.C. 300w et seq.].

(Pub. L. 97–35, title VI, §670E, as added Pub. L. 98–558, title I, §109, Oct. 30, 1984, 98 Stat. 2882; amended Pub. L. 101–501, title III, §§304, 305(b), Nov. 3, 1990, 104 Stat. 1249, 1250.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (d), is act July 1, 1944, ch. 373, 58 Stat. 682. Part A of title XIX of the Public Health Service Act is classified generally to part A (§300w et seq.) of subchapter XVII of chapter 6A of this title. Section 1906(a) of the Act, which is classified to section 300w–5(a) of this title, was amended generally by Pub. L. 102–531, title I, §104(a), Oct. 27, 1992, 106 Stat. 3473, and, as so amended, consists of pars. (1) to (4) rather than pars. (1) to (5). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–501, §305(b), which directed that "until September 30, 1987," be struck out, could not be executed, because of the intervening amendment by Pub. L. 101–501, §304, see below.

Pub. L. 101–501, §304, designated existing provisions as par. (1), substituted "September 30, 1991" for "September 30, 1987", and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

[1] *See References in Text note below.*

§9876. Report

Within three years after October 30, 1984, the Secretary shall prepare and transmit to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor a report concerning the activities conducted by the States with amounts provided under this subchapter.

(Pub. L. 97–35, title VI, §670F, as added Pub. L. 98–558, title I, §109, Oct. 30, 1984, 98 Stat. 2883.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§9877. Definitions

For purposes of this subchapter—

(1) the term "community center" means facilities operated by nonprofit community-based organizations for the provision of recreational, social, or educational services to the general public;

(2) the term "dependent" means—

(A) an individual who has not attained the age of 17 years;

(B) an individual who has attained the age of 55 years; or

(C) an individual with a developmental disability;

(3) the term "developmental disability" has the same meaning as in section 15002 of this title;

(4) the term "equipment" has the same meaning given that term by section 198(a)(8) of the Elementary and Secondary Education Act of 1965; [1]

(5) the term "institution of higher education" has the same meaning given that term under

section 1001 of title 20;

(6) the term "local educational agency" has the same meaning given that term under section 7801 of title 20;

(7) the term "school-age children" means children aged five through thirteen, except that in any State in which by State law children at an earlier age are provided free public education, the age provided in State law shall be substituted for age five;

(8) the term "school facilities" means classrooms and related facilities used for the provision of education;

(9) the term "Secretary" means the Secretary of Health and Human Services;

(10) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Commonwealth of the Northern Mariana Islands; and

(11) the term "State educational agency" has the meaning given that term under section 7801 [1] of title 20.

(Pub. L. 97–35, title VI, §670G, as added Pub. L. 98–558, title I, §109, Oct. 30, 1984, 98 Stat. 2883; amended Pub. L. 99–425, title III, §303, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101–501, title III, §305(c), Nov. 3, 1990, 104 Stat. 1250; Pub. L. 103–382, title III, §394(l), Oct. 20, 1994, 108 Stat. 4029; Pub. L. 105–244, title I, §102(a)(13)(H), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 106–402, title IV, §401(b)(12), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 107–110, title X, §1076(dd), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 114–95, title IX, §9215(rrr), Dec. 10, 2015, 129 Stat. 2189.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 198 of the Elementary and Secondary Education Act of 1965, referred to in par. (4), is section 198 of Pub. L. 89–10, title I, as added Pub. L. 95–561, title I, §101(a), Nov. 1, 1978, 92 Stat. 2198, which was classified to section 2854 of Title 20, Education, prior to the general revision of Pub. L. 89–10 by Pub. L. 100–297, title I, §1001, Apr. 28, 1988, 102 Stat. 140.

Section 7801 of title 20, referred to in par. (11), was in the original a reference to section 9101 of Pub. L. 89–10, which was renumbered section 8101 by Pub. L. 114–95, title VIII, §8001(a)(1), Dec. 10, 2015, 129 Stat. 2089.

AMENDMENTS

2015—Par. (6). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

2002—Pars. (6), (11). Pub. L. 107–110 substituted "7801" for "8801".

2000—Par. (3). Pub. L. 106–402 substituted "section 15002 of this title" for "section 6001(7) of this title".

1998—Par. (5). Pub. L. 105–244, which directed amendment of section 670G(5) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9877(5)) by substituting "section 1001" for "section 1141(a)", was executed to this section, which is section 670G(5) of subchapter E of chapter 8 of subtitle A of title VI of Pub. L. 97–35, known as the State Dependent Care Development Grants Act, to reflect the probable intent of Congress.

1994—Par. (6). Pub. L. 103–382, §394(l)(1), substituted "section 8801 of title 20" for "section 198(a)(10) of the Elementary and Secondary Education Act of 1965".

Par. (11). Pub. L. 103–382, §394(l)(2), substituted "section 8801 of title 20" for "section 198(a)(17) of the Elementary and Secondary Education Act of 1965".

1990—Par. (2)(C). Pub. L. 101–501, §305(c)(1), substituted "an individual" for "a person".

Par. (7). Pub. L. 101–501, §305(c)(2), inserted "in" after first reference to "State".

Par. (10). Pub. L. 101–501, §305(c)(3), substituted "Federated States of Micronesia, the Republic of the Marshall Islands, Palau" for "Trust Territory of the Pacific Islands".

1986—Par. (7). Pub. L. 99–425 inserted ", except that in any State which by State law children at an earlier age are provided free public education, the age provided in State law shall be substituted for age five".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as a note under section 8621 of this title.

[1] *See References in Text note below.*

SUBCHAPTER V—COMPREHENSIVE CHILD DEVELOPMENT PROGRAM

§§9881 to 9887. Repealed. Pub. L. 103–252, title I, §§112(b)(1), (2)(B), May 18, 1994, 108 Stat. 640, 641

Section 9881, Pub. L. 97–35, title VI, §670N, as added Pub. L. 100–297, title II, §2503, Apr. 28, 1988, 102 Stat. 326, authorized Comprehensive Child Development Program for pre-school children. See section 9840a of this title.

Section 9882, Pub. L. 97–35, title VI, §670O, as added Pub. L. 100–297, title II, §2503, Apr. 28, 1988, 102 Stat. 328, proscribed Secretary from taking into consideration, when making a grant under former section 9881, whether the applicant had applied or received funds under subchapter II of this chapter, relating to the Head Start program.

Section 9883, Pub. L. 97–35, title VI, §670P, as added Pub. L. 100–297, title II, §2503, Apr. 28, 1988, 102 Stat. 329, related to applicability to this subchapter of rules and regulations prescribed to carry out subchapter II of this chapter to the extent that the services provided were similar.

Section 9884, Pub. L. 97–35, title VI, §670Q, as added Pub. L. 100–297, title II, §2503, Apr. 28, 1988, 102 Stat. 329, directed Secretary to continually evaluate projects under this subchapter.

Section 9885, Pub. L. 97–35, title VI, §670R, as added Pub. L. 100–297, title II, §2503, Apr. 28, 1988, 102 Stat. 329, directed Secretary to carry out this subchapter through the administrative entity used to carry out subchapter II of this chapter.

Section 9886, Pub. L. 97–35, title VI, §670S, as added Pub. L. 100–297, title II, §2503, Apr. 28, 1988, 102 Stat. 329; amended Pub. L. 102–119, §26(a), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–382, title III, §391(x), Oct. 20, 1994, 108 Stat. 4025, provided definitions for terms used in this subchapter.

Section 9887, Pub. L. 97–35, title VI, §670T, as added Pub. L. 100–297, title II, §2503, Apr. 28, 1988, 102 Stat. 330; amended Pub. L. 101–501, title VIII, §801, Nov. 3, 1990, 104 Stat. 1261, authorized appropriations to carry out this subchapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

COMPREHENSIVE CHILD DEVELOPMENT PROGRAM; CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 100–297, title II, part E, §2502, Apr. 28, 1988, 102 Stat. 325, provided that it is the purpose of part E of title II of Pub. L. 100–297 to provide financial assistance to projects that target and support infants and young children from low-income families, enhance their development, and provide support for their parents and other family members, prior to repeal by Pub. L. 103–252, title I, §112(b)(1), (2)(A), May 18, 1994, 108 Stat. 640, 641.

CONSOLIDATION OF CHILD DEVELOPMENT PROGRAMS

Pub. L. 103–252, title I, §112(b)(1), May 18, 1994, 108 Stat. 640, provided that: "In recognition that the Comprehensive Child Development Centers Act [enacting this subchapter, amending section 9833 of this title, and enacting provisions set out as notes under this section and section 9801 of this title] has demonstrated positive results, and that its purposes and functions have been consolidated into section 645A of the Head Start Act [42 U.S.C. 9840a], the Comprehensive Child Development Centers Act of 1988 (42 U.S.C. 9801 note) and the Comprehensive Child Development Act (42 U.S.C. 9881 et seq.) are repealed."

CHAPTER 106—COMMUNITY SERVICES BLOCK GRANT PROGRAM

Sec.

9901. Purposes and goals.
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EDITORIAL NOTES

CODIFICATION

The Community Services Block Grant Act, comprising this chapter, was originally enacted by subtitle B of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 511, and amended by Pub. L. 97–115, Dec. 29, 1981, 95 Stat. 1595; Pub. L. 98–288, May 21, 1984, 98 Stat. 189; Pub. L. 98–558, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99–425, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101–501, Nov. 3, 1990, 104 Stat. 1222; Pub. L. 101–624, Nov. 28, 1990, 104 Stat. 3359; Pub. L. 103–94, Oct. 6, 1993, 107 Stat. 1001; Pub. L. 103–171, Dec. 2, 1993, 107 Stat. 1988; Pub. L. 103–252, May 18, 1994, 108 Stat. 623. The Community Services Block Grant Act is shown herein, however, as having been added by Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2728, without reference to those intervening amendments because of the extensive revision of that Act by Pub. L. 105–285.

§9901. Purposes and goals

The purposes of this chapter are—

(1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

(2) to accomplish the goals described in paragraph (1) through—

(A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;

(B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;

(C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;

(D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this chapter to empower such residents and members to respond to the unique problems and needs within their communities; and

(E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for—

(i) private, religious, charitable, and neighborhood-based organizations; and

(ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

(Pub. L. 97–35, title VI, §672, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2728.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in par. (1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 9901, Pub. L. 97–35, title VI, §672, Aug. 13, 1981, 95 Stat. 511; Pub. L. 98–558, title II, §201, Oct. 30, 1984, 98 Stat. 2884; Pub. L. 99–425, title IV, §401, Sept. 30, 1986, 100 Stat. 968; Pub. L.

101–501, title IV, §401(a), Nov. 3, 1990, 104 Stat. 1251; Pub. L. 103–252, title II, §202(a), May 18, 1994, 108 Stat. 651, authorized the Secretary to make community service grants, prior to the general amendment of this chapter by Pub. L. 105–285.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–252, title II, §201(a), May 18, 1994, 108 Stat. 651, provided that: "This title [enacting section 9910c of this title, amending this section and sections 9903, 9904, 9910, 9910a, 9910b, 9911, 9912, and 11464 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Community Services Block Grant Amendments of 1994'."

SHORT TITLE

Pub. L. 97–35, title VI, §671, as added by Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2728, provided that: "This subtitle [subtitle B (§§671–683) of title VI of Pub. L. 97–35, enacting this chapter] may be cited as the 'Community Services Block Grant Act'."

A prior section 671 of Pub. L. 97–35 provided that subtitle B (§§671–683) of title VI of Pub. L. 97–35, which enacted prior chapter and repealed sections 2701, 2706, 2711 to 2716, 2771, 2781, 2790, 2791, 2795 to 2797, 2808 to 2815, 2823 to 2825, 2827, 2828, 2830, 2833 to 2837, 2841, 2851 to 2856, 2881, 2901 to 2906, 2921 to 2923, 2928 to 2928g, 2928h to 2928n, 2929 to 2929c, 2930 to 2930f, 2931 to 2933, 2941 to 2948, 2950, 2951, 2961 to 2970, 2971a to 2971g, 2972 to 2980, 2981 to 2981c, 2982 to 2982c, 2983 to 2983b, 2984, 2984a, 2985 to 2985c, 2985d to 2985g, and 2995 to 2995c of this title and provisions set out as a note under section 2701 of this title, could be cited as the "Community Services Block Grant Act", prior to the general amendment of this chapter by Pub. L. 105–285.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13969. EXPANDING EDUCATIONAL OPPORTUNITY THROUGH SCHOOL CHOICE

Ex. Ord. No. 13969, Dec. 28, 2020, 86 F.R. 219, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure the education, health, safety, and well-being of America's children, our most essential resource upon which the future of our great Nation depends, it is hereby ordered as follows:

SECTION 1. *Purpose*. As part of their efforts to address the public health challenges and uncertainties posed by the COVID–19 pandemic, State and local officials shut down in-person learning for the vast majority of our more than 56 million elementary and secondary school students beginning in late February and early March of this year. Since then, however, our Nation has identified effective measures to facilitate the safe resumption of in-person learning, and the Federal Government has provided more than $13 billion to States and school districts to implement those measures.

The prolonged deprivation of in-person learning opportunities has produced undeniably dire consequences for the children of this country. The Centers for Disease Control and Prevention has stated that school attendance is negatively correlated with a child's risk of depression and various types of abuse. States have seen substantial declines in reports of child maltreatment while school buildings have been closed, indicating that allegations are going unreported. These reductions are driven in part by social isolation from the schoolteachers and support staff with whom students typically interact and who have an obligation to report suspected child maltreatment. The American Academy of Pediatrics (AAP) has also found that school closures have a "substantial impact on food security and physical activity for children and families." Additionally, a recent survey of educators found student absences from school, including virtual learning, have nearly doubled during the pandemic, and as AAP has noted, chronic absenteeism is associated with alcohol and drug use, teenage pregnancy, juvenile delinquency, and suicide attempts.

School closures are especially difficult for families with children with special needs. Schools provide not only academic supports for students with special needs, but they also provide much-needed in-person therapies and services, including physical and occupational therapies. A recent survey found that 80 percent of children with special needs are not receiving the services and supports to which they are entitled and that approximately 40 percent of children with special needs are receiving no services or supports. Moreover, the

survey found that virtual learning may not be fully accessible to these students, as children with special needs are twice as likely to receive little or no remote learning and to be dissatisfied with the remote learning received.

Low-income and minority children are also disproportionately affected by school closures. In low-income zip codes, students' math progress decreased by nearly 50 percent while school buildings were closed in the spring, and the math progress of students in middle-income zip codes fell by almost a third during the same period. A recent analysis projected that, if in-person classes do not fully resume until January 2021, Hispanic, Black, and low-income students will lose 9.2, 10.3, and 12.4 months of learning, respectively.

A failure to quickly resume in-person learning options is likely to have long-term economic effects on children and their families. According to a recent study, if in-person classes do not fully resume until January 2021, the average student could lose $61,000 to $82,000 in lifetime earnings, or the equivalent of a year of full-time work. Additionally, in 2019, more than 90 percent of children under the age of 18 had at least one employed parent. Many employed parents do not have the option of engaging in remote work that allows them the flexibility to supervise their children during the day when in-person learning options are not available. Without the resumption of in-person learning opportunities, the economic and social harms resulting from such lost employment opportunities will continue to compound.

To help mitigate these harms, the Department of Health and Human Services recently announced additional relief for low-income parents by allowing States to use funds available through the Child Care and Development Fund to subsidize child care services and services that supplement academic instruction for children under the age of 13 who are participating in virtual instruction. Nevertheless, virtual instruction is an inadequate substitute for in-person learning opportunities and this aid is insufficient to meet current needs.

While some families, especially those with financial means, have been able to mitigate school disruptions through in-person options such as homeschooling, private schools, charter schools, and innovative models like microschools and "learning pods," for many families, their children's residentially assigned public school remains their only financially available option. Unfortunately, more than 50 percent of all public-school students in the United States began school remotely this fall. These children, including those with special needs, are being underserved due to the public education system's failure to provide in-person learning options.

Students whose families pay tuition for their education are also facing significant hardships due to the economic disruptions caused by the pandemic. Scores of private schools, including approximately 100 Catholic schools, have permanently closed since the onset of COVID–19, and more than half of our Nation's private schools are believed to have lost enrollment due to the pandemic. These closures and declining enrollments are harmful to students, bad for communities, and likely to impose increased strain on public school systems.

I am committed to ensuring that all children of our great Nation have access to the educational resources they need to obtain a high-quality education and to improving students' safety and well-being, including by empowering families with emergency learning scholarships.

SEC. 2. *Providing Emergency Learning Scholarships for Students*. The Secretary of Health and Human Services shall take steps, consistent with law, to allow funds available through the Community Services Block Grant program to be used by grantees and eligible entities to provide emergency learning scholarships to disadvantaged families for use by any child without access to in-person learning. These scholarships may be used for:

(i) tuition and fees for a private or parochial school;

(ii) homeschool, microschool, or learning-pod costs;

(iii) special education and related services, including therapies; or

(iv) tutoring or remedial education.

SEC. 3. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§9902. Definitions

In this chapter:

(1) Eligible entity; family literacy services

(A) Eligible entity

The term "eligible entity" means an entity—

(i) that is an eligible entity described in paragraph (1) (as in effect on the day before October 27, 1998) as of the day before October 27, 1998, or is designated by the process described in section 9909 of this title (including an organization serving migrant or seasonal farmworkers that is so described or designated); and

(ii) that has a tripartite board or other mechanism described in subsection (a) or (b), as appropriate, of section 9910 of this title.

(B) Family literacy services

The term "family literacy services" has the meaning given the term in section 9832 of this title.

(2) Poverty line

The term "poverty line" means the official poverty line defined by the Office of Management and Budget based on the most recent data available from the Bureau of the Census. The Secretary shall revise annually (or at any shorter interval the Secretary determines to be feasible and desirable) the poverty line, which shall be used as a criterion of eligibility in the community services block grant program established under this chapter. The required revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index for All Urban Consumers during the annual or other interval immediately preceding the time at which the revision is made. Whenever a State determines that it serves the objectives of the block grant program established under this chapter, the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.

(3) Private, nonprofit organization

The term "private, nonprofit organization" includes a religious organization, to which the provisions of section 9920 of this title shall apply.

(4) Secretary

The term "Secretary" means the Secretary of Health and Human Services.

(5) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97–35, title VI, §673, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2729.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9902, Pub. L. 97–35, title VI, §673, Aug. 13, 1981, 95 Stat. 511; Pub. L. 97–115, §17(a)(1), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98–288, §31(a), May 21, 1984, 98 Stat. 197; Pub. L. 98–558, title II, §202, Oct. 30, 1984, 98 Stat. 2884; Pub. L. 99–425, title IV, §402, Sept. 30, 1986, 100 Stat. 968; Pub. L. 101–501, title IV, §§402, 408, Nov. 3, 1990, 104 Stat. 1251, 1255; Pub. L. 103–171, §7(c)(1), Dec. 2, 1993, 107 Stat. 1994, defined terms used in this chapter, prior to the general amendment of this chapter by Pub. L. 105–285.

§9903. Authorization of appropriations

(a) In general

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 1999 through 2003 to carry out the provisions of this chapter (other than sections 9922 and 9923 of this title).

(b) Reservations

Of the amounts appropriated under subsection (a) for each fiscal year, the Secretary shall reserve—

(1) ½ of 1 percent for carrying out section 9905 of this title (relating to payments for territories);

(2) 1½ percent for activities authorized in sections 9913 through 9918 of this title, of which—

(A) not less than ½ of the amount reserved by the Secretary under this paragraph shall be distributed directly to eligible entities, organizations, or associations described in section 9913(c)(2) of this title for the purpose of carrying out activities described in section 9913(c) of this title; and

(B) ½ of the remainder of the amount reserved by the Secretary under this paragraph shall be used by the Secretary to carry out evaluation and to assist States in carrying out corrective action activities and monitoring (to correct programmatic deficiencies of eligible entities), as described in sections 9914(c) and 9913 of this title; and

(3) 9 percent for carrying out section 9921 of this title (relating to discretionary activities) and section 9917(b)(2) of this title.

(Pub. L. 97–35, title VI, §674, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9903, Pub. L. 97–35, title VI, §674, Aug. 13, 1981, 95 Stat. 512; Pub. L. 99–425, title IV, §405(c)(1), Sept. 30, 1986, 100 Stat. 970; Pub. L. 101–501, title IV, §403, Nov. 3, 1990, 104 Stat. 1251; Pub. L. 103–171, §7(c)(2), Dec. 2, 1993, 107 Stat. 1994; Pub. L. 103–252, title II, §202(b), May 18, 1994, 108 Stat. 651, related to State allocations for technical assistance and training, prior to the general amendment of this chapter by Pub. L. 105–285.

§9904. Establishment of block grant program

The Secretary is authorized to establish a community services block grant program and make grants through the program to States to ameliorate the causes of poverty in communities within the States.

(Pub. L. 97–35, title VI, §675, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9904, Pub. L. 97–35, title VI, §675, Aug. 13, 1981, 95 Stat. 513; Pub. L. 97–115, §17(a)(2), (b), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98–558, title II, §203(a)–(c), Oct. 30, 1984, 98 Stat. 2885; Pub. L. 99–425, title IV, §§403(a)(1), (b), 404(b), Sept. 30, 1986, 100 Stat. 968, 969; Pub. L. 101–501, title IV, §404(a), (b), Nov. 3, 1990, 104 Stat. 1252; Pub. L. 101–624, title XVII, §1772(h)(6), Nov. 28, 1990, 104 Stat. 3809; Pub. L. 103–94, §6, Oct. 6, 1993, 107 Stat. 1005; Pub. L. 103–252, title II, §202(c)–(g), May 18, 1994, 108 Stat. 652–654, related to applications and requirements for community block grant program, prior to the general amendment of this chapter by Pub. L. 105–285.

§9905. Distribution to territories

(a) Apportionment

The Secretary shall apportion the amount reserved under section 9903(b)(1) of this title for each fiscal year on the basis of need among Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(b) Application

Each jurisdiction to which subsection (a) applies may receive a grant under this section for the amount apportioned under subsection (a) on submitting to the Secretary, and obtaining approval of, an application, containing provisions that describe the programs for which assistance is sought under this section, that is prepared in accordance with, and contains the information described in, section 9908 of this title.

(Pub. L. 97–35, title VI, §675A, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

EDITORIAL NOTES

PRIOR PROVISIONS

Prior sections 9905 and 9905a were omitted in the general amendment of this chapter by Pub. L. 105–285.

Section 9905, Pub. L. 97–35, title VI, §676, Aug. 13, 1981, 95 Stat. 516, related to establishment and functions of the Office of Community Services.

Section 9905a, Pub. L. 97–35, title VI, §676A, as added Pub. L. 98–558, title II, §203(d), Oct. 30, 1984, 98 Stat. 2885; amended Pub. L. 99–425, title IV, §403(a)(2)–(4), Sept. 30, 1986, 100 Stat. 968, 969; Pub. L. 101–501, title IV, §404(c), Nov. 3, 1990, 104 Stat. 1252, related to procedures for review of termination or reduction of funding.

§9906. Allotments and payments to States

(a) Allotments in general

The Secretary shall, from the amount appropriated under section 9903(a) of this title for each fiscal year that remains after the Secretary makes the reservations required in section 9903(b) of this title, allot to each State (subject to section 9911 of this title) an amount that bears the same ratio to such remaining amount as the amount received by the State for fiscal year 1981 under section 2808 [1] of this title bore to the total amount received by all States for fiscal year 1981 under such section, except—

(1) that no State shall receive less than ¼ of 1 percent of the amount appropriated under section 9903(a) of this title for such fiscal year; and

(2) as provided in subsection (b).

(b) Allotments in years with greater available funds

(1) Minimum allotments

Subject to paragraphs (2) and (3), if the amount appropriated under section 9903(a) of this title for a fiscal year that remains after the Secretary makes the reservations required in section 9903(b) of this title exceeds $345,000,000, the Secretary shall allot to each State not less than ½ of 1 percent of the amount appropriated under section 9903(a) of this title for such fiscal year.

(2) Maintenance of fiscal year 1990 levels

Paragraph (1) shall not apply with respect to a fiscal year if the amount allotted under subsection (a) to any State for that year is less than the amount allotted under section 9903(a)(1) of this title (as in effect on September 30, 1989) to such State for fiscal year 1990.

(3) Maximum allotments

The amount allotted under paragraph (1) to a State for a fiscal year shall be reduced, if

necessary, so that the aggregate amount allotted to such State under such paragraph and subsection (a) does not exceed 140 percent of the aggregate amount allotted to such State under the corresponding provisions of this chapter for the preceding fiscal year.

(c) Payments

The Secretary shall make grants to eligible States for the allotments described in subsections (a) and (b). The Secretary shall make payments for the grants in accordance with section 6503(a) of title 31.

(d) Definition

In this section, the term "State" does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97–35, title VI, §675B, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2808 of this title, referred to in subsec. (a), was repealed by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519.

PRIOR PROVISIONS

A prior section 9906, Pub. L. 97–35, title VI, §677, Aug. 13, 1981, 95 Stat. 516, contained nondiscrimination provisions, prior to the general amendment of this chapter by Pub. L. 105–285.

[1] *See References in Text note below.*

§9907. Uses of funds

(a) Grants to eligible entities and other organizations

(1) In general

Not less than 90 percent of the funds made available to a State under section 9905 or 9906 of this title shall be used by the State to make grants for the purposes described in section 9901 of this title to eligible entities.

(2) Obligational authority

Funds distributed to eligible entities through grants made in accordance with paragraph (1) for a fiscal year shall be available for obligation during that fiscal year and the succeeding fiscal year, subject to paragraph (3).

(3) Recapture and redistribution of unobligated funds

(A) Amount

Beginning on October 1, 2000, a State may recapture and redistribute funds distributed to an eligible entity through a grant made under paragraph (1) that are unobligated at the end of a fiscal year if such unobligated funds exceed 20 percent of the amount so distributed to such eligible entity for such fiscal year.

(B) Redistribution

In redistributing funds recaptured in accordance with this paragraph, States shall redistribute such funds to an eligible entity, or require the original recipient of the funds to redistribute the funds to a private, nonprofit organization, located within the community served by the original recipient of the funds, for activities consistent with the purposes of this chapter.

(b) Statewide activities

(1) Use of remainder

If a State uses less than 100 percent of the grant or allotment received under section 9905 or 9906 of this title to make grants under subsection (a), the State shall use the remainder of the grant or allotment under section 9905 or 9906 of this title (subject to paragraph (2)) for activities that may include—

(A) providing training and technical assistance to those entities in need of such training and assistance;

(B) coordinating State-operated programs and services, and at the option of the State, locally-operated programs and services, targeted to low-income children and families with services provided by eligible entities and other organizations funded under this chapter, including detailing appropriate employees of State or local agencies to entities funded under this chapter, to ensure increased access to services provided by such State or local agencies;

(C) supporting statewide coordination and communication among eligible entities;

(D) analyzing the distribution of funds made available under this chapter within the State to determine if such funds have been targeted to the areas of greatest need;

(E) supporting asset-building programs for low-income individuals, such as programs supporting individual development accounts;

(F) supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization;

(G) supporting State charity tax credits as described in subsection (c); and

(H) supporting other activities, consistent with the purposes of this chapter.

(2) Administrative cap

No State may spend more than the greater of $55,000, or 5 percent, of the grant received under section 9905 of this title or State allotment received under section 9906 of this title for administrative expenses, including monitoring activities. Funds to be spent for such expenses shall be taken from the portion of the grant under section 9905 of this title or State allotment that remains after the State makes grants to eligible entities under subsection (a). The cost of activities conducted under paragraph (1)(A) shall not be considered to be administrative expenses. The startup cost and cost of administrative activities conducted under subsection (c) shall be considered to be administrative expenses.

(c) Charity tax credit

(1) In general

Subject to paragraph (2), if there is in effect under State law a charity tax credit, the State may use for any purpose the amount of the allotment that is available for expenditure under subsection (b).

(2) Limit

The aggregate amount a State may use under paragraph (1) during a fiscal year shall not exceed 100 percent of the revenue loss of the State during the fiscal year that is attributable to the charity tax credit, as determined by the Secretary of the Treasury without regard to any such revenue loss occurring before January 1, 1999.

(3) Definitions and rules

In this subsection:

(A) Charity tax credit

The term "charity tax credit" means a nonrefundable credit against State income tax (or, in the case of a State that does not impose an income tax, a comparable benefit) that is allowable for contributions, in cash or in kind, to qualified charities.

(B) Qualified charity

(i) In general

The term "qualified charity" means any organization—

(I) that is—

(aa) described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title;

(bb) an eligible entity; or

(cc) a public housing agency as defined in section 1437a(b)(6) of this title;

(II) that is certified by the appropriate State authority as meeting the requirements of clauses (iii) and (iv); and

(III) if such organization is otherwise required to file a return under section 6033 of such title, that elects to treat the information required to be furnished by clause (v) as being specified in section 6033(b) of such title.

(ii) Certain contributions to collection organizations treated as contributions to qualified charity

(I) In general

A contribution to a collection organization shall be treated as a contribution to a qualified charity if the donor designates in writing that the contribution is for the qualified charity.

(II) Collection organization

The term "collection organization" means an organization described in section 501(c)(3) of such title and exempt from tax under section 501(a) of such title—

(aa) that solicits and collects gifts and grants that, by agreement, are distributed to qualified charities;

(bb) that distributes to qualified charities at least 90 percent of the gifts and grants the organization receives that are designated for such qualified charities; and

(cc) that meets the requirements of clause (vi).

(iii) Charity must primarily assist poor individuals

(I) In general

An organization meets the requirements of this clause only if the appropriate State authority reasonably expects that the predominant activity of such organization will be the provision of direct services within the United States to individuals and families whose annual incomes generally do not exceed 185 percent of the poverty line in order to prevent or alleviate poverty among such individuals and families.

(II) No recordkeeping in certain cases

An organization shall not be required to establish or maintain records with respect to the incomes of individuals and families for purposes of subclause (I) if such individuals or families are members of groups that are generally recognized as including substantially only individuals and families described in subclause (I).

(III) Food aid and homeless shelters

Except as otherwise provided by the appropriate State authority, for purposes of subclause (I), services to individuals in the form of—

(aa) donations of food or meals; or

(bb) temporary shelter to homeless individuals;

shall be treated as provided to individuals described in subclause (I) if the location and provision of such services are such that the service provider may reasonably conclude that the beneficiaries of such services are predominantly individuals described in subclause (I).

(iv) Minimum expense requirement

(I) In general

An organization meets the requirements of this clause only if the appropriate State authority reasonably expects that the annual poverty program expenses of such organization will not be less than 75 percent of the annual aggregate expenses of such organization.

(II) Poverty program expense

For purposes of subclause (I)—

(aa) In general

The term "poverty program expense" means any expense in providing direct services referred to in clause (iii).

(bb) Exceptions

Such term shall not include any management or general expense, any expense for the purpose of influencing legislation (as defined in section 4911(d) of title 26), any expense for the purpose of fundraising, any expense for a legal service provided on behalf of any individual referred to in clause (iii), any expense for providing tuition assistance relating to compulsory school attendance, and any expense that consists of a payment to an affiliate of the organization.

(v) Reporting requirement

The information required to be furnished under this clause about an organization is—

(I) the percentages determined by dividing the following categories of the organization's expenses for the year by the total expenses of the organization for the year: expenses for direct services, management expenses, general expenses, fundraising expenses, and payments to affiliates; and

(II) the category or categories (including food, shelter, education, substance abuse prevention or treatment, job training, or other) of services that constitute predominant activities of the organization.

(vi) Additional requirements for collection organizations

The requirements of this clause are met if the organization—

(I) maintains separate accounting for revenues and expenses; and

(II) makes available to the public information on the administrative and fundraising costs of the organization, and information as to the organizations receiving funds from the organization and the amount of such funds.

(vii) Special rule for States requiring tax uniformity

In the case of a State—

(I) that has a constitutional requirement of tax uniformity; and

(II) that, as of December 31, 1997, imposed a tax on personal income with—

(aa) a single flat rate applicable to all earned and unearned income (except insofar as any amount is not taxed pursuant to tax forgiveness provisions); and

(bb) no generally available exemptions or deductions to individuals;

the requirement of paragraph (2) shall be treated as met if the amount of the credit described in paragraph (2) is limited to a uniform percentage (but not greater than 25 percent) of State personal income tax liability (determined without regard to credits).

(4) Limitation on use of funds for startup and administrative activities

Except to the extent provided in subsection (b)(2), no part of the aggregate amount a State uses under paragraph (1) may be used to pay for the cost of the startup and administrative activities conducted under this subsection.

(5) Prohibition on use of funds for legal services or tuition assistance

No part of the aggregate amount a State uses under paragraph (1) may be used to provide legal

services or to provide tuition assistance related to compulsory education requirements (not including tuition assistance for tutoring, camps, skills development, or other supplemental services or training).

(6) Prohibition on supplanting funds

No part of the aggregate amount a State uses under paragraph (1) may be used to supplant non-Federal funds that would be available, in the absence of Federal funds, to offset a revenue loss of the State attributable to a charity tax credit.

(Pub. L. 97–35, title VI, §675C, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2731.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9907, Pub. L. 97–35, title VI, §678, Aug. 13, 1981, 95 Stat. 516, related to payments to States, prior to the general amendment of this chapter by Pub. L. 105–285.

§9908. Application and plan

(a) Designation of lead agency

(1) Designation

The chief executive officer of a State desiring to receive a grant or allotment under section 9905 or 9906 of this title shall designate, in an application submitted to the Secretary under subsection (b), an appropriate State agency that complies with the requirements of paragraph (2) to act as a lead agency for purposes of carrying out State activities under this chapter.

(2) Duties

The lead agency shall—

(A) develop the State plan to be submitted to the Secretary under subsection (b);

(B) in conjunction with the development of the State plan as required under subsection (b), hold at least one hearing in the State with sufficient time and statewide distribution of notice of such hearing, to provide to the public an opportunity to comment on the proposed use and distribution of funds to be provided through the grant or allotment under section 9905 or 9906 of this title for the period covered by the State plan; and

(C) conduct reviews of eligible entities under section 9914 of this title.

(3) Legislative hearing

In order to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, the State shall hold at least one legislative hearing every 3 years in conjunction with the development of the State plan.

(b) State application and plan

Beginning with fiscal year 2000, to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, a State shall prepare and submit to the Secretary an application and State plan covering a period of not less than 1 fiscal year and not more than 2 fiscal years. The plan shall be submitted not later than 30 days prior to the beginning of the first fiscal year covered by the plan, and shall contain such information as the Secretary shall require, including—

(1) an assurance that funds made available through the grant or allotment will be used—

(A) to support activities that are designed to assist low-income families and individuals, including families and individuals receiving assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals—

(i) to remove obstacles and solve problems that block the achievement of self-sufficiency (including self-sufficiency for families and individuals who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act);

(ii) to secure and retain meaningful employment;

(iii) to attain an adequate education, with particular attention toward improving literacy skills of the low-income families in the communities involved, which may include carrying out family literacy initiatives;

(iv) to make better use of available income;

(v) to obtain and maintain adequate housing and a suitable living environment;

(vi) to obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs; and

(vii) to achieve greater participation in the affairs of the communities involved, including the development of public and private grassroots partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners to—

(I) document best practices based on successful grassroots intervention in urban areas, to develop methodologies for widespread replication; and

(II) strengthen and improve relationships with local law enforcement agencies, which may include participation in activities such as neighborhood or community policing efforts;

(B) to address the needs of youth in low-income communities through youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime, such as—

(i) programs for the establishment of violence-free zones that would involve youth development and intervention models (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs); and

(ii) after-school child care programs; and

(C) to make more effective use of, and to coordinate with, other programs related to the purposes of this chapter (including State welfare reform efforts);

(2) a description of how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in section 9907(b) of this title in accordance with this chapter, including a description of how the State will support innovative community and neighborhood-based initiatives related to the purposes of this chapter;

(3) information provided by eligible entities in the State, containing—

(A) a description of the service delivery system, for services provided or coordinated with funds made available through grants made under section 9907(a) of this title, targeted to low-income individuals and families in communities within the State;

(B) a description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and followup consultations;

(C) a description of how funds made available through grants made under section 9907(a) of this title will be coordinated with other public and private resources; and

(D) a description of how the local entity will use the funds to support innovative community and neighborhood-based initiatives related to the purposes of this chapter, which may include fatherhood initiatives and other initiatives with the goal of strengthening families and encouraging effective parenting;

(4) an assurance that eligible entities in the State will provide, on an emergency basis, for the

provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals;

(5) an assurance that the State and the eligible entities in the State will coordinate, and establish linkages between, governmental and other social services programs to assure the effective delivery of such services to low-income individuals and to avoid duplication of such services, and a description of how the State and the eligible entities will coordinate the provision of employment and training activities, as defined in section 3 of the Workforce Innovation and Opportunity Act [29 U.S.C. 3102], in the State and in communities with entities providing activities through statewide and local workforce development systems under such Act;

(6) an assurance that the State will ensure coordination between antipoverty programs in each community in the State, and ensure, where appropriate, that emergency energy crisis intervention programs under title XXVI [42 U.S.C. 8621 et seq.] (relating to low-income home energy assistance) are conducted in such community;

(7) an assurance that the State will permit and cooperate with Federal investigations undertaken in accordance with section 9916 of this title;

(8) an assurance that any eligible entity in the State that received funding in the previous fiscal year through a community services block grant made under this chapter will not have its funding terminated under this chapter, or reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction, subject to review by the Secretary as provided in section 9915(b) of this title;

(9) an assurance that the State and eligible entities in the State will, to the maximum extent possible, coordinate programs with and form partnerships with other organizations serving low-income residents of the communities and members of the groups served by the State, including religious organizations, charitable groups, and community organizations;

(10) an assurance that the State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other mechanism) of the eligible entity to petition for adequate representation;

(11) an assurance that the State will secure from each eligible entity in the State, as a condition to receipt of funding by the entity through a community services block grant made under this chapter for a program, a community action plan (which shall be submitted to the Secretary, at the request of the Secretary, with the State plan) that includes a community-needs assessment for the community served, which may be coordinated with community-needs assessments conducted for other programs;

(12) an assurance that the State and all eligible entities in the State will, not later than fiscal year 2001, participate in the Results Oriented Management and Accountability System, another performance measure system for which the Secretary facilitated development pursuant to section 9917(b) of this title, or an alternative system for measuring performance and results that meets the requirements of that section, and a description of outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization; and

(13) information describing how the State will carry out the assurances described in this subsection.

(c) Funding termination or reductions

For purposes of making a determination in accordance with subsection (b)(8) with respect to—

(1) a funding reduction, the term "cause" includes—

(A) a statewide redistribution of funds provided through a community services block grant under this chapter to respond to—

(i) the results of the most recently available census or other appropriate data;

(ii) the designation of a new eligible entity; or

(iii) severe economic dislocation; or

(B) the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in section 9915(a) of this title; and

(2) a termination, the term "cause" includes the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in section 9915(a) of this title.

(d) Procedures and information

The Secretary may prescribe procedures for the purpose of assessing the effectiveness of eligible entities in carrying out the purposes of this chapter.

(e) Revisions and inspection

(1) Revisions

The chief executive officer of each State may revise any plan prepared under this section and shall submit the revised plan to the Secretary.

(2) Public inspection

Each plan or revised plan prepared under this section shall be made available for public inspection within the State in such a manner as will facilitate review of, and comment on, the plan.

(f) Transition

For fiscal year 2000, to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, a State shall prepare and submit to the Secretary an application and State plan in accordance with the provisions of this chapter (as in effect on the day before October 27, 1998), rather than the provisions of subsections (a) through (c) relating to applications and plans.

(Pub. L. 97–35, title VI, §676, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2735; amended Pub. L. 113–128, title V, §512(f), July 22, 2014, 128 Stat. 1707.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Workforce Innovation and Opportunity Act, referred to in subsec. (b)(5), is Pub. L. 113–128, July 22, 2014, 128 Stat. 1425, which enacted chapter 32 (§3101 et seq.) of Title 29, Labor, repealed chapter 30 (§2801 et seq.) of Title 29 and chapter 73 (§9201 et seq.) of Title 20, Education, and made amendments to numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

Title XXVI, referred to in subsec. (b)(6), is title XXVI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 893, known as the Low-Income Home Energy Assistance Act of 1981, which is classified generally to subchapter II (§8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of this title and Tables.

PRIOR PROVISIONS

A prior section 9908, Pub. L. 97–35, title VI, §679, Aug. 13, 1981, 95 Stat. 517; Pub. L. 98–558, title II, §205, Oct. 30, 1984, 98 Stat. 2886; Pub. L. 99–425, title IV, §404(a), Sept. 30, 1986, 100 Stat. 969, related to withholding of funds, prior to the general amendment of this chapter by Pub. L. 105–285.

A prior section 676 of Pub. L. 97–35 was classified to section 9905 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

AMENDMENTS

2014—Subsec. (b)(5). Pub. L. 113–128 substituted "the eligible entities will coordinate the provision of employment and training activities, as defined in section 3 of the Workforce Innovation and Opportunity Act, in the State and in communities with entities providing activities through statewide and local workforce

development systems under such Act" for "the eligible entities will coordinate the provision of employment and training activities, as defined in section 101 of such Act, in the State and in communities with entities providing activities through statewide and local workforce investment systems under the Workforce Investment Act of 1998".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

§9909. Designation and redesignation of eligible entities in unserved areas

(a) Qualified organization in or near area

(1) In general

If any geographic area of a State is not, or ceases to be, served by an eligible entity under this chapter, and if the chief executive officer of the State decides to serve such area, the chief executive officer may solicit applications from, and designate as an eligible entity—

(A) a private nonprofit organization (which may include an eligible entity) that is geographically located in the unserved area, that is capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency, and that meets the requirements of this chapter; and

(B) a private nonprofit eligible entity that is geographically located in an area contiguous to or within reasonable proximity of the unserved area and that is already providing related services in the unserved area.

(2) Requirement

In order to serve as the eligible entity for the area, an entity described in paragraph (1)(B) shall agree to add additional members to the board of the entity to ensure adequate representation—

(A) in each of the three required categories described in subparagraphs (A), (B), and (C) of section 9910(a)(2) of this title, by members that reside in the community comprised by the unserved area; and

(B) in the category described in section 9910(a)(2)(B) of this title, by members that reside in the neighborhood to be served.

(b) Special consideration

In designating an eligible entity under subsection (a), the chief executive officer shall grant the designation to an organization of demonstrated effectiveness in meeting the goals and purposes of this chapter and may give priority, in granting the designation, to eligible entities that are providing related services in the unserved area, consistent with the needs identified by a community-needs assessment.

(c) No qualified organization in or near area

If no private, nonprofit organization is identified or determined to be qualified under subsection (a) to serve the unserved area as an eligible entity the chief executive officer may designate an appropriate political subdivision of the State to serve as an eligible entity for the area. In order to serve as the eligible entity for that area, the political subdivision shall have a board or other mechanism as required in section 9910(b) of this title.

(Pub. L. 97–35, title VI, §676A, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2739.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9909, Pub. L. 97–35, title VI, §680, Aug. 13, 1981, 95 Stat. 517; Pub. L. 99–425, title IV, §405(c)(2), Sept. 30, 1986, 100 Stat. 970; Pub. L. 103–171, §7(c)(3), Dec. 2, 1993, 107 Stat. 1994, related to limitation on use of grants for construction and waiver of such limitation, prior to the general amendment of this chapter by Pub. L. 105–285.

A prior section 676A of Pub. L. 97–35 was classified to section 9905a of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§9910. Tripartite boards

(a) Private nonprofit entities

(1) Board

In order for a private, nonprofit entity to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through a tripartite board described in paragraph (2) that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.

(2) Selection and composition of board

The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that—

(A) 1/3 of the members of the board are elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than 1/3 of the membership of the board, membership on the board of appointive public officials or their representatives may be counted in meeting such 1/3 requirement;

(B)(i) not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and

(ii) each representative of low-income individuals and families selected to represent a specific neighborhood within a community under clause (i) resides in the neighborhood represented by the member; and

(C) the remainder of the members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) Public organizations

In order for a public organization to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through—

(1) a tripartite board, which shall have members selected by the organization and shall be composed so as to assure that not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members—

(A) are representative of low-income individuals and families in the neighborhood served;

(B) reside in the neighborhood served; and

(C) are able to participate actively in the development, planning, implementation, and evaluation of programs funded under this chapter; or

(2) another mechanism specified by the State to assure decisionmaking and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded under this chapter.

(Pub. L. 97–35, title VI, §676B, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2740.)

EDITORIAL NOTES

PRIOR PROVISIONS

Prior sections 9910 and 9910a were omitted in the general amendment of this chapter by Pub. L. 105–285.

Section 9910, Pub. L. 97–35, title VI, §681, Aug. 13, 1981, 95 Stat. 518; Pub. L. 98–558, title II, §204, Oct. 30, 1984, 98 Stat. 2886; Pub. L. 99–425, title IV, §405(a), (b), Sept. 30, 1986, 100 Stat. 969, 970; Pub. L. 101–501, title IV, §§405, 407(b), Nov. 3, 1990, 104 Stat. 1252, 1255; Pub. L. 103–171, §7(a), Dec. 2, 1993, 107 Stat. 1993; Pub. L. 103–252, title II, §203, May 18, 1994, 108 Stat. 654, related to the discretionary authority of the Secretary.

Section 9910a, Pub. L. 97–35, title VI, §681A, as added Pub. L. 98–558, title II, §206, Oct. 30, 1984, 98 Stat. 2886; amended Pub. L. 99–425, title IV, §406, Sept. 30, 1986, 100 Stat. 970; Pub. L. 101–501, title IV, §§401(b), 406, Nov. 3, 1990, 104 Stat. 1251, 1253; Pub. L. 103–171, §7(c)(4), Dec. 2, 1993, 107 Stat. 1994; Pub. L. 103–252, title II, §204, May 18, 1994, 108 Stat. 655, related to community food and nutrition.

A prior section 9910b, Pub. L. 99–425, title IV, §408, Sept. 30, 1986, 100 Stat. 972, as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9925 of this title.

A prior section 9910c, Pub. L. 97–35, title VI, §682, as added Pub. L. 103–252, title II, §205(2), May 18, 1994, 108 Stat. 655; amended Pub. L. 105–244, title I, §102(a)(13)(I), Oct. 7, 1998, 112 Stat. 1621, related to national or regional programs designed to provide instructional activities for low-income youth, prior to the general amendment of this chapter by Pub. L. 105–285.

A prior section 9910d, Pub. L. 100–485, title V, §505, Oct. 13, 1988, 102 Stat. 2404, as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9926 of this title.

§9911. Payments to Indian tribes

(a) Reservation

If, with respect to any State, the Secretary—

(1) receives a request from the governing body of an Indian tribe or tribal organization within the State that assistance under this chapter be made directly to such tribe or organization; and

(2) determines that the members of such tribe or tribal organization would be better served by means of grants made directly to provide benefits under this chapter,

the Secretary shall reserve from amounts that would otherwise be allotted to such State under section 9906 of this title for the fiscal year the amount determined under subsection (b).

(b) Determination of reserved amount

The Secretary shall reserve for the purpose of subsection (a) from amounts that would otherwise be allotted to such State, not less than 100 percent of an amount that bears the same ratio to the State allotment for the fiscal year involved as the population of all eligible Indians for whom a determination has been made under subsection (a) bears to the population of all individuals eligible for assistance through a community services block grant made under this chapter in such State.

(c) Awards

The sums reserved by the Secretary on the basis of a determination made under subsection (a) shall be made available by grant to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(d) Plan

In order for an Indian tribe or tribal organization to be eligible for a grant award for a fiscal year under this section, the tribe or organization shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe by regulation.

(e) Definitions

In this section:

(1) Indian tribe; tribal organization

The terms "Indian tribe" and "tribal organization" mean a tribe, band, or other organized group recognized in the State in which the tribe, band, or group resides, or considered by the Secretary of the Interior, to be an Indian tribe or an Indian organization for any purpose.

(2) Indian

The term "Indian" means a member of an Indian tribe or of a tribal organization.

(Pub. L. 97–35, title VI, §677, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2741.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9911, Pub. L. 97–35, title VI, §683, formerly §682, as added Pub. L. 101–501, title IV, §407(a), Nov. 3, 1990, 104 Stat. 1254; amended Pub. L. 103–171, §7(b), Dec. 2, 1993, 107 Stat. 1993; renumbered §683, Pub. L. 103–252, title II, §205(1), May 18, 1994, 108 Stat. 655, related to annual reports by Secretary, prior to the general amendment of this chapter by Pub. L. 105–285.

Another prior section 9911, Pub. L. 97–35, title VI, §682, Aug. 13, 1981, 95 Stat. 518; Pub. L. 97–115, §17(c), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 97–274, Sept. 30, 1982, 96 Stat. 1183, related to transition provisions, prior to repeal by Pub. L. 101–501, §407(a).

A prior section 677 of Pub. L. 97–35 was classified to section 9906 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§9912. Office of Community Services

(a) Office

The Secretary shall carry out the functions of this chapter through an Office of Community Services, which shall be established in the Department of Health and Human Services. The Office shall be headed by a Director.

(b) Grants, contracts, and cooperative agreements

The Secretary shall carry out functions of this chapter through grants, contracts, or cooperative agreements.

(Pub. L. 97–35, title VI, §678, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2742.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9912, Pub. L. 97–35, title VI, §684, formerly §683, Aug. 13, 1981, 95 Stat. 519; Pub. L. 98–288, §31(b), May 21, 1984, 98 Stat. 198; renumbered §684, Pub. L. 103–252, title II, §205(1), May 18, 1994, 108 Stat. 655, contained provisions repealing certain other statutory provisions, reauthorizing appropriations, and conforming references, prior to general amendment of this chapter by Pub. L. 105–285.

A prior section 678 of Pub. L. 97–35 was classified to section 9907 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§9913. Training, technical assistance, and other activities

(a) Activities

(1) In general

The Secretary shall use amounts reserved in section 9903(b)(2) of this title—

(A) for training, technical assistance, planning, evaluation, and performance measurement, to assist States in carrying out corrective action activities and monitoring (to correct programmatic deficiencies of eligible entities), and for reporting and data collection activities, related to programs carried out under this chapter; and

(B) to distribute amounts in accordance with subsection (c).

(2) Grants, contracts, and cooperative agreements

The activities described in paragraph (1)(A) may be carried out by the Secretary through grants, contracts, or cooperative agreements with appropriate entities.

(b) Terms and technical assistance process

The process for determining the training and technical assistance to be carried out under this section shall—

(1) ensure that the needs of eligible entities and programs relating to improving program quality (including quality of financial management practices) are addressed to the maximum extent feasible; and

(2) incorporate mechanisms to ensure responsiveness to local needs, including an ongoing procedure for obtaining input from the national and State networks of eligible entities.

(c) Distribution requirement

(1) In general

The amounts reserved under section 9903(b)(2)(A) of this title for activities to be carried out under this subsection shall be distributed directly to eligible entities, organizations, or associations described in paragraph (2) for the purpose of improving program quality (including quality of financial management practices), management information and reporting systems, and measurement of program results, and for the purpose of ensuring responsiveness to identified local needs.

(2) Eligible entities, organizations, or associations

Eligible entities, organizations, or associations described in this paragraph shall be eligible entities, or statewide or local organizations or associations, with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

(Pub. L. 97–35, title VI, §678A, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2742.)

§9914. Monitoring of eligible entities

(a) In general

In order to determine whether eligible entities meet the performance goals, administrative standards, financial management requirements, and other requirements of a State, the State shall conduct the following reviews of eligible entities:

(1) A full onsite review of each such entity at least once during each 3-year period.

(2) An onsite review of each newly designated entity immediately after the completion of the first year in which such entity receives funds through the community services block grant program.

(3) Followup reviews including prompt return visits to eligible entities, and their programs, that fail to meet the goals, standards, and requirements established by the State.

(4) Other reviews as appropriate, including reviews of entities with programs that have had other Federal, State, or local grants (other than assistance provided under this chapter) terminated for cause.

(b) Requests

The State may request training and technical assistance from the Secretary as needed to comply

with the requirements of this section.

(c) Evaluations by the Secretary

The Secretary shall conduct in several States in each fiscal year evaluations (including investigations) of the use of funds received by the States under this chapter in order to evaluate compliance with the provisions of this chapter, and especially with respect to compliance with section 9908(b) of this title. The Secretary shall submit, to each State evaluated, a report containing the results of such evaluations, and recommendations of improvements designed to enhance the benefit and impact of the activities carried out with such funds for people in need. On receiving the report, the State shall submit to the Secretary a plan of action in response to the recommendations contained in the report. The results of the evaluations shall be submitted annually to the Chairperson of the Committee on Education and the Workforce of the House of Representatives and the Chairperson of the Committee on Labor and Human Resources of the Senate as part of the report submitted by the Secretary in accordance with section 9917(b)(2) of this title.

(Pub. L. 97–35, title VI, §678B, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2743.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§9915. Corrective action; termination and reduction of funding

(a) Determination

If the State determines, on the basis of a final decision in a review pursuant to section 9914 of this title, that an eligible entity fails to comply with the terms of an agreement, or the State plan, to provide services under this chapter or to meet appropriate standards, goals, and other requirements established by the State (including performance objectives), the State shall—

(1) inform the entity of the deficiency to be corrected;

(2) require the entity to correct the deficiency;

(3)(A) offer training and technical assistance, if appropriate, to help correct the deficiency, and prepare and submit to the Secretary a report describing the training and technical assistance offered; or

(B) if the State determines that such training and technical assistance are not appropriate, prepare and submit to the Secretary a report stating the reasons for the determination;

(4)(A) at the discretion of the State (taking into account the seriousness of the deficiency and the time reasonably required to correct the deficiency), allow the entity to develop and implement, within 60 days after being informed of the deficiency, a quality improvement plan to correct such deficiency within a reasonable period of time, as determined by the State; and

(B) not later than 30 days after receiving from an eligible entity a proposed quality improvement plan pursuant to subparagraph (A), either approve such proposed plan or specify the reasons why the proposed plan cannot be approved; and

(5) after providing adequate notice and an opportunity for a hearing, initiate proceedings to terminate the designation of or reduce the funding under this chapter of the eligible entity unless the entity corrects the deficiency.

(b) Review

A determination to terminate the designation or reduce the funding of an eligible entity is reviewable by the Secretary. The Secretary shall, upon request, review such a determination. The review shall be completed not later than 90 days after the Secretary receives from the State all necessary documentation relating to the determination to terminate the designation or reduce the

funding. If the review is not completed within 90 days, the determination of the State shall become final at the end of the 90th day.

(c) Direct assistance

Whenever a State violates the assurances contained in section 9908(b)(8) of this title and terminates or reduces the funding of an eligible entity prior to the completion of the State hearing described in that section and the Secretary's review as required in subsection (b), the Secretary is authorized to provide financial assistance under this chapter to the eligible entity affected until the violation is corrected. In such a case, the grant or allotment for the State under section 9905 or 9906 of this title for the earliest appropriate fiscal year shall be reduced by an amount equal to the funds provided under this subsection to such eligible entity.

(Pub. L. 97–35, title VI, §678C, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2743.)

§9916. Fiscal controls, audits, and withholding

(a) Fiscal controls, procedures, audits, and inspections

(1) In general

A State that receives funds under this chapter shall—

(A) establish fiscal control and fund accounting procedures necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this chapter, including procedures for monitoring the funds provided under this chapter;

(B) ensure that cost and accounting standards of the Office of Management and Budget apply to a recipient of the funds under this chapter;

(C) subject to paragraph (2), prepare, at least every year, an audit of the expenditures of the State of amounts received under this chapter and amounts transferred to carry out the purposes of this chapter; and

(D) make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request for the items.

(2) Audits

(A) In general

Subject to subparagraph (B), each audit required by subsection (a)(1)(C) shall be conducted by an entity independent of any agency administering activities or services carried out under this chapter and shall be conducted in accordance with generally accepted accounting principles.

(B) Single audit requirements

Audits shall be conducted under this paragraph in the manner and to the extent provided in chapter 75 of title 31 (commonly known as the "Single Audit Act Amendments of 1996").

(C) Submission of copies

Within 30 days after the completion of each such audit in a State, the chief executive officer of the State shall submit a copy of such audit to any eligible entity that was the subject of the audit at no charge, to the legislature of the State, and to the Secretary.

(3) Repayments

The State shall repay to the United States amounts found not to have been expended in accordance with this chapter or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this chapter.

(b) Withholding

(1) In general

The Secretary shall, after providing adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State that does not utilize the grant or allotment under section 9905 or 9906 of this title in accordance with the provisions of this chapter, including the assurances such State provided under section 9908 of this title.

(2) Response to complaints

The Secretary shall respond in an expeditious and speedy manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this chapter, including the assurances provided by the State under section 9908 of this title. For purposes of this paragraph, a complaint of a failure to meet any one of the assurances provided under section 9908 of this title that constitutes disregarding that assurance shall be considered to be a complaint of a serious nature.

(3) Investigations

Whenever the Secretary determines that there is a pattern of complaints of failures described in paragraph (2) from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this chapter by such State in order to ensure compliance with the provisions of this chapter.

(Pub. L. 97–35, title VI, §678D, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2744.)

§9917. Accountability and reporting requirements

(a) State accountability and reporting requirements

(1) Performance measurement

(A) In general

By October 1, 2001, each State that receives funds under this chapter shall participate, and shall ensure that all eligible entities in the State participate, in a performance measurement system, which may be a performance measurement system for which the Secretary facilitated development pursuant to subsection (b), or an alternative system that the Secretary is satisfied meets the requirements of subsection (b).

(B) Local agencies

The State may elect to have local agencies that are subcontractors of the eligible entities under this chapter participate in the performance measurement system. If the State makes that election, references in this section to eligible entities shall be considered to include the local agencies.

(2) Annual report

Each State shall annually prepare and submit to the Secretary a report on the measured performance of the State and the eligible entities in the State. Prior to the participation of the State in the performance measurement system, the State shall include in the report any information collected by the State relating to such performance. Each State shall also include in the report an accounting of the expenditure of funds received by the State through the community services block grant program, including an accounting of funds spent on administrative costs by the State and the eligible entities, and funds spent by eligible entities on the direct delivery of local services, and shall include information on the number of and characteristics of clients served under this chapter in the State, based on data collected from the eligible entities. The State shall also include in the report a summary describing the training and technical assistance offered by the State under section 9915(a)(3) of this title during the year covered by the report.

(b) Secretary's accountability and reporting requirements

(1) Performance measurement

The Secretary, in collaboration with the States and with eligible entities throughout the Nation, shall facilitate the development of one or more model performance measurement systems, which may be used by the States and by eligible entities to measure their performance in carrying out the requirements of this chapter and in achieving the goals of their community action plans. The Secretary shall provide technical assistance, including support for the enhancement of electronic data systems, to States and to eligible entities to enhance their capability to collect and report data for such a system and to aid in their participation in such a system.

(2) Reporting requirements

At the end of each fiscal year beginning after September 30, 1999, the Secretary shall, directly or by grant or contract, prepare a report containing—

(A) a summary of the planned use of funds by each State, and the eligible entities in the State, under the community services block grant program, as contained in each State plan submitted pursuant to section 9908 of this title;

(B) a description of how funds were actually spent by the State and eligible entities in the State, including a breakdown of funds spent on administrative costs and on the direct delivery of local services by eligible entities;

(C) information on the number of entities eligible for funds under this chapter, the number of low-income persons served under this chapter, and such demographic data on the low-income populations served by eligible entities as is determined by the Secretary to be feasible;

(D) a comparison of the planned uses of funds for each State and the actual uses of the funds;

(E) a summary of each State's performance results, and the results for the eligible entities, as collected and submitted by the States in accordance with subsection (a)(2); and

(F) any additional information that the Secretary considers to be appropriate to carry out this chapter, if the Secretary informs the States of the need for such additional information and allows a reasonable period of time for the States to collect and provide the information.

(3) Submission

The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate the report described in paragraph (2), and any comments the Secretary may have with respect to such report. The report shall include definitions of direct and administrative costs used by the Department of Health and Human Services for programs funded under this chapter.

(4) Costs

Of the funds reserved under section 9903(b)(3) of this title, not more than $350,000 shall be available to carry out the reporting requirements contained in paragraph (2).

(Pub. L. 97–35, title VI, §678E, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2746.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§9918. Limitations on use of funds

(a) Construction of facilities

(1) Limitations

Except as provided in paragraph (2), grants made under this chapter (other than amounts reserved under section 9903(b)(3) of this title) may not be used by the State, or by any other

person with which the State makes arrangements to carry out the purposes of this chapter, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

(2) Waiver

The Secretary may waive the limitation contained in paragraph (1) upon a State request for such a waiver, if the Secretary finds that the request describes extraordinary circumstances to justify the purchase of land or the construction of facilities (or the making of permanent improvements) and that permitting the waiver will contribute to the ability of the State to carry out the purposes of this chapter.

(b) Political activities

(1) Treatment as a State or local agency

For purposes of chapter 15 of title 5, any entity that assumes responsibility for planning, developing, and coordinating activities under this chapter and receives assistance under this chapter shall be deemed to be a State or local agency. For purposes of paragraphs (1) and (2) of section 1502(a) of such title, any entity receiving assistance under this chapter shall be deemed to be a State or local agency.

(2) Prohibitions

Programs assisted under this chapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel, in a manner supporting or resulting in the identification of such programs with—

(A) any partisan or nonpartisan political activity or any political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(C) any voter registration activity.

(3) Rules and regulations

The Secretary, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this subsection, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(c) Nondiscrimination

(1) In general

No person shall, on the basis of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified individual with a disability as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.) shall also apply to any such program or activity.

(2) Action of Secretary

Whenever the Secretary determines that a State that has received a payment under this chapter has failed to comply with paragraph (1) or an applicable regulation, the Secretary shall notify the chief executive officer of the State and shall request that the officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42

U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), as may be applicable; or

(C) take such other action as may be provided by law.

(3) Action of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (2), or whenever the Attorney General has reason to believe that the State is engaged in a pattern or practice of discrimination in violation of the provisions of this subsection, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(Pub. L. 97–35, title VI, §678F, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2747.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsec. (c)(1), (2)(B), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(1), (2)(B), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327. Title II of the Act is classified generally to subchapter II (§12131 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§9919. Drug and child support services and referrals

(a) Drug testing and rehabilitation

(1) In general

Nothing in this chapter shall be construed to prohibit a State from testing participants in programs, activities, or services carried out or provided under this chapter for controlled substances. A State that conducts such testing shall inform the participants who test positive for any of such substances about the availability of treatment or rehabilitation services and refer such participants for appropriate treatment or rehabilitation services.

(2) Administrative expenses

Any funds provided under this chapter expended for such testing shall be considered to be expended for administrative expenses and shall be subject to the limitation specified in section 9907(b)(2) of this title.

(3) Definition

In this subsection, the term "controlled substance" has the meaning given the term in section 802 of title 21.

(b) Child support services and referrals

During each fiscal year for which an eligible entity receives a grant under section 9907 of this title, such entity shall—

(1) inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this chapter about the availability of child support services;

and

(2) refer eligible parents to the child support offices of State and local governments.

(Pub. L. 97–35, title VI, §678G, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2749.)

§9920. Operational rule

(a) Religious organizations included as nongovernmental providers

For any program carried out by the Federal Government, or by a State or local government under this chapter, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, so long as the program is implemented in a manner consistent with the Establishment Clause of the first amendment to the Constitution. Neither the Federal Government nor a State or local government receiving funds under this chapter shall discriminate against an organization that provides assistance under, or applies to provide assistance under, this chapter, on the basis that the organization has a religious character.

(b) Religious character and independence

(1) In general

A religious organization that provides assistance under a program described in subsection (a) shall retain its religious character and control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State or local government shall require a religious organization—

(A) to alter its form of internal governance, except (for purposes of administration of the community services block grant program) as provided in section 9910 of this title; or

(B) to remove religious art, icons, scripture, or other symbols;

in order to be eligible to provide assistance under a program described in subsection (a).

(3) Employment practices

A religious organization's exemption provided under section 2000e–1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a).

(c) Limitations on use of funds for certain purposes

No funds provided directly to a religious organization to provide assistance under any program described in subsection (a) shall be expended for sectarian worship, instruction, or proselytization.

(d) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization providing assistance under any program described in subsection (a) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

(2) Limited audit

Such organization shall segregate government funds provided under such program into a separate account. Only the government funds shall be subject to audit by the government.

(e) Treatment of eligible entities and other intermediate organizations

If an eligible entity or other organization (referred to in this subsection as an "intermediate

organization"), acting under a contract, or grant or other agreement, with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (a), the intermediate organization shall have the same duties under this section as the government.

(Pub. L. 97–35, title VI, §679, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2749.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 679 of Pub. L. 97–35 was classified to section 9908 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§9921. Discretionary authority of Secretary

(a) Grants, contracts, arrangements, loans, and guarantees

(1) In general

The Secretary shall, from funds reserved under section 9903(b)(3) of this title, make grants, loans, or guarantees to States and public agencies and private, nonprofit organizations, or enter into contracts or jointly financed cooperative arrangements with States and public agencies and private, nonprofit organizations (and for-profit organizations, to the extent specified in paragraph (2)(E)) for each of the objectives described in paragraphs (2) through (4).

(2) Community economic development

(A) Economic development activities

The Secretary shall make grants described in paragraph (1) on a competitive basis to private, nonprofit organizations that are community development corporations to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities.

(B) Consultation

The Secretary shall exercise the authority provided under subparagraph (A) after consultation with other relevant Federal officials.

(C) Governing boards

For a community development corporation to receive funds to carry out this paragraph, the corporation shall be governed by a board that shall consist of residents of the community and business and civic leaders and shall have as a principal purpose planning, developing, or managing low-income housing or community development projects.

(D) Geographic distribution

In making grants to carry out this paragraph, the Secretary shall take into consideration the geographic distribution of funding among States and the relative proportion of funding among rural and urban areas.

(E) Reservation

Of the amounts made available to carry out this paragraph, the Secretary may reserve not more than 1 percent for each fiscal year to make grants to private, nonprofit organizations or to enter into contracts with private, nonprofit or for-profit organizations to provide technical assistance to aid community development corporations in developing or implementing activities funded to carry out this paragraph and to evaluate activities funded to carry out this paragraph.

(3) Rural community development activities

The Secretary shall provide the assistance described in paragraph (1) for rural community development activities, which shall include providing—

(A) grants to private, nonprofit corporations to enable the corporations to provide assistance concerning home repair to rural low-income families and concerning planning and developing low-income rural rental housing units; and

(B) grants to multistate, regional, private, nonprofit organizations to enable the organizations to provide training and technical assistance to small, rural communities concerning meeting their community facility needs.

(4) Neighborhood innovation projects

The Secretary shall provide the assistance described in paragraph (1) for neighborhood innovation projects, which shall include providing grants to neighborhood-based private, nonprofit organizations to test or assist in the development of new approaches or methods that will aid in overcoming special problems identified by communities or neighborhoods or otherwise assist in furthering the purposes of this chapter, and which may include providing assistance for projects that are designed to serve low-income individuals and families who are not being effectively served by other programs.

(b) Evaluation

The Secretary shall require all activities receiving assistance under this section to be evaluated for their effectiveness. Funding for such evaluations shall be provided as a stated percentage of the assistance or through a separate grant awarded by the Secretary specifically for the purpose of evaluation of a particular activity or group of activities.

(c) Annual report

The Secretary shall compile an annual report containing a summary of the evaluations required in subsection (b) and a listing of all activities assisted under this section. The Secretary shall annually submit the report to the Chairperson of the Committee on Education and the Workforce of the House of Representatives and the Chairperson of the Committee on Labor and Human Resources of the Senate.

(Pub. L. 97–35, title VI, §680, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2750.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 680 of Pub. L. 97–35 was classified to section 9909 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

PROCEDURES TO PERMIT GRANT FUNDS OR INTANGIBLE PROPERTY ACQUIRED BY GRANT FUNDS TO BECOME SOLE PROPERTY OF GRANTEES

Pub. L. 119–75, div. B, title II, Feb. 3, 2026, 140 Stat. 277, provided in part: "That the Secretary [of Health and Human Services] shall establish procedures regarding the disposition of intangible assets and program income that permit such assets acquired with, and program income derived from, grant funds authorized under section 680 of the CSBG Act [Community Services Block Grant Act, 42 U.S.C. 9921] to become the sole property of such grantees after a period of not more than 12 years after the end of the grant period for any activity consistent with section 680(a)(2)(A) of the CSBG Act [42 U.S.C. 9921(a)(2)(A)]: *Provided further*, That intangible assets in the form of loans, equity investments and other debt instruments, and program income may be used by grantees for any eligible purpose consistent with section 680(a)(2)(A) of the CSBG

Act: *Provided further*, That these procedures shall apply to such grant funds made available after November 29, 1999".

Similar provisions were contained in the following prior appropriation acts:
Pub. L. 118–47, div. D, title II, Mar. 23, 2024, 138 Stat. 666.
Pub. L. 117–328, div. H, title II, Dec. 29, 2022, 136 Stat. 4873.
Pub. L. 117–103, div. H, title II, Mar. 15, 2022, 136 Stat. 460.
Pub. L. 116–260, div. H, title II, Dec. 27, 2020, 134 Stat. 1584.
Pub. L. 116–94, div. A, title II, Dec. 20, 2019, 133 Stat. 2572.
Pub. L. 115–245, div. B, title II, Sept. 28, 2018, 132 Stat. 3084.
Pub. L. 115–141, div. H, title II, Mar. 23, 2018, 132 Stat. 730.
Pub. L. 115–31, div. H, title II, May 5, 2017, 131 Stat. 533.
Pub. L. 114–113, div. H, title II, Dec. 18, 2015, 129 Stat. 2614.
Pub. L. 113–235, div. G, title II, Dec. 16, 2014, 128 Stat. 2481.
Pub. L. 113–76, div. H, title II, Jan. 17, 2014, 128 Stat. 378.
Pub. L. 112–74, div. F, title II, Dec. 23, 2011, 125 Stat. 1078.
Pub. L. 111–117, div. D, title II, Dec. 16, 2009, 123 Stat. 3251.
Pub. L. 111–8, div. F, title II, Mar. 11, 2009, 123 Stat. 775.
Pub. L. 110–161, div. G, title II, Dec. 26, 2007, 121 Stat. 2180.
Pub. L. 109–149, title II, Dec. 30, 2005, 119 Stat. 2855.
Pub. L. 108–447, div. F, title II, Dec. 8, 2004, 118 Stat. 3134.
Pub. L. 108–199, div. E, title II, Jan. 23, 2004, 118 Stat. 249.
Pub. L. 108–7, div. G, title II, Feb. 20, 2003, 117 Stat. 319.
Pub. L. 107–116, title II, Jan. 10, 2002, 115 Stat. 2196.
Pub. L. 106–554, §1(a)(1) [title II], Dec. 21, 2000, 114 Stat. 2763, 2763A–23.
Pub. L. 106–113, div. B, §1000(a)(4) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A–235.

§9922. Community food and nutrition programs

(a) Grants

The Secretary may, through grants to public and private, nonprofit agencies, provide for community-based, local, statewide, and national programs—

(1) to coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations;

(2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and

(3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals.

(b) Allotments and distribution of funds

(1) Not to exceed $6,000,000 in appropriations

Of the amount appropriated for a fiscal year to carry out this section (but not to exceed $6,000,000), the Secretary shall distribute funds for grants under subsection (a) as follows:

(A) Allotments

From a portion equal to 60 percent of such amount (but not to exceed $3,600,000), the Secretary shall allot for grants to eligible agencies for statewide programs in each State the amount that bears the same ratio to such portion as the low-income and unemployed population of such State bears to the low-income and unemployed population of all the States.

(B) Competitive grants

From a portion equal to 40 percent of such amount (but not to exceed $2,400,000), the Secretary shall make grants on a competitive basis to eligible agencies for local and statewide programs.

(2) Greater available appropriations

Any amounts appropriated for a fiscal year to carry out this section in excess of $6,000,000

shall be allotted as follows:

(A) Allotments

The Secretary shall use 40 percent of such excess to allot for grants under subsection (a) to eligible agencies for statewide programs in each State an amount that bears the same ratio to 40 percent of such excess as the low-income and unemployed population of such State bears to the low-income and unemployed population of all the States.

(B) Competitive grants for local and statewide programs

The Secretary shall use 40 percent of such excess to make grants under subsection (a) on a competitive basis to eligible agencies for local and statewide programs.

(C) Competitive grants for nationwide programs

The Secretary shall use the remaining 20 percent of such excess to make grants under subsection (a) on a competitive basis to eligible agencies for nationwide programs, including programs benefiting Indians, as defined in section 9911 of this title, and migrant or seasonal farmworkers.

(3) Eligibility for allotments for statewide programs

To be eligible to receive an allotment under paragraph (1)(A) or (2)(A), an eligible agency shall demonstrate that the proposed program is statewide in scope and represents a comprehensive and coordinated effort to alleviate hunger within the State.

(4) Minimum allotments for statewide programs

(A) In general

From the amounts allotted under paragraphs (1)(A) and (2)(A), the minimum total allotment for each State for each fiscal year shall be—

(i) $15,000 if the total amount appropriated to carry out this section is not less than $7,000,000 but less than $10,000,000;

(ii) $20,000 if the total amount appropriated to carry out this section is not less than $10,000,000 but less than $15,000,000; or

(iii) $30,000 if the total amount appropriated to carry out this section is not less than $15,000,000.

(B) Definition

In this paragraph, the term "State" does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(5) Maximum grants

From funds made available under paragraphs (1)(B) and (2)(B) for any fiscal year, the Secretary may not make grants under subsection (a) to an eligible agency in an aggregate amount exceeding $50,000. From funds made available under paragraph (2)(C) for any fiscal year, the Secretary may not make grants under subsection (a) to an eligible agency in an aggregate amount exceeding $300,000.

(c) Report

For each fiscal year, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the grants made under this section. Such report shall include—

(1) a list of grant recipients;

(2) information on the amount of funding awarded to each grant recipient; and

(3) a summary of the activities performed by the grant recipients with funding awarded under this section and a description of the manner in which such activities meet the objectives described in subsection (a).

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary

for each of fiscal years 1999 through 2003.

(Pub. L. 97–35, title VI, §681, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2752.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 681 of Pub. L. 97–35 was classified to section 9910 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§9923. National or regional programs designed to provide instructional activities for low-income youth

(a) General authority

The Secretary is authorized to make a grant to an eligible service provider to administer national or regional programs to provide instructional activities for low-income youth. In making such a grant, the Secretary shall give priority to eligible service providers that have a demonstrated ability to operate such a program.

(b) Program requirements

Any instructional activity carried out by an eligible service provider receiving a grant under this section shall be carried out on the campus of an institution of higher education (as defined in section 1141(a) [1] of title 20) and shall include—

(1) access to the facilities and resources of such an institution;

(2) an initial medical examination and follow-up referral or treatment, without charge, for youth during their participation in such activity;

(3) at least one nutritious meal daily, without charge, for participating youth during each day of participation;

(4) high quality instruction in a variety of sports (that shall include swimming and that may include dance and any other high quality recreational activity) provided by coaches and teachers from institutions of higher education and from elementary and secondary schools (as defined in section 7801 of title 20); and

(5) enrichment instruction and information on matters relating to the well-being of youth, to include educational opportunities and information on study practices, education for the prevention of drug and alcohol abuse, and information on health and nutrition, career opportunities, and family and job responsibilities.

(c) Advisory committee; partnerships

The eligible service provider shall, in each community in which a program is funded under this section—

(1) ensure that—

(A) a community-based advisory committee is established, with representatives from local youth, family, and social service organizations, schools, entities providing park and recreation services, and other community-based organizations serving high-risk youth; or

(B) an existing community-based advisory board, commission, or committee with similar membership is utilized to serve as the committee described in subparagraph (A); and

(2) enter into formal partnerships with youth-serving organizations or other appropriate social service entities in order to link program participants with year-round services in their home communities that support and continue the objectives of this chapter.

(d) Eligible providers

A service provider that is a national private, nonprofit organization, a coalition of such organizations, or a private, nonprofit organization applying jointly with a business concern shall be eligible to apply for a grant under this section if—

(1) the applicant has demonstrated experience in operating a program providing instruction to low-income youth;

(2) the applicant agrees to contribute an amount (in cash or in kind, fairly evaluated) of not less than 25 percent of the amount requested, for the program funded through the grant;

(3) the applicant agrees to use no funds from a grant authorized under this section for administrative expenses; and

(4) the applicant agrees to comply with the regulations or program guidelines promulgated by the Secretary for use of funds made available through the grant.

(e) Application process

To be eligible to receive a grant under this section, a service provider shall submit to the Secretary, for approval, an application at such time, in such manner, and containing such information as the Secretary may require.

(f) Promulgation of regulations or program guidelines

The Secretary shall promulgate regulations or program guidelines to ensure funds made available through a grant made under this section are used in accordance with the objectives of this chapter.

(g) Authorization of appropriations

There are authorized to be appropriated $15,000,000 for each of fiscal years 1999 through 2003 for grants to carry out this section.

(Pub. L. 97–35, title VI, §682, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2753; amended Pub. L. 107–110, title X, §1076(ee), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 114–95, title IX, §9215(t), Dec. 10, 2015, 129 Stat. 2171.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1141(a) of title 20, referred to in subsec. (b), was repealed by Pub. L. 105–244, §3, title I, §101(b), title VII, §702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998. However, the term "institution of higher education" is defined in section 1001 of Title 20, Education.

PRIOR PROVISIONS

A prior section 682 of Pub. L. 97–35 was classified to section 9910c of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

Another prior section 682 of Pub. L. 97–35 was renumbered section 683 and was classified to section 9911 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

Another prior section 682 of Pub. L. 97–35 was classified to section 9911 of this title, prior to repeal by Pub. L. 101–501.

AMENDMENTS

2015—Subsec. (b)(4). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

2002—Subsec. (b)(4). Pub. L. 107–110 substituted "7801" for "8801".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

[1] *See References in Text note below.*

§9924. References

Any reference in any provision of law to the poverty line set forth in section 624 or 625 of the Economic Opportunity Act of 1964 shall be construed to be a reference to the poverty line defined in section 9902 of this title. Except as otherwise provided, any reference in any provision of law to any community action agency designated under title II of the Economic Opportunity Act of 1964 shall be construed to be a reference to an entity eligible to receive funds under the community services block grant program.

(Pub. L. 97–35, title VI, §683, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2755.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508. Title II of the Act was classified generally to subchapter II (§2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Section 625 of the Act, which was subsequently renumbered section 624 of the Act and related to the poverty line, was classified to section 2971d of this title, prior to repeal by section 683(a) of Pub. L. 97–35. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 683 of Pub. L. 97–35 was classified to section 9911 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

Another prior section 683 of Pub. L. 97–35 was renumbered section 684, and was classified to section 9912 of this title, prior to the general amendment of this chapter by Pub. L. 105–285.

§9925. Demonstration partnership agreements addressing needs of poor

(a) General authority

(1) In order to stimulate the development of new approaches to provide for greater self-sufficiency of the poor, to test and evaluate such new approaches, to disseminate project results and evaluation findings so that such approaches can be replicated, and to strengthen the integration, coordination, and redirection of activities to promote maximum self-sufficiency among the poor, the Secretary may make grants from funds appropriated under subsection (e) to eligible entities for the development and implementation of new and innovative approaches to deal with particularly critical needs or problems of the poor which are common to a number of communities. Grants may be made only with respect to applications which—

(A) involve activities which can be incorporated into or be closely coordinated with eligible entities' ongoing programs;

(B) involve significant new combinations of resources or new and innovative approaches

involving partnership agreements;

(C) are structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of the Community Services Block Grant Act [42 U.S.C. 9901 et seq.]; and

(D) contain an assurance that the applicant for such grants will obtain an independent, methodologically sound evaluation of the effectiveness of the activities carried out with such grant and will submit such evaluation to the Secretary.

(2) No grant may be made under this section unless an application is submitted to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may require.

(3) Initial and subsequent grant awards may fully fund projects for periods of up to 3 years.

(b) Federal share; limitations

(1)(A) Subject to subparagraph (B), grants awarded pursuant to this section shall be used for programs and shall not exceed 50 per centum of the cost of such programs.

(B) After the first funding period for which an eligible entity receives a grant under this section to carry out a program, the amount of a subsequent grant made under this section to such entity to carry out such program may not exceed 80 percent of the amount of the grant previously received by such entity under this section to carry out such program.

(2) Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, or services.

(3) Not more than one grant in each fiscal year may be made to any eligible entity, and no grant may exceed $350,000. Not more than 2 grants may be made under this section to an eligible entity to carry out a particular program.

(4) No application may be approved for assistance under this section unless the Secretary is satisfied that—

(A) the activities to be carried out under the application will be in addition to, and not in substitution for, activities previously carried on without Federal assistance; and

(B) funds or other resources devoted to programs designed to meet the needs of the poor within the community, area, or State will not be diminished in order to provide the matching contributions required under this section.

(c) Programs directed to special populations

(1) In addition to the grant programs described in subsection (a), the Secretary may make grants to community action agencies for the purpose of enabling such agencies to demonstrate new approaches to dealing with the problems caused by entrenched, chronic unemployment and lack of economic opportunities for urban youth. Demonstrations shall include such activities as peer counseling, mentoring, development of job skills, assistance with social skills, community services, family literacy, parenting skills, opportunities for employment or entrepreneurship, and other services designed to assist such at-risk youth to continue their education, to secure meaningful employment, to perform community service, or to pursue other productive alternatives within the community.

(2) Such grants may be made only with respect to applications that—

(A) identify and describe the population to be served, the problems to be addressed, the overall approach and methods of outreach and recruitment to be used, and the services to be provided;

(B) describe how the approach to be used differs from other approaches used for the population to be served by the project;

(C) describe the objectives of the project and contain a plan for measuring progress toward meeting those objectives; and

(D) contain assurances that the grantee will report on the progress and results of the demonstration at such times and in such manner as the Secretary shall require.

(3) Notwithstanding subsection (b), such grants shall not exceed 80 percent of the cost of such

programs.

(4) Such grants made under this subsection on a competitive basis shall be based on an annual competition determined by the Secretary. Grants made under this subsection shall not exceed $500,000.

(d) Dissemination of results

As soon as practicable, but not later than 180 days after the end of the fiscal year in which a recipient of a grant under this section completes the expenditure of such grant, the Secretary shall prepare and make available to each State and each eligible entity a description of the program carried out with such grant, any relevant information developed and results achieved, and a summary of the evaluation of such program received under subsection (a)(1)(D) so as to provide a model of innovative programs for other eligible entities.

(e) Replication of programs

(1) The Secretary shall annually identify programs that receive grants under this section that demonstrate a significant potential for dealing with particularly critical needs or problems of the poor that exist in a number of communities.

(2) Not less than 10 percent, and not more than 25 percent, of the funds appropriated for each fiscal year to carry out this section shall be available to make grants under this section to replicate in additional geographic areas programs identified under paragraph (1).

(f) Omitted

(g) Definitions

As used in this section—

(1) the term "eligible entity" has the same meaning given such term by section 673(1) of the Community Services Block Grant Act (42 U.S.C. 9902(1)), except that such term includes an organization that serves migrant and seasonal farm workers and that receives a grant under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) in the fiscal year preceding the fiscal year for which such organization requests a grant under this section; and

(2) the term "Secretary" means the Secretary of Health and Human Services.

(h) Authorization of appropriations

(1) There are authorized to be appropriated $30,000,000 for fiscal year 1995, and such sums as may be necessary for fiscal years 1996, 1997, and 1998, to carry out this section.

(2) Of the amounts appropriated for this section, not less than 30 percent and not more than 40 percent shall be used to carry out the programs authorized under subsection (c).

(3) In addition to sums which are required to carry out the evaluation, reporting, and dissemination of results under subsections (a), (c), (d), and (f),[1] the Secretary is authorized to reserve up to 2 percent of the amounts appropriated pursuant to subparagraphs (1) and (2) for administration of the program as well as for planning and technical assistance.

(Pub. L. 99–425, title IV, §408, Sept. 30, 1986, 100 Stat. 972; Pub. L. 101–204, title VII, §705, Dec. 7, 1989, 103 Stat. 1821; Pub. L. 101–501, title VI, §§601, 602, Nov. 3, 1990, 104 Stat. 1257, 1258; Pub. L. 103–252, title II, §207, May 18, 1994, 108 Stat. 656.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Community Services Block Grant Act, referred to in subsecs. (a)(1)(C) and (g)(1), is subtitle B (§671 et seq.) of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 511, which is classified generally to this chapter (§9901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

Subsection (f) of this section, referred to in subsec. (h)(3), was omitted from the Code.

CODIFICATION

Subsec. (f) of this section, which required the Secretary to submit to the Committee on Education and Labor

of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual report describing programs for which grants were made under this section in the most recently completed fiscal year and the evaluations received under subsec. (a)(1)(D) of this section in such fiscal year, describing the methods used by the Secretary to comply with subsec. (d) of this section, making recommendations regarding the suitability of carrying out such programs with funds made available under other Federal laws, and describing each program identified under subsec. (d)(1) of this section or replicated under subsec. (e)(2) of this section and identifying the geographical location where such program was carried out, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 98 of House Document No. 103–7.

Section was formerly classified to section 9910b of this title.

Section was enacted as part of the Human Services Reauthorization Act of 1986, and not as part of the Community Services Block Grant Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–252, §207(1), added par. (3).

Subsec. (b)(1)(B). Pub. L. 103–252, §207(2), substituted "After the first funding period" for "After the first fiscal year".

Subsec. (c)(1). Pub. L. 103–252, §207(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In addition to the grant programs described in subsection (a) of this section, the Secretary shall make grants to eligible entities for the purpose of demonstrating new and innovative approaches to addressing the problems of, and providing opportunities for leadership development, community involvement, and educational success to, disadvantaged persons between the ages of 14 and 25 from populations experiencing conditions such as a high poverty rate, high unemployment, high dropout rate, low labor force participation, low enrollment in college or participation in other post high school training classes, high incidence of involvement in violence, and a high rate of incarceration. Services provided through approaches funded by such grants may include assessment and development of employability plans, remedial education, motivational activities, life skills instruction, community service, mentoring, access to information on available financial aid, campus visits, career education, cultural enrichment, and employment training, placement, and follow-up."

Subsec. (c)(4). Pub. L. 103–252, §207(3)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Such grants shall be made annually on such terms and conditions as the Secretary shall specify to eligible entities that serve the populations described in paragraph (1) and that are located within those areas where such populations are concentrated."

Subsec. (h). Pub. L. 103–252, §207(4), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows:

"(1) There are authorized to be appropriated $10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994, to carry out this section (other than subsection (c) of this section).

"(2) There are authorized to be appropriated $10,000,000 for fiscal year 1991 and such sums as may be necessary in each of the fiscal years 1992 through 1994, to carry out subsection (c) of this section."

1990—Subsecs. (c) to (e). Pub. L. 101–501, §601(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–501, §601(1), (2), redesignated subsec. (e) as (f) and substituted "subsection (d)" for "subsection (c)" in par. (2) and "subsection (e)(2)" for "subsection (d)(2)" in par. (4). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101–501, §601(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 101–501, §§601(2), 602, redesignated subsec. (g) as (h), designated existing provisions as par. (1), substituted "$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994" for "$5,000,000 for each of the fiscal years 1987, 1988, and 1989, and $7,000,000 for fiscal year 1990", inserted "(other than subsection (c) of this section)" before period at end, and added par. (2).

1989—Subsec. (a)(1). Pub. L. 101–204, §705(a)(1), substituted "stimulate the development of new approaches to provide for greater self-sufficiency of the poor, to test and evaluate such new approaches, to disseminate project results and evaluation findings so that such approaches can be replicated, and to strengthen the integration, coordination, and redirection of activities to promote maximum self-sufficiency among the poor" for "provide for the self-sufficiency of the Nation's poor".

Subsec. (a)(1)(D). Pub. L. 101–204, §705(a)(2), added subpar. (D).

Subsec. (b)(1). Pub. L. 101–204, §705(b)(1), designated existing provisions as subpar. (A), substituted "Subject to subparagraph (B), grants" for "Grants", struck out "new" before "programs" wherever appearing, and added subpar. (B).

Subsec. (b)(3). Pub. L. 101–204, §705(b)(2), inserted "in each fiscal year" after "than one grant", substituted "$350,000" for "$250,000", and inserted at end "Not more than 2 grants may be made under this section to an eligible entity to carry out a particular program."

Subsec. (c). Pub. L. 101–204, §705(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "As soon as practicable, but no later than 90 days after the expiration of the fiscal year for which any grant is awarded under this section, the Secretary shall prepare and make available upon request to each State and eligible entity descriptions of the demonstration programs assisted under this section, and any relevant information developed and results achieved, so as to provide models for innovative programs to other eligible entities."

Subsecs. (d), (e). Pub. L. 101–204, §705(f)(2), added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 101–204, §705(d), (f)(1), redesignated subsec. (d) as (f) and inserted before semicolon in par. (1) ", except that such term includes an organization that serves migrant and seasonal farm workers and that receives a grant under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) in the fiscal year preceding the fiscal year for which such organization requests a grant under this section".

Subsec. (g). Pub. L. 101–204, §705(e), (f)(1), redesignated subsec. (e) as (g), substituted "are" for "is", and inserted "and $7,000,000 for fiscal year 1990," after "1989,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective Oct. 1, 1994, see section 208 of Pub. L. 103–252, set out as a note under section 9901 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

[1] *See References in Text note below.*

§9926. Projects to expand the number of job opportunities available to certain low-income individuals

(a) In general

The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with nonprofit organizations (including community development corporations) submitting applications under this section for the purpose of conducting projects in accordance with subsection (b) to create employment opportunities for certain low-income individuals.

(b) Nature of project

(1) Each nonprofit organization conducting a project under this section shall provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for those individuals eligible to participate in the projects as described in this subsection.

(2) For purposes of this section, a nonprofit organization is any organization (including a community development corporation) exempt from taxation under section 501(a) of title 26 by reason of paragraph (3) or (4) of section 501(c) of such title.

(3) A low-income individual eligible to participate in a project conducted under this section is any

individual eligible to receive assistance under the program funded part [1] A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] of the State in which the individual resides and any other individual whose income level does not exceed 100 percent of the official poverty line as defined by the Office of Management and Budget and revised in accordance with section 9902(2) of this title.

(c) Content of applications; selection priority

(1) Each nonprofit organization submitting an application under this section shall, as part of such application, describe—

(A) the technical and financial assistance that will be made available under the project conducted under this section;

(B) the geographic area to be served by the project;

(C) the percentage of low-income individuals (as described in subsection (b)) and individuals receiving assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] in the area to be served by the project; and

(D) unemployment rates in the geographic areas to be served and (to the extent practicable) the jobs available and skills necessary to fill those vacancies in such areas.

(2) In approving applications under this section, the Secretary shall give priority to applications proposing to serve those areas containing the highest percentage of individuals receiving assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.].

(d) Administration

Each nonprofit organization participating in a project conducted under this section shall provide assurances in its agreement with the Secretary that it has or will have a cooperative relationship with the agency responsible for administering the the [2] State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] in the area served by the project.

(e) Authorization of appropriations

For the purpose of conducting projects under this section, there is authorized to be appropriated an amount not to exceed $25,000,000 for any fiscal year.

(Pub. L. 100–485, title V, §505, Oct. 13, 1988, 102 Stat. 2404; Pub. L. 101–508, title V, §5063, Nov. 5, 1990, 104 Stat. 1388–232; Pub. L. 103–432, title II, §261(a), Oct. 31, 1994, 108 Stat. 4467; Pub. L. 104–193, title I, §112, Aug. 22, 1996, 110 Stat. 2176; Pub. L. 105–33, title V, §5515, Aug. 5, 1997, 111 Stat. 620.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(3), (c)(1)(C), (2), and (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was formerly classified to section 9910d of this title. Prior to such classification, section was set out as a note under section 1315 of this title.

Section was enacted as part of the Family Support Act of 1988, and not as part of the Community Services Block Grant Act which comprises this chapter.

AMENDMENTS

1997—Subsec. (c)(1)(C), (2). Pub. L. 105–33 which directed the amendment of Pub. L. 104–193, §112(5), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 104–193 to reflect the probable intent of Congress. See 1996 Amendment notes below.

1996—Pub. L. 104–193, §112(1), struck out "Demonstration" before "projects" in section catchline.

Subsec. (a). Pub. L. 104–193, §112(2), (3), substituted "shall enter into agreements with" for "in each of the fiscal years 1990, 1991, and 1992, shall enter into agreements with not less than 5 nor more than 10" and "conducting projects" for "conducting demonstration projects".

Subsec. (b)(1). Pub. L. 104–193, §112(2), struck out "demonstration" after "organization conducting a".

Subsec. (b)(3). Pub. L. 104–193, §112(4), substituted "assistance under the program funded part A of title IV of the Social Security Act of the State in which the individual resides" for "aid to families with dependent children under part A of title IV of the Social Security Act".

Subsec. (c)(1)(C). Pub. L. 104–193, §112(5)(A), as amended by Pub. L. 105–33, substituted "assistance under a State program funded under part A of title IV of the Social Security Act" for "aid to families with dependent children under title IV of the Social Security Act".

Subsec. (c)(2). Pub. L. 104–193, §112(5)(B), as amended by Pub. L. 105–33, substituted "assistance under a State program funded under part A of title IV of the Social Security Act" for "aid to families with dependent children under title IV of such Act".

Subsec. (d). Pub. L. 104–193, §112(2), (6), struck out "demonstration" after "organization participating in a" and substituted "the State program funded under part A of title IV of the Social Security Act" for "job opportunities and basic skills training program (as provided for under title IV of the Social Security Act)".

Subsecs. (e) to (g). Pub. L. 104–193, §112(7), added subsec. (e) and struck out former subsec. (e) which related to duration of demonstration projects under this section, subsec. (f) which required evaluation of the success of each demonstration project, and subsec. (g) which authorized appropriations for the conduct of demonstration projects for each of fiscal years 1990 to 1996.

1994—Subsec. (e). Pub. L. 103–432, §261(a)(1), substituted "6-year period" for "3-year period".

Subsec. (f)(2). Pub. L. 103–432, §261(a)(2), substituted "January 1, 1995" for "January 1, 1993".

Subsec. (g). Pub. L. 103–432, §261(a)(3), substituted "1991, 1992, 1993, 1994, 1995, and 1996" for "1991, and 1992".

1990—Subsec. (a). Pub. L. 101–508, §5063(1), inserted "in each of the fiscal years 1990, 1991, and 1992," before "shall".

Subsec. (e). Pub. L. 101–508, §5063(2), substituted "September 30 of the fiscal year specified in the agreement described in subsection (a) of this section" for "September 30, 1989".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–432, title II, §261(b), Oct. 31, 1994, 108 Stat. 4467, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1993."

[1] So in original. Probably should be "under part".

[2] So in original.

CHAPTER 107—CONSUMER-PATIENT RADIATION HEALTH AND SAFETY

Sec.

10001. Statement of findings.
10002. Statement of purpose.
10003. Definitions.
10004. Promulgation of standards.

10005. Model statute.
10006. Compliance.
10007. Federal radiation guidelines.
10008. Applicability to Federal agencies.

§10001. Statement of findings

The Congress finds that—

(1) it is in the interest of public health and safety to minimize unnecessary exposure to potentially hazardous radiation due to medical and dental radiologic procedures;

(2) it is in the interest of public health and safety to have a continuing supply of adequately educated persons and appropriate accreditation and certification programs administered by State governments;

(3) the protection of the public health and safety from unnecessary exposure to potentially hazardous radiation due to medical and dental radiologic procedures and the assurance of efficacious procedures are the responsibility of State and Federal governments;

(4) persons who administer radiologic procedures, including procedures at Federal facilities, should be required to demonstrate competence by reason of education, training, and experience; and

(5) the administration of radiologic procedures and the effect on individuals of such procedures have a substantial and direct effect upon United States interstate commerce.

(Pub. L. 97–35, title IX, §976, Aug. 13, 1981, 95 Stat. 598.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 97–35, title IX, §975, Aug. 13, 1981, 95 Stat. 598, provided that: "This subtitle [subtitle I (§§975–983) of title IX of Pub. L. 97–35, enacting this chapter] may be cited as the 'Consumer-Patient Radiation Health and Safety Act of 1981'."

§10002. Statement of purpose

It is the purpose of this chapter to—

(1) provide for the establishment of minimum standards by the Federal Government for the accreditation of education programs for persons who administer radiologic procedures and for the certification of such persons; and

(2) insure that medical and dental radiologic procedures are consistent with rigorous safety precautions and standards.

(Pub. L. 97–35, title IX, §977, Aug. 13, 1981, 95 Stat. 599.)

§10003. Definitions

Unless otherwise expressly provided, for purposes of this chapter, the term—

(1) "radiation" means ionizing and nonionizing radiation in amounts beyond normal background levels from sources such as medical and dental radiologic procedures;

(2) "radiologic procedure" means any procedure or article intended for use in—

(A) the diagnosis of disease or other medical or dental conditions in humans (including diagnostic X-rays or nuclear medicine procedures); or

(B) the cure, mitigation, treatment, or prevention of disease in humans;

that achieves its intended purpose through the emission of radiation;

(3) "radiologic equipment" means any radiation electronic product which emits or detects

radiation and which is used or intended for use to—

(A) diagnose disease or other medical or dental conditions (including diagnostic X-ray equipment); or

(B) cure, mitigate, treat, or prevent disease in humans;

that achieves its intended purpose through the emission or detection of radiation;

(4) "practitioner" means any licensed doctor of medicine, osteopathy, dentistry, podiatry, or chiropractic, who prescribes radiologic procedures for other persons;

(5) "persons who administer radiologic procedures" means any person, other than a practitioner, who intentionally administers radiation to other persons for medical purposes, and includes medical radiologic technologists (including dental hygienists and assistants), radiation therapy technologists, and nuclear medicine technologists;

(6) "Secretary" means the Secretary of Health and Human Services; and

(7) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(Pub. L. 97–35, title IX, §978, Aug. 13, 1981, 95 Stat. 599.)

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§10004. Promulgation of standards

(a) Within twelve months after August 13, 1981, the Secretary, in consultation with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, appropriate agencies of the States, and appropriate professional organizations, shall by regulation promulgate minimum standards for the accreditation of educational programs to train individuals to perform radiologic procedures. Such standards shall distinguish between programs for the education of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists, (4) nuclear medicine technologists, and (5) such other kinds of health auxiliaries who administer radiologic procedures as the Secretary determines appropriate. Such standards shall not be applicable to educational programs for practitioners.

(b) Within twelve months after August 13, 1981, the Secretary, in consultation with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, interested agencies of the States, and appropriate professional organizations, shall by regulation promulgate minimum standards for the certification of persons who administer radiologic procedures. Such standards shall distinguish between certification of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists, (4) nuclear medicine technologists, and (5) such other kinds of health auxiliaries who administer radiologic procedures as the Secretary determines appropriate. Such standards shall include minimum certification criteria for individuals with regard to accredited education, practical experience, successful passage of required examinations, and such other criteria as the Secretary shall deem necessary for the adequate qualification of individuals to administer radiologic procedures. Such standards shall not apply to practitioners.

(Pub. L. 97–35, title IX, §979, Aug. 13, 1981, 95 Stat. 599; Pub. L. 102–54, §13(q)(13)(A), June 13, 1991, 105 Stat. 281.)

EDITORIAL NOTES

AMENDMENTS

1991—Subsecs. (a), (b). Pub. L. 102–54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

§10005. Model statute

In order to encourage the administration of accreditation and certification programs by the States, the Secretary shall prepare and transmit to the States a model statute for radiologic procedure safety. Such model statute shall provide that—

(1) it shall be unlawful in a State for individuals to perform radiologic procedures unless such individuals are certified by the State to perform such procedures; and

(2) any educational requirements for certification of individuals to perform radiologic procedures shall be limited to educational programs accredited by the State.

(Pub. L. 97–35, title IX, §980, Aug. 13, 1981, 95 Stat. 600.)

§10006. Compliance

(a) Implementation by Secretary

The Secretary shall take all actions consistent with law to effectuate the purposes of this chapter.

(b) Accreditation or certification program

A State may utilize an accreditation or certification program administered by a private entity if—

(1) such State delegates the administration of the State accreditation or certification program to such private entity;

(2) such program is approved by the State; and

(3) such program is consistent with the minimum Federal standards promulgated under this chapter for such program.

(c) Noncompliance; proposed legislative changes

Absent compliance by the States with the provisions of this chapter within three years after August 13, 1981, the Secretary shall report to the Congress recommendations for legislative changes considered necessary to assure the States' compliance with this chapter.

(d) Repealed. Pub. L. 104–66, title I, §1061(b), Dec. 21, 1995, 109 Stat. 719

(e) Existing standards and guidelines

Notwithstanding any other provision of this section, in the case of a State which has, prior to the effective date of standards and guidelines promulgated pursuant to this chapter, established standards for the accreditation of educational programs and certification of radiologic technologists, such State shall be deemed to be in compliance with the conditions of this section unless the Secretary determines, after notice and hearing, that such State standards do not meet the minimum standards prescribed by the Secretary or are inconsistent with the purposes of this chapter.

(Pub. L. 97–35, title IX, §981, Aug. 13, 1981, 95 Stat. 600; Pub. L. 104–66, title I, §1061(b), Dec. 21, 1995, 109 Stat. 719.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–66 struck out subsec. (d) which read as follows: "The Secretary shall be responsible for continued monitoring of compliance by the States with the applicable provisions of this chapter and shall report to the Senate and the House of Representatives by January 1, 1982, and January 1 of each succeeding year the status of the States' compliance with the purposes of this chapter."

§10007. Federal radiation guidelines

The Secretary shall, in conjunction with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, appropriate agencies of the States, and appropriate professional organizations, promulgate Federal radiation guidelines with respect to radiologic procedures. Such guidelines shall—

(1) determine the level of radiation exposure due to radiologic procedures which is unnecessary and specify the techniques, procedures, and methods to minimize such unnecessary exposure;

(2) provide for the elimination of the need for retakes of diagnostic radiologic procedures;

(3) provide for the elimination of unproductive screening programs;

(4) provide for the optimum diagnostic information with minimum radiologic exposure; and

(5) include the therapeutic application of radiation to individuals in the treatment of disease, including nuclear medicine applications.

(Pub. L. 97–35, title IX, §982, Aug. 13, 1981, 95 Stat. 601; Pub. L. 102–54, §13(q)(13)(B), June 13, 1991, 105 Stat. 281.)

EDITORIAL NOTES

AMENDMENTS

1991—Pub. L. 102–54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs" in introductory provisions.

§10008. Applicability to Federal agencies

(a) Except as provided in subsection (b), each department, agency, and instrumentality of the executive branch of the Federal Government shall comply with standards promulgated pursuant to this chapter.

(b) The Secretary of Veterans Affairs, through the Under Secretary for Health of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Under Secretary for Health under title 38, prescribe regulations making the standards promulgated pursuant to this chapter applicable to the provision of radiologic procedures in facilities over which that Secretary has jurisdiction. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall consult with the Secretary in order to achieve the maximum possible coordination of the regulations, standards, and guidelines, and the implementation thereof, which the Secretary and the Secretary of Veterans Affairs prescribe under this chapter.

(Pub. L. 97–35, title IX, §983, Aug. 13, 1981, 95 Stat. 601; Pub. L. 102–54, §13(q)(13)(C), June 13, 1991, 105 Stat. 282; Pub. L. 102–405, title III, §302(e)(1), Oct. 9, 1992, 106 Stat. 1985.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–405 substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

1991—Subsec. (b). Pub. L. 102–54 substituted "The Secretary of Veterans Affairs, through the Chief Medical Director of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Chief Medical Director under title 38" for "(1) The Administrator of Veterans' Affairs, through the Chief Medical Director of the Veterans' Administration, shall, to the maximum extent feasible consistent with the responsibilities of such Administrator and Chief Medical Director under subtitle 38", "over which that Secretary" for "over which the Administrator", and "Secretary of Veterans Affairs" for "Administrator" wherever else appearing, and struck out pars. (2) and (3) which read as follows:

"(2) Not later than 180 days after standards are promulgated by the Secretary pursuant to this chapter, the Administrator of Veterans' Affairs shall submit to the appropriate committees of Congress a full report with

respect to the regulations (including guidelines, policies, and procedures thereunder) prescribed pursuant to paragraph (1) of this subsection. Such report shall include—

"(A) an explanation of any inconsistency between standards made applicable by such regulations and the standards promulgated by the Secretary pursuant to this chapter;

"(B) an account of the extent, substance, and results of consultations with the Secretary respecting the prescription and implementation of regulations by the Administrator; and

"(C) such recommendations for legislation and administrative action as the Administrator determines are necessary and desirable.

"(3) The Administrator of Veterans' Affairs shall publish the report required by paragraph (2) in the Federal Register."

CHAPTER 108—NUCLEAR WASTE POLICY

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§10101. Definitions

For purposes of this chapter:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "affected Indian tribe" means any Indian tribe—

(A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;

(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe; [1]

(3) The term "atomic energy defense activity" means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

(A) naval reactors development;
(B) weapons activities including defense inertial confinement fusion;
(C) verification and control technology;
(D) defense nuclear materials production;
(E) defense nuclear waste and materials by-products management;
(F) defense nuclear materials security and safeguards and security investigations; and
(G) defense research and development.

(4) The term "candidate site" means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 10132 of this title for site characterization, approved by the President under section 10132 of this title for site characterization, or undergoing site characterization under section 10133 of this title.

(5) The term "civilian nuclear activity" means any atomic energy activity other than an atomic energy defense activity.

(6) The term "civilian nuclear power reactor" means a civilian nuclear powerplant required to be

licensed under section 2133 or 2134(b) of this title.

(7) The term "Commission" means the Nuclear Regulatory Commission.

(8) The term "Department" means the Department of Energy.

(9) The term "disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

(10) The terms "disposal package" and "package" mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.

(11) The term "engineered barriers" means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

(12) The term "high-level radioactive waste" means—

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

(13) The term "Federal agency" means any Executive agency, as defined in section 105 of title 5.

(14) The term "Governor" means the chief executive officer of a State.

(15) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

(16) The term "low-level radioactive waste" means radioactive material that—

(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 2014(e)(2) of this title; and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

(17) The term "Office" means the Office of Civilian Radioactive Waste Management established in section 10224 [2] of this title.

(18) The term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

(19) The term "reservation" means—

(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18; or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(20) The term "Secretary" means the Secretary of Energy.

(21) The term "site characterization" means—

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited

subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(22) The term "siting research" means activities, including borings, surface excavations, shaft excavations, subsurface lateral excavations and borings, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

(23) The term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(24) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(25) The term "storage" means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

(26) The term "Storage Fund" means the Interim Storage Fund established in section 10156(c) [2] of this title.

(27) The term "test and evaluation facility" means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

(28) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(29) The term "Waste Fund" means the Nuclear Waste Fund established in section 10222(c) of this title.

(30) The term "Yucca Mountain site" means the candidate site in the State of Nevada recommended by the Secretary to the President under section 10132(b)(1)(B) of this title on May 27, 1986.

(31) The term "affected unit of local government" means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

(32) The term "Negotiator" means the Nuclear Waste Negotiator.

(33) As used in subchapter IV, the term "Office" means the Office of the Nuclear Waste Negotiator established under subchapter IV of this chapter.

(34) The term "monitored retrievable storage facility" means the storage facility described in section 10161(b)(1) of this title.

(Pub. L. 97–425, §2, Jan. 7, 1983, 96 Stat. 2202; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5002, Dec. 22, 1987, 101 Stat. 1330–227.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 10224 of this title, referred to in par. (17), was in the original a reference to section 305 of Pub. L. 97–425, which is classified to section 10225 of this title, and was translated as section 10224 of this title as the probable intent of Congress, in view of the Office of Civilian Radioactive Waste Management being established by section 10224 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (19)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 10156(c) of this title, referred to in par. (26), was in the original a reference to section 137(c) of

Pub. L. 97–425, which is classified to section 10157(c) of this title, and has been translated as section 10156(c) of this title as the probable intent of Congress, in view of the Interim Storage Fund being established by section 10156(c) of this title.

AMENDMENTS

1987—Pars. (30) to (34). Pub. L. 100–202 and Pub. L. 100–203 amended section identically adding pars. (30) to (34).

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121, and Pub. L. 100–203, title V, §5001, Dec. 22, 1987, 101 Stat. 1330–227, provided that: "This subtitle [subtitle A (§§5001–5065) of title V, enacting sections 10162, 10163, 10164, 10165, 10166, 10167, 10168, 10169, 10172, 10172a, 10173, 10173a, 10173b, 10173c, 10174, 10174a, 10175, 10204, 10241, 10242, 10243, 10244, 10245, 10246, 10247, 10248, 10249, 10250, 10251, 10261, 10262, 10263, 10264, 10265, 10266, 10267, 10268, 10269, and 10270 of this title, amending this section and sections 10132, 10133, 10134, 10136, 10137, and 10138 of this title and enacting provisions set out as a note under section 5841 of this title] may be cited as the 'Nuclear Waste Policy Amendments Act of 1987'."

SHORT TITLE

Pub. L. 97–425, §1, Jan. 7, 1983, 96 Stat. 2201, provided that: "This Act [enacting this chapter] may be cited as the 'Nuclear Waste Policy Act of 1982'."

NUCLEAR WASTE MANAGEMENT PLAN; REPORT

Pub. L. 102–486, title VIII, §803, Oct. 24, 1992, 106 Stat. 2923, provided that:

"(a) PREPARATION AND SUBMISSION OF REPORT.—The Secretary of Energy, in consultation with the Nuclear Regulatory Commission and the Environmental Protection Agency, shall prepare and submit to the Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of the enactment of this Act [Oct. 24, 1992]. The Secretary shall prepare the report for submission to the President and the Congress within 1 year after the date of the enactment of this Act. The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

"(b) OPPORTUNITY FOR PUBLIC COMMENT.—In preparation of the report required under subsection (a), the Secretary of Energy shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Nuclear Regulatory Commission, the Environmental Protection Agency, and other interested parties.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section."

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] So in original. The semicolon probably should be a period.

[2] See References in Text note below.

§10102. Separability

If any provision of this chapter, or the application of such provision to any person or circumstance, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 97–425, §3, Jan. 7, 1983, 96 Stat. 2205.)

§10103. Territories and possessions

Nothing in this chapter shall be deemed to repeal, modify, or amend the provisions of section 1491 of title 48.

(Pub. L. 97–425, §4, Jan. 7, 1983, 96 Stat. 2205.)

§10104. Ocean disposal

Nothing in this chapter shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

(Pub. L. 97–425, §5, Jan. 7, 1983, 96 Stat. 2205.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in text, is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, which enacted chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

§10105. Limitation on spending authority

The authority under this chapter to incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 97–425, §6, Jan. 7, 1983, 96 Stat. 2205.)

§10106. Protection of classified national security information

Nothing in this chapter shall require the release or disclosure to any person or to the Commission of any classified national security information.

(Pub. L. 97–425, §7, Jan. 7, 1983, 96 Stat. 2205.)

§10107. Applicability to atomic energy defense activities

(a) Atomic energy defense activities

Subject to the provisions of subsection (c), the provisions of this chapter shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

(b) Evaluation by President

(1) Not later than 2 years after January 7, 1983, the President shall evaluate the use of disposal

capacity at one or more repositories to be developed under part A of subchapter I for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.

(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under part A of subchapter I for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories. The costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall be paid by the Federal Government, into the special account established under section 10222 of this title.

(3) Any repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only shall (A) be subject to licensing under section 5842 of this title; and (B) comply with all requirements of the Commission for the siting, development, construction, and operation of a repository.

(c) Applicability to certain repositories

The provisions of this chapter shall apply with respect to any repository not used exclusively for the disposal of high-level radioactive waste or spent nuclear fuel resulting from atomic energy defense activities, research and development activities of the Secretary, or both.

(Pub. L. 97–425, §8, Jan. 7, 1983, 96 Stat. 2205.)

§10108. Applicability to transportation

Nothing in this chapter shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.

(Pub. L. 97–425, §9, Jan. 7, 1983, 96 Stat. 2206.)

§10109. Biennial report on the spent nuclear fuel and high-level radioactive waste inventory in the United States

(a) Definitions

In this section:

(1) High-level radioactive waste

The term "high-level radioactive waste" has the meaning given the term in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(2) Spent nuclear fuel

The term "spent nuclear fuel" has the meaning given the term in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(3) Standard contract

The term "standard contract" has the meaning given the term "contract" in section 961.3 of title 10, Code of Federal Regulations (or any successor regulation).

(b) Report

Not later than January 1, 2026, and biennially thereafter, the Secretary of Energy shall submit to Congress a report that describes—

(1) the annual and cumulative amount of payments made by the United States to the holder of a standard contract due to a partial breach of contract under the Nuclear Waste Policy Act of 1982

(42 U.S.C. 10101 et seq.) resulting in financial damages to the holder;

(2) the cumulative amount spent by the Department of Energy since fiscal year 2008 to reduce future payments projected to be made by the United States to any holder of a standard contract due to a partial breach of contract under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.);

(3) the cumulative amount spent by the Department of Energy to store, manage, and dispose of spent nuclear fuel and high-level radioactive waste in the United States as of the date of the report;

(4) the projected lifecycle costs to store, manage, transport, and dispose of the projected inventory of spent nuclear fuel and high-level radioactive waste in the United States, including spent nuclear fuel and high-level radioactive waste expected to be generated from existing reactors through 2050;

(5) any mechanisms for better accounting of liabilities for the lifecycle costs of the spent nuclear fuel and high-level radioactive waste inventory in the United States;

(6) any recommendations for improving the methods used by the Department of Energy for the accounting of spent nuclear fuel and high-level radioactive waste costs and liabilities;

(7) any actions taken in the previous fiscal year by the Department of Energy with respect to interim storage; and

(8) any activities taken in the previous fiscal year by the Department of Energy to develop and deploy nuclear technologies and fuels that enhance the safe transportation or storage of spent nuclear fuel or high-level radioactive waste, including technologies to protect against seismic, flooding, and other extreme weather events.

(Pub. L. 118–67, div. B, title IV, §403, July 9, 2024, 138 Stat. 1468.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Nuclear Waste Policy Act of 1982, referred to in subsec. (b)(1), (2), is Pub. L. 97–425, Jan. 7, 1983, 96 Stat. 2201, which is classified generally to chapter 108 (§10101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10101 of this title and Tables.

CODIFICATION

Section was enacted as part of the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024, also known as the ADVANCE Act of 2024, and not as part of the Nuclear Waste Policy Act of 1982 which comprises this chapter.

SUBCHAPTER I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

§10121. State and affected Indian tribe participation in development of proposed repositories for defense waste

(a) Notification to States and affected Indian tribes

Notwithstanding the provisions of section 10107 of this title, upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.

(b) Participation of States and affected Indian tribes

Following the receipt of any notification under subsection (a), the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation identical to those provided in sections 10135 through 10138 of this title, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 10136(c) or 10138(b) of this title shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

(Pub. L. 97–425, title I, §101, Jan. 7, 1983, 96 Stat. 2206.)

PART A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

§10131. Findings and purposes

(a) The Congress finds that—

(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

(2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;

(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate;

(4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety and the environment, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;

(5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary of Energy in accordance with the provisions of this chapter;

(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and

(7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

(b) The purposes of this part are—

(1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;

(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

(3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and

(4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

(Pub. L. 97–425, title I, §111, Jan. 7, 1983, 96 Stat. 2207.)

§10132. Recommendation of candidate sites for site characterization

(a) Guidelines

Not later than 180 days after January 7, 1983, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the United States Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b). The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

(b) Recommendation by Secretary to President

(1)(A) Following the issuance of guidelines under subsection (a) and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

(B) Subsequent to such nomination, the Secretary shall recommend to the President 3 of the nominated sites not later than January 1, 1985 for characterization as candidate sites.

(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 10225 of this title.

(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an evaluation by the Secretary as to whether such site is suitable for site characterization under the guidelines established under subsection (a);

(ii) an evaluation by the Secretary as to whether such site is suitable for development as a repository under each such guideline that does not require site characterization as a prerequisite for application of such guideline;

(iii) an evaluation by the Secretary of the effects of the site characterization activities at such site on the public health and safety and the environment;

(iv) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(v) a description of the decision process by which such site was recommended; and

(vi) an assessment of the regional and local impacts of locating the proposed repository at such site.

(E)(i) [1] The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).[2]

(F) Each environmental assessment prepared under this paragraph shall be made available to the public.

(G) Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination.

(2) Before nominating any site the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 10133(b)(1) of this title.

(3) In evaluating the sites nominated under this section prior to any decision to recommend a site as a candidate site, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress on January 7, 1983, or (ii) the Secretary certifies that such available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this chapter or any other law: *Provided*, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches.

(c) Presidential review of recommended candidate sites

(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b). Not later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion, may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a candidate site, upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the candidate site involved by the end of such 6-month period, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(d) Preliminary activities

Except as otherwise provided in this section, each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall

require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97–425, title I, §112, Jan. 7, 1983, 96 Stat. 2208; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5011(b)–(d), Dec. 22, 1987, 101 Stat. 1330–228; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (b)(1)(C) to (H). Pub. L. 100–202 and Pub. L. 100–203, §5011(b), amended par. (1) identically, redesignating subpars. (D) to (H) as (C) to (G), respectively, in subpar. (C) substituting "subparagraph (B)" for "subparagraphs (B) and (C)", and striking out former subpar. (C) which read as follows: "Not later than July 1, 1989, the Secretary shall nominate 5 sites, which shall include at least 3 additional sites not nominated under subparagraph (A), and recommend by such date to the President from such 5 nominated sites 3 candidate sites the Secretary determines suitable for site characterization for selection of the second repository. The Secretary may not nominate any site previously nominated under subparagraph (A), that was not recommended as a candidate site under subparagraph (B)."

Subsec. (d). Pub. L. 100–202 and Pub. L. 100–203, §5011(c), amended section identically, redesignating subsec. (e) as (d) and striking out former subsec (d) which read as follows: "After the required recommendation of candidate sites under subsection (b) of this section, the Secretary may continue, as he determines necessary, to identify and study other sites to determine their suitability for recommendation for site characterization, in accordance with the procedures described in this section."

Subsec. (e). Pub. L. 100–202 and Pub. L. 100–203, §5011(d), which contained identical amendments directing that subsec. (f) be struck out and all subsequent subsections be redesignated accordingly, was executed by striking out subsec. (e) as the probable intent of Congress because of the redesignation of former subsec. (f) as (e) by Pub. L. 100–202 and Pub. L. 100–203, §5011(c), and the absence of any subsections subsequent to former subsec. (f). Subsec. (e) read as follows: "Nothing in this section may be construed as prohibiting the Secretary from continuing ongoing or presently planned site characterization at any site on Department of Energy land for which the location of the principal borehole has been approved by the Secretary by August 1, 1982, except that (1) the environmental assessment described in subsection (b)(1) of this section shall be prepared and made available to the public before proceeding to sink shafts at any such site; and (2) the Secretary shall not continue site characterization at any such site unless such site is among the candidate sites recommended by the Secretary under the first sentence of subsection (b) of this section for site characterization and approved by the President under subsection (c) of this section; and (3) the Secretary shall conduct public hearings under section 10133(b)(2) of this title and comply with requirements under section 10137 of this title within one year of January 7, 1983."

Pub. L. 100–202 and Pub. L. 100–203, §5011(c), amended section identically, redesignating subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 100–202 and Pub. L. 100–203, §5011(c), amended section identically, redesignating subsec. (f) as (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"United States Geological Survey" substituted for "Geological Survey" in subsec. (a) pursuant to provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

EXECUTIVE DOCUMENTS

DELEGATION OF NOTIFICATION FUNCTION

Letter of the President of the United States, dated May 28, 1986, 51 F.R. 19531, provided:

Letter to the Honorable John S. Herrington, Secretary of Energy

Dear Mr. Secretary:

You are hereby authorized to perform the notification function vested in the President pursuant to Section 112(c)(1) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. §10132(c)(1).

This document shall be published in the Federal Register.

Sincerely,

RONALD REAGAN.

[1] *So in original. There is no cl. (ii).*

[2] *So in original. Probably should be "subparagraph (D)."*

§10133. Site characterization

(a) In general

The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) and section 10132(b)(2) of this title and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1).[1]

(b) Commission and States

(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment—

(A) a general plan for site characterization activities to be conducted at such candidate site, which plan shall include—

(i) a description of such candidate site;

(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive or nonradioactive material, plans for any investigation activities that may affect the capability of such candidate site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for a construction authorization for a repository;

(iv) criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 10132(a) of this title; and

(v) any other information required by the Commission;

(B) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be emplaced in such repository, a description, to the extent practicable, of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the activities being conducted by the Secretary with respect to such possible waste form or packaging or such relationship; and

(C) a conceptual repository design that takes into account likely site-specific requirements.

(2) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall (A) make available to the public the site characterization plan described in paragraph (1); and (B) hold public hearings in the vicinity of such candidate site to inform the residents of the area in which such candidate site is located of such plan, and to receive their comments.

(3) During the conduct of site characterization activities at the Yucca Mountain site, the Secretary

shall report not less than once every 6 months to the Commission and to the Governor and legislature of the State of Nevada, on the nature and extent of such activities and the information developed from such activities.

(c) Restrictions

(1) The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) In conducting site characterization activities—

(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

(B) if any radioactive material is used at a site—

(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

(ii) such radioactive material shall be fully retrievable.

(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

(A) terminate all site characterization activities at such site;

(B) notify the Congress, the [2] Governor and legislature of Nevada of such termination and the reasons for such termination;

(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

(E) suspend all future benefits payments under part F with respect to such site; and

(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

(d) Preliminary activities

Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) shall be considered a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to [3] require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97–425, title I, §113, Jan. 7, 1983, 96 Stat. 2211; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5011(e)–(g), Dec. 22, 1987, 101 Stat. 1330–228.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsection (b)(1), referred to in subsec. (a), probably means subsec. (b)(1) of section 10132 of this title, which relates to nomination of repository sites for radioactive waste and submission of environmental assessments for those sites.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–202 and Pub. L. 100–203, §5011(e)(2), which contained identical amendments directing that "at the Yucca Mountain site" be substituted for "beginning" and all that follows through "geological media", were executed by substituting "at the Yucca Mountain site" for "beginning with the candidate sites that have been approved under section 10132 of this title and are located in various geologic media" as the probable intent of Congress.

Pub. L. 100–202 and Pub. L. 100–203, §5011(e)(1), amended subsec. (a) identically, substituting "State of Nevada" for "State involved or the governing body of the affected Indian tribe involved".

Subsec. (b)(1). Pub. L. 100–202 and Pub. L. 100–203, §5011(f)(1), amended par. (1) identically, substituting "the Yucca Mountain site" for "any candidate site" and "the Governor or legislature of the State of Nevada" for "either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe on whose reservation such candidate site is located, as the case may be".

Subsec. (b)(2). Pub. L. 100–202 and Pub. L. 100–203, §5011(f)(2), amended par. (2) identically, substituting "the Yucca Mountain site" for "any candidate site".

Subsec. (b)(3). Pub. L. 100–202 and Pub. L. 100–203, §5011(f)(3), amended par. (3) identically, substituting "the Yucca Mountain site" for "a candidate site", striking "either" before "the Governor", and substituting "the State of Nevada" for "the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be".

Subsec. (c)(1). Pub. L. 100–202 and Pub. L. 100–203, §5011(g)(1), amended par. (1) identically, substituting "the Yucca Mountain site" for "any candidate site", "suitability of such site" for "suitability of such candidate site", and "repository at such site" for "repository at such candidate site".

Subsec. (c)(2). Pub. L. 100–202 and Pub. L. 100–203, §5011(g)(2), amended par. (2) identically, striking out "candidate" before "site" in two places in subpar. (A) and in two places in subpar. (B).

Subsec. (c)(3), (4). Pub. L. 100–202 and Pub. L. 100–203, §5011(g)(3), amended subsec. (c) identically, adding par. (3) and striking out former pars. (3) and (4) which read as follows:

"(3) If site characterization activities are terminated at a candidate site for any reason, the Secretary shall (A) notify the Congress, the Governors and legislatures of all States in which candidate sites are located, and the governing bodies of all affected Indian tribes where candidate sites are located, of such termination and the reasons for such termination; and (B) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such candidate site as promptly as practicable.

"(4) If a site is determined to be unsuitable for application for a construction authorization for a repository, the Secretary shall take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities."

[1] See References in Text note below.

[2] So in original. Probably should read "Congress and the".

[3] So in original. The word "to" probably should not appear.

§10134. Site approval and construction authorization

(a) Hearings and Presidential recommendation

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 10133 of this title, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 10133 of this title and this section, including the information described in

subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

(C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;

(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 10136(c)(2)(B) of this title by the State of Nevada.

(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to [1] require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) Submission of application

If the President recommends to the Congress the Yucca Mountain site under subsection (a) and the site designation is permitted to take effect under section 10135 of this title, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) Status report on application

Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b), and annually thereafter until the date on which such authorization is

granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application; and

(3) any Commission actions regarding the granting or denial of such authorization.

(d) Commission action

The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2). The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to part C of this subchapter, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(e) Project decision schedule

(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this part. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) Environmental impact statement

(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this chapter shall be

deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this part.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this part shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(5) Nothing in this chapter shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

(6) In any such statement prepared with respect to the repository to be constructed under this part, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(Pub. L. 97–425, title I, §114, Jan. 7, 1983, 96 Stat. 2213; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5011(h)–(l), Dec. 22, 1987, 101 Stat. 1330–229, 1330–230.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1)(D) and (f), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (f)(4), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (f)(5), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233. Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§5841 et seq.) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–202 and Pub. L. 100–203, §5011(h)(1)(A)–(E), amended par. (1) identically, in introductory provisions substituting "vicinity of the Yucca Mountain site" for "vicinity of each site under consideration for recommendation to the President under this paragraph as a site for the development of a repository", striking out "in which such site is located" after "residents of the area", substituting "activities at the Yucca Mountain site" for "activities at not less than 3 candidate sites for the first proposed repository, or from all of the characterized sites for the development of subsequent respositories" [sic] and "of Nevada" for "in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be", and struck out before last sentence "In making site recommendations and approvals subsequent to the first site recommendation, the Secretary and the President, respectively, shall also consider the need for regional distribution of repositories and the need to minimize, to the extent practicable, the impacts and cost of transporting spent fuel and solidified high-level radioactive waste."

Subsec. (a)(1)(D). Pub. L. 100–202 and Pub. L. 100–203, §5011(h)(1)(F), generally amended subpar. (D)

identically. Prior to amendment, subpar. (D) read as follows: "a final environmental impact statement prepared pursuant to subsection (f) of this section and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including an analysis of the consideration given by the Secretary to not less than 3 candidate sites for the first proposed respository [sic] or to all of the characterized sites for the development of subsequent repositories, with respect to which site characterization is completed under section 10133 of this title, together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that any such environmental impact statement concerning the first repository to be developed under this chapter shall not be required to consider the need for a repository or the alternatives to geologic disposal;".

Subsec. (a)(1)(H). Pub. L. 100–202 and Pub. L. 100–203, §5011(h)(1)(G), amended subpar. (H) identically, substituting "the State of Nevada" for "the State in which such site is located, or under section 10138(b)(3)(B) of this title by the affected Indian tribe where such site is located, as the case may be".

Subsec. (a)(2). Pub. L. 100–202 and Pub. L. 100–203, §5011(h)(2), amended subsec. (a) identically, adding par. (2) and striking out former par. (2) which required submission of recommendation of one site for repository not later than Mar. 31, 1987, and recommendation of second site not later than Mar. 31, 1990, and permitted subsequent recommendations for other sites and extension of deadlines.

Subsec. (a)(3), (4). Pub. L. 100–202 and Pub. L. 100–203, §5011(h)(2), (3), amended subsec. (a) identically, redesignating par. (4) as (3), in subpar. (A), substituting "the Yucca Mountain site" for "any site under this subsection" and "statement" for "report", and striking out former par. (3) which read as follows: "If approval of any such site recommendation does not take effect as a result of a disapproval by the Governor or legislature of a State under section 10136 of this title or the governing body of an affected Indian tribe under section 10138 of this title, the President shall submit to the Congress, not later than 1 year after the disapproval of such recommendation, a recommendation of another site for the first or subsequent repository."

Subsec. (b). Pub. L. 100–202 and Pub. L. 100–203, §5011(i), amended subsec. (b) identically, substituting "the Yucca Mountain site" for "a site for a repository" and "State of Nevada" for "State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be,".

Subsec. (d). Pub. L. 100–202 and Pub. L. 100–203, §5011(j), amended subsec. (d) identically, substituting "than the expiration" for "than— (1) January 1, 1989, for the first such application, and January 1, 1992 for the second such application; or (2) the expiration" and "subsection (e)(2)" for "subsection (e)(2); whichever occurs later".

Subsec. (e)(1). Pub. L. 100–202 and Pub. L. 100–203, §5011(k), amended par. (1) identically, substituting "operation of the repository" for "operation of the repository involved".

Subsec. (f). Pub. L. 100–202 and Pub. L. 100–203, §5011(l), generally amended subsec. (f) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of single unnumbered par.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (c) of this section is listed as the 17th item on page 186), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

VIABILITY ASSESSMENT OF YUCCA MOUNTAIN SITE

Pub. L. 104–206, title III, Sept. 30, 1996, 110 Stat. 2995, provided in part: "That no later than September 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include:

"(1) the preliminary design concept for the critical elements for the repository and waste package;

"(2) a total system performance assessment, based upon the design concept and the scientific data and analysis available by September 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geological setting relative to the overall system performance standards;

"(3) a plan and cost estimate for the remaining work required to complete a license application; and

"(4) an estimate of the costs to construct and operate the repository in accordance with the design concept."

[1] *So in original. The word "to" probably should not appear.*

§10135. Review of repository site selection

(a) "Resolution of repository siting approval" defined

For purposes of this section, the term "resolution of repository siting approval" means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the site at ..... for a repository, with respect to which a notice of disapproval was submitted by ..... on .....". The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

(b) State or Indian tribe petitions

The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 10134 of this title, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 10136 or 10138 of this title. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c).

(c) Congressional review of petitions

If any notice of disapproval of a repository site designation has been submitted to the Congress under section 10136 or 10138 of this title after a recommendation for approval of such site is made by the President under section 10134 of this title, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

(d) Procedures applicable to Senate

(1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 10136 or 10138 of this title, a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

(B) Upon introduction, a resolution of repository siting approval shall be referred to the appropriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

(3) If any committee to which is referred a resolution of siting approval introduced under

paragraph (2)(A), or, in the absence of such a resolution, any other resolution of siting approval introduced with respect to the site involved, has not reported such resolution at the end of 60 days of continuous session of Congress after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(4)(A) When each committee to which a resolution of siting approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in paragraph (3), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(B) Debate on a resolution of siting approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than 10 hours, which shall be divided equally between Members favoring and Members opposing such resolution. A motion further to limit debate shall be in order and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of siting approval shall be decided without debate.

(5) If the Senate receives from the House a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the House with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the Senate with respect to such site—

(i) the procedure with respect to that or other resolutions of the Senate with respect to such site shall be the same as if no resolution from the House with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the Senate with respect to such site, a resolution from the House with respect to such site where the text is identical shall be automatically substituted for the resolution of the Senate.

(e) Procedures applicable to House of Representatives

(1) The provisions of this section [1] are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Resolutions of repository siting approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such

resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(5) If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the Senate with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the House with respect to such site—

(i) the procedure with respect to that or other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the House with respect to such site, a resolution from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

(f) Computation of days

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) and the 60-day period referred to in subsections (d) and (e).

(g) Information provided to Congress

In considering any notice of disapproval submitted to the Congress under section 10136 or 10138 of this title, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

(Pub. L. 97–425, title I, §115, Jan. 7, 1983, 96 Stat. 2217.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

YUCCA MOUNTAIN, NEVADA REPOSITORY SITE

Pub. L. 107–200, July 23, 2002, 116 Stat. 735, provided: "That there hereby is approved the site at Yucca Mountain, Nevada, for a repository, with respect to which a notice of disapproval was submitted by the Governor of the State of Nevada on April 8, 2002."

[1] *So in original. Probably should be "subsection".*

§10136. Participation of States

(a) Notification of States and affected tribes

The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after January 7, 1983. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in

any State of the potentially acceptable sites within such State. For the purposes of this subchapter, the term "potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

(b) State participation in repository siting decisions

(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

(3) The authority of the Governor or legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

(c) Financial assistance

(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

(i) to review activities taken under this part with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization

activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 10133(b) of this title.

(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

(ii) the procedures to be followed in providing such assistance.

(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

(ii) the date on which the Yucca Mountain site is disapproved under section 10135 of this title; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

(iii) such funds as may be provided under an agreement entered into under subchapter IV.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987.

(d) Additional notification and consultation

Whenever the Secretary is required under any provision of this chapter to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

(Pub. L. 97–425, title I, §116, Jan. 7, 1983, 96 Stat. 2220; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5032(a), Dec. 22, 1987,

101 Stat. 1330–241.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–202 and Pub. L. 100–203 generally amended subsec. (c) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of pars. (1) to (5).

§10137. Consultation with States and affected Indian tribes

(a) Provision of information

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this part, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation

In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 10132(c) of this title, and in subsequently developing and loading [1] any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this part, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

(c) Written agreement

Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 10132(c) of this title, or (2) the written request of the State or Indian tribe in any affected State notified under section 10136(a) of this title to the Secretary, whichever,[2] first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures—

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 10136(c) of this title or section 10138(b) of this title, as the case may be;

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative

The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this subchapter an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.

(Pub. L. 97–425, title I, §117, Jan. 7, 1983, 96 Stat. 2222; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5011(m), Dec. 22, 1987, 101 Stat. 1330–231; Pub. L. 104–66, title I, §1051(i), Dec. 21, 1995, 109 Stat. 716.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–66 struck out after third sentence "If such written agreement is not completed within such period, the Secretary shall report to the Congress in writing within 30 days on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress."

1987—Subsec. (d). Pub. L. 100–202 and Pub. L. 100–203 amended section identically, adding subsec. (d).

[1] *So in original. Probably should be "locating".*

[2] *So in original. The comma probably should not appear.*

§10138. Participation of Indian tribes

(a) Participation of Indian tribes in repository siting decisions

Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

(b) Financial assistance

(1) The Secretary shall make grants to each affected tribe notified under section 10136(a) of this title for the purpose of participating in activities required by section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 10132(c) of this title. Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe—

(i) to review activities taken under this part with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(B) The amount of funds provided to any affected Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

(3)(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian

tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 10132(c) of this title an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(5) [1] An affected Indian tribe may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the candidate site involved on the reservation of such Indian tribe;

(ii) the date on which such site is disapproved under section 10135 of this title;

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site; [2]

(iv) December 22, 1987;

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 10132(c) of this title and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) An affected Indian tribe may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository at a site on the reservation of an affected Indian tribe, no Federal funds shall be made available under paragraph (1) or (2) to such Indian tribe, except for—

(i) such funds as may be necessary to support activities of such Indian tribe related to any other repository where a license to receive and possess has not been in effect for more than 1 year; and

(ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such Indian tribe with the Secretary during such 2-year period.

(6) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 10222 of this title.

(Pub. L. 97–425, title I, §118, Jan. 7, 1983, 96 Stat. 2225; Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5033, Dec. 22, 1987, 101 Stat. 1330–243.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (b)(5)(iv). Pub. L. 100–202 and Pub. L. 100–203 amended par. (5) identically, adding cl. (iv).

[1] So in original. Probably should be designated "(5)(A)".

[2] So in original. Probably should be followed by "or".

§10139. Judicial review of agency actions

(a) Jurisdiction of United States courts of appeals

(1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

(A) for review of any final decision or action of the Secretary, the President, or the Commission under this part;

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this part;

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this part;

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this part, or as required under section 10155(c)(1) of this title, or alleging a failure to prepare such statement with respect to any such action;

(E) for review of any environmental assessment prepared under section 10132(b)(1) or 10155(c)(2) of this title; or

(F) for review of any research and development activity under subchapter II.

(2) The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia.

(c) [1] Deadline for commencing action

A civil action for judicial review described under subsection (a)(1) may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

(Pub. L. 97–425, title I, §119, Jan. 7, 1983, 96 Stat. 2227.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1)(D), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

[1] *So in original. No subsec. (b) has been enacted.*

§10140. Expedited authorizations

(a) Issuance of authorizations

(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this part requires a certificate, right-of-way, permit, lease, or other authorization from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency

or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The provisions of paragraph (1) shall not apply to any certificate, right-of-way, permit, lease, or other authorization issued or granted by, or requested from, the Commission.

(b) Terms of authorizations

Any authorization issued or granted pursuant to subsection (a) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

(Pub. L. 97–425, title I, §120, Jan. 7, 1983, 96 Stat. 2227.)

§10141. Certain standards and criteria

(a) Environmental Protection Agency standards

Not later than 1 year after January 7, 1983, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

(b) Commission requirements and criteria

(1)(A) Not later than January 1, 1984, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will apply, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), in approving or disapproving—

(i) applications for authorization to construct repositories;

(ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and

(iii) applications for authorization for closure and decommissioning of such repositories.

(B) Such criteria shall provide for the use of a system of multiple barriers in the design of the repository and shall include such restrictions on the retrievability of the solidified high-level radioactive waste and spent fuel emplaced in the repository as the Commission deems appropriate.

(C) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a).

(2) For purposes of this chapter, nothing in this section shall be construed to prohibit the Commission from promulgating requirements and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a). If the Administrator promulgates standards under subsection (a) after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(C).

(c) Environmental impact statement

The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97–425, title I, §121, Jan. 7, 1983, 96 Stat. 2228.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(1)(A), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of

this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (b)(1)(A), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, which is classified principally to chapter 73 (§5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

NUCLEAR WASTE STORAGE AND DISPOSAL AT YUCCA MOUNTAIN SITE

Pub. L. 102–486, title VIII, §801, Oct. 24, 1992, 106 Stat. 2921, provided that:

"(a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—

"(1) PROMULGATION.—Notwithstanding the provisions of section 121(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(a)), section 161 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(b)), and any other authority of the Administrator of the Environmental Protection Agency to set generally applicable standards for the Yucca Mountain site, the Administrator shall, based upon and consistent with the findings and recommendations of the National Academy of Sciences, promulgate, by rule, public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. Such standards shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository. The standards shall be promulgated not later than 1 year after the Administrator receives the findings and recommendations of the National Academy of Sciences under paragraph (2) and shall be the only such standards applicable to the Yucca Mountain site.

"(2) STUDY BY NATIONAL ACADEMY OF SCIENCES.—Within 90 days after the date of the enactment of this Act [Oct. 24, 1992], the Administrator shall contract with the National Academy of Sciences to conduct a study to provide, by not later than December 31, 1993, findings and recommendations on reasonable standards for protection of the public health and safety, including—

"(A) whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

"(B) whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

"(C) whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.

"(3) APPLICABILITY.—The provisions of this section shall apply to the Yucca Mountain site, rather than any other authority of the Administrator to set generally applicable standards for radiation protection.

"(b) NUCLEAR REGULATORY COMMISSION REQUIREMENTS AND CRITERIA.—

"(1) MODIFICATIONS.—Not later than 1 year after the Administrator promulgates standards under subsection (a), the Nuclear Regulatory Commission shall, by rule, modify its technical requirements and criteria under section 121(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(b)), as necessary, to be consistent with the Administrator's standards promulgated under subsection (a).

"(2) REQUIRED ASSUMPTIONS.—The Commission's requirements and criteria shall assume, to the extent consistent with the findings and recommendations of the National Academy of Sciences, that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure oversight of the Yucca Mountain site, in accordance with subsection (c), shall be sufficient to—

"(A) prevent any activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers; and

"(B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits.

"(c) POST-CLOSURE OVERSIGHT.—Following repository closure, the Secretary of Energy shall continue to oversee the Yucca Mountain site to prevent any activity at the site that poses an unreasonable risk of—

"(1) breaching the repository's engineered or geologic barriers; or

"(2) increasing the exposure of individual members of the public to radiation beyond allowable limits."

§10142. Disposal of spent nuclear fuel

Notwithstanding any other provision of this part, any repository constructed on a site approved under this part shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 10134 of this title.

(Pub. L. 97–425, title I, §122, Jan. 7, 1983, 96 Stat. 2228.)

§10143. Title to material

Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this part shall constitute a transfer to the Secretary of title to such waste or spent fuel.

(Pub. L. 97–425, title I, §123, Jan. 7, 1983, 96 Stat. 2229.)

§10144. Consideration of effect of acquisition of water rights

The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

(Pub. L. 97–425, title I, §124, Jan. 7, 1983, 96 Stat. 2229.)

§10145. Termination of certain provisions

Sections 10139 and 10140 of this title shall cease to have effect at such time as a repository developed under this part is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.

(Pub. L. 97–425, title I, §125, Jan. 7, 1983, 96 Stat. 2229.)

PART B—INTERIM STORAGE PROGRAM

§10151. Findings and purposes

(a) The Congress finds that—

(1) the persons owning and operating civilian nuclear power reactors have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors, by maximizing, to the extent practical, the effective use of existing storage facilities at the site of each civilian nuclear power reactor, and by adding new onsite storage capacity in a timely manner where practical;

(2) the Federal Government has the responsibility to encourage and expedite the effective use of existing storage facilities and the addition of needed new storage capacity at the site of each civilian nuclear power reactor; and

(3) the Federal Government has the responsibility to provide, in accordance with the provisions of this part, not more than 1,900 metric tons of capacity for interim storage of spent nuclear fuel for civilian nuclear power reactors that cannot reasonably provide adequate storage capacity at the sites of such reactors when needed to assure the continued, orderly operation of such reactors.

(b) The purposes of this part are—

(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

(2) to provide, in accordance with the provisions of this part, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

(Pub. L. 97–425, title I, §131, Jan. 7, 1983, 96 Stat. 2229.)

§10152. Available capacity for interim storage of spent nuclear fuel

The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with—

(1) the protection of the public health and safety, and the environment;

(2) economic considerations;

(3) continued operation of such reactor;

(4) any applicable provisions of law; and

(5) the views of the population surrounding such reactor.

(Pub. L. 97–425, title I, §132, Jan. 7, 1983, 96 Stat. 2230.)

§10153. Interim at-reactor storage

The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 10198(a) [1] of this title for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

(Pub. L. 97–425, title I, §133, Jan. 7, 1983, 96 Stat. 2230.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 10198(a) of this title, referred to in text, was in the original a reference to section 219(a) of Pub. L. 97–425, which is classified to section 10199(a) of this title, and has been translated as section 10198(a) of this title as the probable intent of Congress in view of the subject matter of section 10198(a) which relates to development of technologies for storage of spent nuclear fuel, and the subject matter of section 10199(a) which relates to payments to States and Indian tribes.

[1] *See References in Text note below.*

§10154. Licensing of facility expansions and transshipments

(a) Oral argument

In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

(b) Adjudicatory hearing

(1) At the conclusion of any oral argument under subsection (a), the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

(2) In making a determination under this subsection, the Commission—

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider—

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I) such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

(c) Judicial review

No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure

pursuant to this section unless—

(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

(Pub. L. 97–425, title I, §134, Jan. 7, 1983, 96 Stat. 2230.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§10155. Storage of spent nuclear fuel

(a) Storage capacity

(1) Subject to section 10107 of this title, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not—

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

(ii) except as provided in subsection (c) require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such [1] facility is already being used, or has previously been used, for such storage or for any similar purpose.[2]

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on January 7, 1983;

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under

section 10156(a) of this title, and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term "facility" means any building or structure.

(b) Contracts

(1) Subject to the capacity limitation established in subsections (a)(1) and (d), the Secretary shall offer to enter into, and may enter into, contracts under section 10156(a) of this title with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including—

(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

(ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;

(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

(c) Environmental review

(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) that requires the modification or expansion of any facility at the site, and a discussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an estimate of the amount of storage capacity to be made available at such site;

(ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;

(iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;

(iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;

(v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;

(vi) a description of any other sites and facilities that have been considered by the Secretary for

the provision of such storage capacity; and

(vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5. Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 10139 of this title.

(d) Review of sites and State participation

(1) In carrying out the provisions of this part with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by this section to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, development, modification, expansion, operation, or closure of storage capacity at a site or facility within such State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.

(4) For the purpose of this subsection, "process of consultation and cooperation" means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 10135 of this title and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at _____, with respect to which a notice of disapproval was submitted by _____ on _____.". The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 10135 of this title to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

(7) As used in this section, the term "affected Tribal Council" means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

(e) Limitations

Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this chapter is available for disposal of such spent nuclear fuel.

(f) Report

The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after January 7, 1983.

(g) Criteria for determining adequacy of available storage capacity

Not later than 90 days after January 7, 1983, the Commission pursuant to section 553 of the Administrative Procedures Act [5 U.S.C. 553], shall propose, by rule, procedures and criteria for making the determination required by subsection (b) that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

(h) Application

Notwithstanding any other provision of law, nothing in this chapter shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on January 7, 1983.

(i) Coordination with research and development program

To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 10198 [3] of this title from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e).

(Pub. L. 97–425, title I, §135, Jan. 7, 1983, 96 Stat. 2232.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a)(1)(A)(i), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (a)(1)(A)(i), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, which is classified principally to chapter 73 (§5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

Section 10198 of this title, referred to in subsec. (i), was in the original a reference to section 217 of Pub. L. 97–425, which is classified to section 10197 of this title, and has been translated as section 10198 of this title as the probable intent of Congress in view of section 10198(c)(2) which directs the Secretary to provide spent nuclear fuel for the research and development program authorized by section 10198(c) of this title from spent nuclear fuel received by the Secretary for storage under section 10155 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (d)(5) and (f) of this section are listed as the 12th and 13th items on page 83), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

[1] *So in original. Probably should be preceded by "if".*

[2] *So in original. The period probably should be a semicolon.*

[3] *See References in Text note below.*

§10156. Interim Storage Fund

(a) Contracts

(1) During the period following January 7, 1983, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this part: *Provided, however*, That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 10155(a) of this title. Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

(2) The Secretary shall undertake a study and, not later than 180 days after January 7, 1983, submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

(3) Fees for storage under this part shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this part with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this part.

(4) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

(5) Except as provided in section 10157 of this title, nothing in this chapter or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

(b) Limitation

No spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be stored by the Secretary in any storage capacity provided under this part unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent nuclear fuel were generated by any other person.

(c) Establishment of Interim Storage Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Storage Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Storage Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the interim storage of civilian spent nuclear fuel, which shall automatically be transferred to the Storage Fund on such date.

(d) Use of Storage Fund

The Secretary may make expenditures from the Storage Fund, subject to subsection (e), for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this part, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this part;

(2) the administrative cost of the interim storage program;

(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 10155 of this title;

(4) the cost of transportation of spent nuclear fuel; and

(5) impact assistance as described in subsection (e).

(e) Impact assistance

(1) Beginning the first fiscal year which commences after January 7, 1983, the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdicational [1] boundaries of such government or governments and authorized under this part: *Provided, however*, That such impact assistance payments shall not exceed (A) ten per centum of the costs incurred in paragraphs (1) and (2), or (B) $15 per kilogram of spent fuel, whichever is less;

(2) Payments made available to States and units of local government pursuant to this section shall be—

(A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts; and

(B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii) provision of public services related to the providing of such interim storage authorized under this subchapter, and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines necessary to ensure that the purposes of this subsection shall be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Payments under this subsection shall be made available solely from the fees determined under subsection (a).

(5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement of establishment of storage capacity authorized under this part in an

effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.

(6) As used in this subsection, the term "unit of local government" means a county, parish, township, municipality, and shall include a borough existing in the State of Alaska on January 7, 1983, and any other unit of government below the State level which is a unit of general government as determined by the Secretary.

(f) Administration of Storage Fund

(1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this part, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act [2] are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Storage Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on

the cumulative amount of appropriations available to the Storage Fund, less the average undisbursed cash balance in the Storage Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub. L. 97–425, title I, §136, Jan. 7, 1983, 96 Stat. 2237.)

EDITORIAL NOTES

REFERENCES IN TEXT

Such Act, referred to in subsec. (f)(5), probably means chapter 31 of Title 31, Money and Finance.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 140 of House Document No. 103–7.

[1] So in original. Probably should be "jurisdictional".

[2] See References in Text note below.

§10157. Transportation

(a)(1) [1] Transportation of spent nuclear fuel under section 10156(a) of this title shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

(2) The Secretary, in providing for the transportation of spent nuclear fuel under this chapter, shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination of the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at reasonable cost.

(Pub. L. 97–425, title I, §137, Jan. 7, 1983, 96 Stat. 2241.)

[1] So in original. No subsec. (b) has been enacted.

PART C—MONITORED RETRIEVABLE STORAGE

§10161. Monitored retrievable storage

(a) Findings

The Congress finds that—

(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;

(2) the executive branch and the Congress should proceed as expeditiously as possible to

consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

(3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;

(4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and

(5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this chapter should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

(b) Submission of proposal by Secretary

(1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include—

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and

(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this chapter.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.

(c) Environmental impact statements

(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.],

an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b), specifically authorizes construction of a monitored retrievable storage facility, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(d) Licensing

Any facility authorized pursuant to this section shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(e) Clarification

Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of paragraph (b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

(f) Impact assistance

(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b), the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

(2) Payments made available to units of general local government under this subsection shall be—

(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 10222(c) of this title and shall be available only to the extent provided in advance in appropriation Acts.

(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

(g) Limitation

No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 10132 of this title. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

(h) Participation of States and Indian tribes

Any facility authorized pursuant to this section shall be subject to the provisions of sections

10135, 10136(a), 10136(b), 10136(d), 10137, and 10138 of this title. For purposes of carrying out the provisions of this subsection, any reference in sections 10135 through 10138 of this title to a repository shall be considered to refer to a monitored retrievable storage facility.

(Pub. L. 97–425, title I, §141, Jan. 7, 1983, 96 Stat. 2241.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§10162. Authorization of monitored retrievable storage

(a) Nullification of Oak Ridge siting proposal

The proposal of the Secretary (EC–1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 10164 and 10165 of this title, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

(b) Authorization

The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 10163 through 10169 of this title.

(Pub. L. 97–425, title I, §142, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–232.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10163. Monitored Retrievable Storage Commission

(a) [1] Establishment

(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(B) Members of the MRS Commission shall be appointed not later than 30 days after December 22, 1987, from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this chapter. In preparing the report under this subparagraph, the MRS Commission shall—

(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this chapter, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this chapter. Such comparison shall take into consideration the impact on—

(A) repository design and construction;

(B) waste package design, fabrication and standardization;

(C) waste preparation;

(D) waste transportation systems;

(E) the reliability of the national system for the disposal of radioactive waste;

(F) the ability of the Secretary to fulfill contractual commitments of the Department under this chapter to accept spent nuclear fuel for disposal; and

(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5.

(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS–18 of the General Schedule, for such staff as may be necessary to carry out its functions.

(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5 at rates and under such rules as the MRS Commission considers reasonable.

(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

(Pub. L. 97–425, title I, §143, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–232; amended Pub. L. 100–507, §2, Oct. 18, 1988, 102 Stat. 2541.)

EDITORIAL NOTES

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(4)(A)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100–507 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on June 1, 1989."

STATUTORY NOTES AND RELATED SUBSIDIARIES

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

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

[1] So in original. No subsec. (b) has been enacted.

§10164. Survey

After the MRS Commission submits its report to the Congress under section 10163 of this title, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter;

(2) minimize the impacts of transportation and handling of such fuel and waste;

(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

(4) impose minimal adverse effects on the local community and the local environment;

(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

(Pub. L. 97–425, title I, §144, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–234.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10165. Site selection

(a) In general

The Secretary may select the site evaluated under section 10164 of this title that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter.

(b) Limitation

The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 10134(a) of this title.

(c) Site specific activities

The Secretary may conduct such site specific activities at each site surveyed under section 10164 of this title as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) Environmental assessment

Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.]. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) Notification before selection

(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) Notification of selection

The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

(g) Limitation

No monitored retrievable storage facility authorized pursuant to section 10162(b) of this title may be constructed in the State of Nevada.

(Pub. L. 97–425, title I, §145, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–234.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10166. Notice of disapproval

(a) In general

The selection of a site under section 10165 of this title shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection,[1] unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 10165 of this title shall not be effective except as provided under section 10135(c) of this title.

(b) References

For purposes of carrying out the provisions of this subsection,[1] references in section 10135(c) of this title to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 10136(b) or 10138(a) of this title shall be considered to refer to a notice of disapproval under this section.

(Pub. L. 97–425, title I, §146, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–235.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

[1] So in original. Probably should be "section,".

§10167. Benefits agreement

Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 10165 of this title, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

(Pub. L. 97–425, title I, §147, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–235.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10168. Construction authorization

(a) Environmental impact statement

(1) Once the selection of a site is effective under section 10166 of this title, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 10161(b)(1) of this title in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored

retrievable storage facility authorized under section 10162(b) of this title.

(b) Application for construction license

Once the selection of a site for a monitored retrievable storage facility is effective under section 10166 of this title, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this chapter affecting such facility.

(c) Licensing

Any monitored retrievable storage facility authorized pursuant to section 10162(b) of this title shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(d) Licensing conditions

Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 10135(d) [1] of this title;

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

(Pub. L. 97–425, title I, §148, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–235.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

[1] So in original. Section 10135(d) of this title does not relate to Commission issuance of license.

§10169. Financial assistance

The provisions of section 10136(c) or 10138(b) of this title with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

(Pub. L. 97–425, title I, §149, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–236.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

PART D—LOW-LEVEL RADIOACTIVE WASTE

§10171. Financial arrangements for low-level radioactive waste site closure

(a) Financial arrangements

(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 2021 of this title, by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

(2) If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

(b) Title and custody

(1) The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a);

(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

(2) If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

(c) Special sites

If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by

the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

(Pub. L. 97–425, title I, §151, Jan. 7, 1983, 96 Stat. 2244.)

PART E—REDIRECTION OF NUCLEAR WASTE PROGRAM

§10172. Selection of Yucca Mountain site

(a) In general

(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after December 22, 1987.

(b) Eligibility to enter into benefits agreement

Effective on December 22, 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

(Pub. L. 97–425, title I, §160, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5011(a), Dec. 22, 1987, 101 Stat. 1330–227.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10172a. Siting a second repository

(a) Congressional action required

The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

(b) Report

The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

(c) Termination of granite research

Not later than 6 months after December 22, 1987, the Secretary shall phase out in an orderly manner funding for all research programs in existence on December 22, 1987, designed to evaluate the suitability of crystalline rock as a potential repository host medium.

(d) Additional siting criteria

In the event that the Secretary at any time after December 22, 1987, considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 10132 of this title) such potentially disqualifying factors as—

(1) seasonal increases in population;

(2) proximity to public drinking water supplies, including those of metropolitan areas; and

(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.

(Pub. L. 97–425, title I, §161, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101

Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5012, Dec. 22, 1987, 101 Stat. 1330–231.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

PART F—BENEFITS

§10173. Benefits agreements

(a) In general

(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

(4) Benefits and payments under this part may be made available only in accordance with a benefits agreement under this section.

(b) Amendment

A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 10173c of this title.

(c) Agreement with Nevada

The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

(d) Monitored retrievable storage

The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

(e) Limitation

Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

(f) Judicial review

Decisions of the Secretary under this section are not subject to judicial review.

(Pub. L. 97–425, title I, §170, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–237.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10173a. Content of agreements

(a) In general

(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under this subchapter, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 10173 of this title in accordance with the following schedule:

BENEFITS SCHEDULE
(amounts in $ millions)

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	5	10
(B) Upon first spent fuel receipt	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20

(2) For purposes of this section, the term—

(A) "MRS" means a monitored retrievable storage facility,

(B) "spent fuel" means high-level radioactive waste or spent nuclear fuel, and

(C) "first spent fuel receipt" does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this subchapter before January 1, 1989, shall be made on or after such date.

(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 10173 of this title covering such payments.

(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this chapter and applicable State law.

(b) Contents

A benefits agreement under section 10173 of this title shall provide that—

(1) a Review Panel be established in accordance with section 10173b of this title;

(2) the State or Indian tribe that is party to such agreement waive its rights under this subchapter

to disapprove the recommendation of a site for a repository;

(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 10136(c)(1)(B)(ii), 10136(c)(2), 10138(b)(2)(A)(ii), and 10138(b)(3) of this title.

(c) Payments by Secretary

The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 10173 of this title shall constitute a commitment by the United States to make payments in accordance with such agreement.

(Pub. L. 97–425, title I, §171, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–237.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10173b. Review Panel

(a) In general

The Review Panel required to be established by section 10173a(b)(1) of this title shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

(1) 2 members selected by the Governor of such State or governing body of such Indian tribe;

(2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;

(3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and

(4) 1 member to represent other public interests, to be selected by the Secretary.

(b) Terms

(1) The members of the Review Panel shall serve for terms of 4 years each.

(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

(c) Duties

The Review Panel shall—

(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

(3) recommend corrective actions to the Secretary;

(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

(d) Information

The Secretary shall promptly [1] make available promptly [1] any information in the Secretary's possession requested by the Panel or its Chairman.

(e) Chapter 10 of title 5

The requirements of chapter 10 of title 5 shall not apply to a Review Panel established under this subchapter.

(Pub. L. 97–425, title I, §172, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–239; amended Pub. L. 117–286, §4(a)(272), Dec. 27, 2022, 136 Stat. 4335.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

2022—Subsec. (e). Pub. L. 117–286 substituted "Chapter 10 of title 5" for "Federal Advisory Committee Act" in heading and "chapter 10 of title 5" for "the Federal Advisory Committee Act" in text.

[1] *So in original.*

§10173c. Termination

(a) In general

The Secretary may terminate a benefits agreement under this subchapter if—

(1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this chapter; or

(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

(b) Termination by State or Indian tribe

A State or Indian tribe may terminate a benefits agreement under this subchapter only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this chapter or the Secretary determines that the Commission cannot license the facility within a reasonable time.

(c) Decisions of Secretary

Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

(Pub. L. 97–425, title I, §173, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–240.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

PART G—OTHER BENEFITS

§10174. Consideration in siting facilities

The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

(Pub. L. 97–425, title I, §174, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–240.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10174a. Report

(a) In general

Within one year of December 22, 1987, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 10173a of this title, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

(b) Impacts to be considered

Potential impacts to be addressed in the report under this [1] subsection (a) shall include impacts on—

(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

(5) medical care, including emergency services and hospitals;

(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

(8) vocational training and employment services;

(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

(12) availability of energy;

(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility.

(Pub. L. 97–425, title I, §175, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–240.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

[1] *So in original. The word "this" probably should not appear.*

PART H—TRANSPORTATION

§10175. Transportation

(a) Packaging

No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under part A or under part C except in packages that have been certified for such purpose by the Commission.

(b) Advance notification

The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under part A or under part C.

(c) Training for public safety officials

The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under part A or under part C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.

(Pub. L. 97–425, title I, §180, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5061, Dec. 22, 1987, 101 Stat. 1330–251.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

§10191. Purpose

It is the purpose of this subchapter—

(1) to provide direction to the Secretary with respect to the disposal of high-level radioactive waste and spent nuclear fuel;

(2) to authorize the Secretary, pursuant to this subchapter—

(A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and

(B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and development program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and

(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.

(Pub. L. 97–425, title II, §211, Jan. 7, 1983, 96 Stat. 2245.)

§10192. Applicability

The provisions of this subchapter are subject to section 10107 of this title and shall not apply to facilities that are used for the disposal of high-level radioactive waste, low-level radioactive waste, transuranic waste, or spent nuclear fuel resulting from atomic energy defense activities.

(Pub. L. 97–425, title II, §212, Jan. 7, 1983, 96 Stat. 2245.)

§10193. Identification of sites

(a) Guidelines

Not later than 6 months after January 7, 1983, and notwithstanding the failure of other agencies to promulgate standards pursuant to applicable law, the Secretary, in consultation with the Commission, the Director of the United States Geological Survey, the Administrator, the Council on Environmental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to section 553 of title 5, general guidelines for the selection of a site for a test and evaluation facility. Under such guidelines the Secretary shall specify factors that qualify or disqualify a site for development as a test and evaluation facility, including factors pertaining to the location of valuable natural resources, hydrogeophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall require the Secretary to consider the various geologic media in which the site for a test and evaluation facility may be located and, to the extent practicable, to identify sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering and selecting sites under this subchapter.

(b) Site identification by Secretary

(1) Not later than 1 year after January 7, 1983, and following promulgation of guidelines under subsection (a), the Secretary is authorized to identify 3 or more sites, at least 2 of which shall be in different geologic media in the continental United States, and at least 1 of which shall be in media other than salt. Subject to Commission requirements, the Secretary shall give preference to sites for the test and evaluation facility in media possessing geochemical characteristics that retard aqueous

transport of radionuclides. In order to provide a greater possible protection of public health and safety as operating experience is gained at the test and evaluation facility, and with the exception of the primary areas under review by the Secretary on January 7, 1983, for the location of a test and evaluation facility or repository, all sites identified under this subsection shall be more than 15 statute miles from towns having a population of greater than 1,000 persons as determined by the most recent census unless such sites contain high-level radioactive waste prior to identification under this subchapter. Each identification of a site shall be supported by an environmental assessment, which shall include a detailed statement of the basis for such identification and of the probable impacts of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(A) an evaluation by the Secretary as to whether such site is suitable for siting research under the guidelines established under subsection (a);

(B) an evaluation by the Secretary of the effects of the siting research activities at such site on the public health and safety and the environment;

(C) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(D) a description of the decision process by which such site was recommended; and

(E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.

(Pub. L. 97–425, title II, §213, Jan. 7, 1983, 96 Stat. 2245; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"United States Geological Survey" substituted for "Geological Survey" in subsec. (a) pursuant to provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

§10194. Siting research and related activities

(a) In general

Not later than 30 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, the Secretary is authorized to complete sufficient evaluation of 3 sites to select a site for expanded siting research activities and for other activities under section 10198 of this title. The Secretary is authorized to conduct such preconstruction activities relative to such site selection for the test and evaluation facility as he deems appropriate. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be evaluated after such 30-month period, following the same procedures as if such sites were to be evaluated within such period.

(b) Public meetings and environmental assessment

Not later than 6 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, and before beginning siting research activities, the Secretary shall hold at least 1 public meeting in the vicinity of each site to inform the residents of the area of the

activities to be conducted at such site and to receive their views.

(c) Restrictions

Except as provided in section 10198 of this title with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a)—

(1) the Secretary shall use the minimum quantity of high-level radioactive waste or other radioactive materials, if any, necessary to achieve the test or research objectives;

(2) the Secretary shall ensure that any radioactive material used or placed on a site shall be fully retrievable; and

(3) upon termination of siting research activities at a site for any reason, the Secretary shall remove any radioactive material at or in the site as promptly as practicable.

(d) Title to material

The Secretary may take title, in the name of the Federal Government, to the high-level radioactive waste, spent nuclear fuel, or other radioactive material emplaced in a test and evaluation facility. If the Secretary takes title to any such material, the Secretary shall enter into the appropriate financial arrangements described in subsection (a) or (b) of section 10222 of this title for the disposal of such material.

(Pub. L. 97–425, title II, §214, Jan. 7, 1983, 96 Stat. 2247.)

§10195. Test and evaluation facility siting review and reports

(a) Consultation and cooperation

The Governor of a State, or the governing body of an affected Indian tribe, notified of a site identification under section 10193 of this title shall have the right to participate in a process of consultation and cooperation as soon as the site involved has been identified pursuant to such section and throughout the life of the test and evaluation facility. For purposes of this section, the term "process of consultation and cooperation" means a methodology—

(1) by which the Secretary—

(A) keeps the Governor or governing body involved fully and currently informed about any potential economic or public health and safety impacts in all stages of the siting, development, construction, and operation of a test and evaluation facility;

(B) solicits, receives, and evaluates concerns and objections of such Governor or governing body with regard to such test and evaluation facility on an ongoing basis; and

(C) works diligently and cooperatively to resolve such concerns and objections; and

(2) by which the State or affected Indian tribe involved can exercise reasonable independent monitoring and testing of onsite activities related to all stages of the siting, development, construction and operation of the test and evaluation facility, except that any such monitoring and testing shall not unreasonably interfere with onsite activities.

(b) Written agreements

The Secretary shall enter into written agreements with the Governor of the State in which an identified site is located or with the governing body of any affected Indian tribe where an identified site is located in order to expedite the consultation and cooperation process. Any such written agreement shall specify—

(1) procedures by which such Governor or governing body may study, determine, comment on, and make recommendations with regard to the possible health, safety, and economic impacts of the test and evaluation facility;

(2) procedures by which the Secretary shall consider and respond to comments and recommendations made by such Governor or governing body, including the period in which the Secretary shall so respond;

(3) the documents the Department is to submit to such Governor or governing body, the timing

for such submissions, the timing for such Governor or governing body to identify public health and safety concerns and the process to be followed to try to eliminate those concerns;

(4) procedures by which the Secretary and either such Governor or governing body may review or modify the agreement periodically; and

(5) procedures for public notification of the procedures specified under subparagraphs (A) through (D).

(c) Limitation

Except as specifically provided in this section, nothing in this subchapter is intended to grant any State or affected Indian tribe any authority with respect to the siting, development, or loading of the test and evaluation facility.

(Pub. L. 97–425, title II, §215, Jan. 7, 1983, 96 Stat. 2247.)

§10196. Federal agency actions

(a) Cooperation and coordination

Federal agencies shall assist the Secretary by cooperating and coordinating with the Secretary in the preparation of any necessary reports under this subchapter and the mission plan under section 10221 of this title.

(b) Environmental review

(1) No action of the Secretary or any other Federal agency required by this subchapter or section 10221 of this title with respect to a test and evaluation facility to be taken prior to the initiation of onsite construction of a test and evaluation facility shall require the preparation of an environmental impact statement under section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of environmental reports, except as otherwise specifically provided for in this subchapter.

(2) The Secretary and the heads of all other Federal agencies shall, to the maximum extent possible, avoid duplication of efforts in the preparation of reports under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Pub. L. 97–425, title II, §216, Jan. 7, 1983, 96 Stat. 2248.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(2), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§10197. Research and development on disposal of high-level radioactive waste

(a) Purpose

Not later than 64 months after January 7, 1983, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 10194 of this title, as part of and as an extension of siting research activities of such site under such section, the mining and construction of a test and evaluation facility. Prior to the mining and construction of such facility, the Secretary shall prepare an environmental assessment. The purpose of such facility shall be—

(1) to supplement and focus the repository site characterization process;

(2) to provide the conditions under which known technological components can be integrated to demonstrate a functioning repository-like system;

(3) to provide a means of identifying, evaluating, and resolving potential repository licensing issues that could not be resolved during the siting research program conducted under section

10192 [1] of this title;

(4) to validate, under actual conditions, the scientific models used in the design of a repository;

(5) to refine the design and engineering of repository components and systems and to confirm the predicted behavior of such components and systems;

(6) to supplement the siting data, the generic and specific geological characteristics developed under section 10194 of this title relating to isolating disposal materials in the physical environment of a repository;

(7) to evaluate the design concepts for packaging, handling, and emplacement of high-level radioactive waste and spent nuclear fuel at the design rate; and

(8) to establish operating capability without exposing workers to excessive radiation.

(b) Design

The Secretary shall design each test and evaluation facility—

(1) to be capable of receiving not more than 100 full-sized canisters of solidified high-level radioactive waste (which canisters shall not exceed an aggregate weight of 100 metric tons), except that spent nuclear fuel may be used instead of such waste if such waste cannot be obtained under reasonable conditions;

(2) to permit full retrieval of solidified high-level radioactive waste, or other radioactive material used by the Secretary for testing, upon completion of the technology demonstration activities; and

(3) based upon the principle that the high-level radioactive waste, spent nuclear fuel, or other radioactive material involved shall be isolated from the biosphere in such a way that the initial isolation is provided by engineered barriers functioning as a system with the geologic environment.

(c) Operation

(1) Not later than 88 months after January 7, 1983, the Secretary shall begin an in situ testing program at the test and evaluation facility in accordance with the mission plan developed under section 10221 of this title, for purposes of—

(A) conducting in situ tests of bore hole sealing, geologic media fracture sealing, and room closure to establish the techniques and performance for isolation of high-level radioactive waste, spent nuclear fuel, or other radioactive materials from the biosphere;

(B) conducting in situ tests with radioactive sources and materials to evaluate and improve reliable models for radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, if the Secretary finds there is reasonable assurance that such radioactive sources and materials will not threaten the use of such site as a repository;

(C) conducting in situ tests to evaluate and improve models for ground water or brine flow through fractured geologic media;

(D) conducting in situ tests under conditions representing the real time and the accelerated time behavior of the engineered barriers within the geologic environment involved;

(E) conducting in situ tests to evaluate the effects of heat and pressure on the geologic media involved, on the hydrology of the surrounding area, and on the integrity of the disposal packages;

(F) conducting in situ tests under both normal and abnormal repository conditions to establish safe design limits for disposal packages and to determine the effects of the gross release of radionuclides into surroundings, and the effects of various credible failure modes, including—

(i) seismic events leading to the coupling of aquifers through the test and evaluation facility;

(ii) thermal pulses significantly greater than the maximum calculated; and

(iii) human intrusion creating a direct pathway to the biosphere; and

(G) conducting such other research and development activities as the Secretary considers appropriate, including such activities necessary to obtain the use of high-level radioactive waste, spent nuclear fuel, or other radioactive materials (such as any highly radioactive material from the Three Mile Island nuclear powerplant or from the West Valley Demonstration Project) for test and evaluation purposes, if such other activities are reasonably necessary to support the repository

program and if there is reasonable assurance that the radioactive sources involved will not threaten the use of such site as a repository.

(2) The in situ testing authorized in this subsection shall be designed to ensure that the suitability of the site involved for licensing by the Commission as a repository will not be adversely affected.

(d) Use of existing Department facilities

During the conducting of siting research activities under section 10194 of this title and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Government on January 7, 1983, for the conducting of generically applicable tests regarding packaging, handling, and emplacement technology for solidified high-level radioactive waste and spent nuclear fuel from civilian nuclear activities.

(e) Engineered barriers

The system of engineered barriers and selected geology used in a test and evaluation facility shall have a design life at least as long as that which the Commission requires by regulations issued under this chapter, or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), for repositories.

(f) Role of Commission

(1)(A) Not later than 1 year after January 7, 1983, the Secretary and the Commission shall reach a written understanding establishing the procedures for review, consultation, and coordination in the planning, construction, and operation of the test and evaluation facility under this section. Such understanding shall establish a schedule, consistent with the deadlines set forth in this subchapter,[2] for submission by the Secretary of, and review by the Commission of and necessary action on—

(i) the mission plan prepared under section 10221 of this title; and

(ii) such reports and other information as the Commission may reasonably require to evaluate any health and safety impacts of the test and evaluation facility.

(B) Such understanding shall also establish the conditions under which the Commission may have access to the test and evaluation facility for the purpose of assessing any public health and safety concerns that it may have. No shafts may be excavated for the test and evaluation until the Secretary and the Commission enter into such understanding.

(2) Subject to section 10225 of this title, the test and evaluation facility, and the facilities authorized in this section, shall be constructed and operated as research, development, and demonstration facilities, and shall not be subject to licensing under section 5842 of this title.

(3)(A) The Commission shall carry out a continuing analysis of the activities undertaken under this section to evaluate the adequacy of the consideration of public health and safety issues.

(B) The Commission shall report to the President, the Secretary, and the Congress as the Commission considers appropriate with respect to the conduct of activities under this section.

(g) Environmental review

The Secretary shall prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) prior to conducting tests with radioactive materials at the test and evaluation facility. Such environmental impact statement shall incorporate, to the extent practicable, the environmental assessment prepared under subsection (a). Nothing in this subsection may be construed to limit siting research activities conducted under section 10194 of this title. This subsection shall apply only to activities performed exclusively for a test and evaluation facility.

(h) Limitations

(1) If the test and evaluation facility is not located at the site of a repository, the Secretary shall obtain the concurrence of the Commission with respect to the decontamination and decommissioning of such facility.

(2) If the test and evaluation facility is not located at a candidate site or repository site, the Secretary shall conduct only the portion of the in situ testing program required in subsection (c)

determined by the Secretary to be useful in carrying out the purposes of this chapter.

(3) The operation of the test and evaluation facility shall terminate not later than—

(A) 5 years after the date on which the initial repository begins operation; or

(B) at such time as the Secretary determines that the continued operation of a test and evaluation facility is not necessary for research, development, and demonstration purposes;

whichever occurs sooner.

(4) Notwithstanding any other provisions of this subsection, as soon as practicable following any determination by the Secretary, with the concurrence of the Commission, that the test and evaluation facility is unsuitable for continued operation, the Secretary shall take such actions as are necessary to remove from such site any radioactive material placed on such site as a result of testing and evaluation activities conducted under this section. Such requirement may be waived if the Secretary, with the concurrence of the Commission, finds that short-term testing and evaluation activities using radioactive material will not endanger the public health and safety.

(Pub. L. 97–425, title II, §217, Jan. 7, 1983, 96 Stat. 2249.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (e), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

This subchapter, referred to in subsec. (f)(1)(A), was in the original "this subtitle", and was translated as this subchapter to reflect the probable intent of Congress because title II of Pub. L. 97–425, which enacted this subchapter, does not contain subtitles.

[1] So in original. Probably should be "10194".

[2] See References in Text note below.

§10198. Research and development on spent nuclear fuel

(a) Demonstration and cooperative programs

The Secretary shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Not later than 1 year after January 7, 1983, the Secretary shall select at least 1, but not more than 3, sites evaluated under section 10194 of this title at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b), the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies: spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear fuel rod consolidation in existing power reactor water storage basins.

(b) Cooperative agreements

To carry out the programs described in subsection (a), the Secretary shall enter into a cooperative agreement with each utility involved that specifies, at a minimum, that—

(1) such utility shall select the alternate storage technique to be used, make the land and spent nuclear fuel available for the dry storage demonstration, submit and provide site-specific documentation for a license application to the Commission, obtain a license relating to the facility involved, construct such facility, operate such facility after licensing, pay the costs required to construct such facility, and pay all costs associated with the operation and maintenance of such facility;

(2) the Secretary shall provide, on a cost-sharing basis, consultative and technical assistance, including design support and generic licensing documentation, to assist such utility in obtaining the construction authorization and appropriate license from the Commission; and

(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance utility-provided, at-reactor storage capabilities, if authorized in any other provision of this chapter or in any other provision of law.

(c) Dry storage research and development

(1) The consultative and technical assistance referred to in subsection (b)(2) may include, but shall not be limited to, the establishment of a research and development program for the dry storage of not more than 300 metric tons of spent nuclear fuel at facilities owned by the Federal Government on January 7, 1983. The purpose of such program shall be to collect necessary data to assist the utilities involved in the licensing process.

(2) To the extent available, and consistent with the provisions of section 10155 of this title, the Secretary shall provide spent nuclear fuel for the research and development program authorized in this subsection from spent nuclear fuel received by the Secretary for storage under section 10155 of this title. Such spent nuclear fuel shall not be subject to the provisions of section 10155(e) of this title.

(d) Funding

The total contribution from the Secretary from Federal funds and the use of Federal facilities or services shall not exceed 25 percent of the total costs of the demonstration program authorized in subsection (a), as estimated by the Secretary. All remaining costs of such program shall be paid by the utilities involved or shall be provided by the Secretary from the Interim Storage Fund established in section 10156 of this title.

(e) Relation to spent nuclear fuel storage program

The spent nuclear fuel storage program authorized in section 10155 of this title shall not be construed to authorize the use of research development or demonstration facilities owned by the Department unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) has passed after the Secretary has transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written report containing a full and complete statement concerning (A) the facility involved; (B) any necessary modifications; (C) the cost thereof; and (D) the impact on the authorized research and development program; or

(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.

(Pub. L. 97–425, title II, §218, Jan. 7, 1983, 96 Stat. 2252; Pub. L. 103–437, §15(c)(10), Nov. 2, 1994, 108 Stat. 4592.)

EDITORIAL NOTES

AMENDMENTS

1994—Subsec. (e)(1). Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

§10199. Payments to States and Indian tribes

(a) Payments

Subject to subsection (b), the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to section 10195 of this title. The Secretary shall pay an amount equal to 100 percent of the expenses incurred by such State or Indian tribe in engaging in any monitoring, testing, evaluation, or other consultation and cooperation activity under section 10195 of this title with respect to any site. The amount paid by the Secretary under this paragraph shall not exceed $3,000,000 per year from the date on which the site involved was identified to the date on which the decontamination and decommission of the facility is complete pursuant to section 10197(h) of this title. Any such payment may only be made to a State in which a potential site for a test and evaluation facility has been identified under section 10193 of this title, or to an affected Indian tribe where the potential site has been identified under such section.

(b) Limitation

The Secretary shall make any payment to a State under subsection (a) only if such State agrees to provide, to each unit of general local government within the jurisdictional boundaries of which the potential site or effectively selected site involved is located, at least one-tenth of the payments made by the Secretary to such State under such subsection. A State or affected Indian tribe receiving any payment under subsection (a) shall otherwise have discretion to use such payment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with section 10195 of this title. Annual payments shall be prorated on a 365-day basis to the specified dates.

(Pub. L. 97–425, title II, §219, Jan. 7, 1983, 96 Stat. 2253.)

§10200. Study of research and development needs for monitored retrievable storage proposal

Not later than 6 months after January 7, 1983, the Secretary shall submit to the Congress a report describing the research and development activities the Secretary considers necessary to develop the proposal required in section 10161(b) of this title with respect to a monitored retrievable storage facility.

(Pub. L. 97–425, title II, §220, Jan. 7, 1983, 96 Stat. 2254.)

§10201. Judicial review

Judicial review of research and development activities under this subchapter shall be in accordance with the provisions of section 10139 of this title.

(Pub. L. 97–425, title II, §221, Jan. 7, 1983, 96 Stat. 2254.)

§10202. Research on alternatives for permanent disposal of high-level radioactive waste

The Secretary shall continue and accelerate a program of research, development, and investigation of alternative means and technologies for the permanent disposal of high-level radioactive waste from civilian nuclear activities and Federal research and development activities except that funding shall be made from amounts appropriated to the Secretary for purposes of carrying out this section. Such program shall include examination of various waste disposal options.

(Pub. L. 97–425, title II, §222, Jan. 7, 1983, 96 Stat. 2254.)

§10203. Technical assistance to non-nuclear weapon states in field of spent fuel storage and disposal

(a) Statement of policy

It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b) Publication of joint notice; update

(1) Within 90 days of January 7, 1983, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Notification to non-nuclear weapon states; expressions of interest

Following publication of the annual joint notice referred to in paragraph (2),[1] the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) Funding requests

With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

(e) "Non-nuclear weapon state" defined

For the purposes of this subsection,[2] the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C.[3] 438).

(f) Unauthorized actions

Nothing in this subsection [2] shall authorize the Department or the Commission to take any action not authorized under existing law.

(Pub. L. 97–425, title II, §223, Jan. 7, 1983, 96 Stat. 2254.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Treaty on the Non-Proliferation of Nuclear Weapons, referred to in subsec. (e), is set out in 21 UST 483; TIAS 6839.

[1] *So in original. Probably should be "paragraph (2) of subsection (b),".*

[2] *So in original. Probably should be "section".*

[3] *So in original. Probably should be "UST".*

§10204. Subseabed disposal

(a) Repealed. Pub. L. 104–66, title I, §1051(d), Dec. 21, 1995, 109 Stat. 716

(b) Office of Subseabed Disposal Research

(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Science of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Science, and compensated at a rate determined by applicable law.

(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Science, and the first such Director shall be appointed within 30 days of December 22, 1987.

(3) In carrying out his responsibilities under this chapter, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

(4)(A) Within 60 days of December 22, 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

(Pub. L. 97–425, title II, §224, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5063, Dec. 22, 1987, 101 Stat. 1330–253; amended Pub. L. 104–66, title I, §1051(d), Dec. 21, 1995, 109 Stat. 716; Pub. L. 105–245, title III, §309(b)(2)(E), Oct. 7, 1998, 112 Stat. 1853.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–245 which directed the substitution of "Science" for "Energy Research", was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 105–245 substituted "Office of Science" for "Office of Energy Research".

1995—Subsec. (a). Pub. L. 104–66 struck out subsec. (a) which required Secretary of Energy to report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste.

Subsec. (b)(5). Pub. L. 104–66 struck out par. (5) which read as follows: "The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office."

SUBCHAPTER III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

§10221. Mission plan

(a) Contents of mission plan

The Secretary shall prepare a comprehensive report, to be known as the mission plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this chapter. The mission plan shall include—

(1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with respect to the siting and construction of a test and evaluation facility and repositories;

(2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this chapter and any additional activities to be undertaken to provide such information, a schedule for the activities necessary to achieve important programmatic milestones, and an estimate of the costs required to carry out such research, development, and demonstration programs;

(3) an evaluation of financial, political, legal, or institutional problems that may impede the implementation of this chapter, the plans of the Secretary to resolve such problems, and recommendations for any necessary legislation to resolve such problems;

(4) any comments of the Secretary with respect to the purpose and program of the test and evaluation facility;

(5) a discussion of the significant results of research and development programs conducted and the implications for each of the different geologic media under consideration for the siting of repositories, and, on the basis of such information, a comparison of the advantages and disadvantages associated with the use of such media for repository sites;

(6) the guidelines issued under section 10132(a) of this title;

(7) a description of known sites at which site characterization activities should be undertaken, a description of such siting characterization activities, including the extent of planned excavations, plans for onsite testing with radioactive or nonradioactive material, plans for any investigations activities which may affect the capability of any such site to isolate high-level radioactive waste or spent nuclear fuel, plans to control any adverse, safety-related impacts from such site characterization activities, and plans for the decontamination and decommissioning of such site if it is determined unsuitable for licensing as a repository;

(8) an identification of the process for solidifying high-level radioactive waste or packaging spent nuclear fuel, including a summary and analysis of the data to support the selection of the solidification process and packaging techniques, an analysis of the requirements for the number of solidification packaging facilities needed, a description of the state of the art for the materials proposed to be used in packaging such waste or spent fuel and the availability of such materials including impacts on strategic supplies and any requirements for new or reactivated facilities to produce any such materials needed, and a description of a plan, and the schedule for implementing

such plan, for an aggressive research and development program to provide when needed a high-integrity disposal package at a reasonable price;

(9) an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur; (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal;

(10) an estimate, on an annual basis, of the costs required (A) to construct and operate the repositories anticipated to be needed under paragraph (9) based on each of the assumptions referred to in such paragraph; (B) to construct and operate a test and evaluation facility, or any other facilities, other than repositories described in subparagraph (A), determined to be necessary; and (C) to carry out any other activities under this chapter; and

(11) an identification of the possible adverse economic and other impacts to the State or Indian tribe involved that may arise from the development of a test and evaluation facility or repository at a site.

(b) Submission of mission plan

(1) Not later than 15 months after January 7, 1983, the Secretary shall submit a draft mission plan to the States, the affected Indian tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.

(2) In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan.

(3) The Secretary, after reviewing any other comments made by such agencies and revising the mission plan to the extent that the Secretary may consider to be appropriate, shall submit the mission plan to the appropriate committees of the Congress not later than 17 months after January 7, 1983. The mission plan shall be used by the Secretary at the end of the first period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) following receipt of the mission plan by the Congress.

(Pub. L. 97–425, title III, §301, Jan. 7, 1983, 96 Stat. 2255.)

§10222. Nuclear Waste Fund

(a) Contracts

(1) In the performance of his functions under this chapter, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d).

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after January 7, 1983, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days

after January 7, 1983, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 10143 of this title, to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c).[1] In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

(4) Not later than 180 days after January 7, 1983, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) herein. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d), the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 6421 of this title.

(5) Contracts entered into under this section shall provide that—

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter.[1]

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) Advance contracting requirement

(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 2133 or 2134 of this title unless—

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 2133 or 2134 of this title that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5) may be disposed of by the Secretary in any repository constructed under this chapter unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than—

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste;

whichever occurs later.

(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be disposed of by the Secretary in any repository constructed under this chapter unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) Establishment of Nuclear Waste Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Waste Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Waste Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

(d) Use of Waste Fund

The Secretary may make expenditures from the Waste Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under subchapters I and II, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored,[2] retrievable storage facility [3] or test and evaluation facility constructed under this chapter;

(2) the conducting of nongeneric research, development, and demonstration activities under this chapter;

(3) the administrative cost of the radioactive waste disposal program;

(4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored,[2] retrievable storage site [3] or to be used in a test and evaluation facility;

(5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored,[2] retrievable storage site [3] or a test and evaluation facility site and necessary or incident to such repository, monitored,[2] retrievable storage facility [3] or test and evaluation facility; and

(6) the provision of assistance to States, units of general local government, and Indian tribes under sections 10136, 10138, and 10199 of this title.

No amount may be expended by the Secretary under this subchapter [1] for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

(e) Administration of Waste Fund

(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Waste Fund shall consist of the estimates

made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subchapter,[1] the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act [1] are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub. L. 97–425, title III, §302, Jan. 7, 1983, 96 Stat. 2257.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsection (c), referred to in subsec. (a)(3), was in the original "subsection (c) 126(b)" and was translated as subsection (c) as the probable intent of Congress in view of the establishment of the Nuclear Waste Fund by subsec. (c) of this section and the absence of a section 126 in Pub. L. 97–425.

This subchapter, referred to in subsecs. (a)(5)(B), (d), and (e)(5), was in the original "this subtitle", and was translated as this subchapter to reflect the probable intent of Congress because title III of Pub. L. 97–425, which enacted this subchapter, does not contain subtitles.

Such Act, referred to in subsec. (e)(5), probably means chapter 31 of Title 31, Money and Finance.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 4th item on page 143 of House Document No. 103–7.

[1] See References in Text note below.

[2] So in original. The comma probably should not appear.

[3] So in original. Probably should be followed by a comma.

§10223. Alternative means of financing

The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after January 7, 1983.

(Pub. L. 97–425, title III, §303, Jan. 7, 1983, 96 Stat. 2261.)

§10224. Office of Civilian Radioactive Waste Management

(a) Establishment

There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5.

(b) Functions of Director

The Director of the Office shall be responsible for carrying out the functions of the Secretary under this chapter, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

(c) Annual report to Congress

The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

(d) Audit by GAO

If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the Government Accountability Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.

(Pub. L. 97–425, title III, §304, Jan. 7, 1983, 96 Stat. 2261; Pub. L. 104–66, title I, §1052(l), Dec. 21, 1995, 109 Stat. 719; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1995—Subsec. (d). Pub. L. 104–66 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section."

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to annual submittal of report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 13th item on page 91 of House Document No. 103–7.

§10225. Location of test and evaluation facility

(a) Report to Congress

Not later than 1 year after January 7, 1983, the Secretary shall transmit to the Congress a report setting forth whether the Secretary plans to locate the test and evaluation facility at the site of a repository.

(b) Procedures

(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in subchapter I with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such test and evaluation facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.

(2) No test and evaluation facility may be converted into a repository unless site selection and development of such facility was conducted in accordance with the procedures and requirements established in subchapter I with respect to the site selection and development of respositories.[1]

(3) The Secretary may not commence construction of a test and evaluation facility at a candidate site or site recommended as the location for a repository prior to the date on which the designation of such site is effective under section 10135 of this title.

(Pub. L. 97–425, title III, §305, Jan. 7, 1983, 96 Stat. 2262.)

[1] *So in original. Probably should be "repositories."*

§10226. Nuclear Regulatory Commission training authorization

The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for

civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs. Such regulations or other regulatory guidance shall be promulgated by the Commission within the 12-month period following January 7, 1983, and the Commission within the 12-month period following January 7, 1983, shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

(Pub. L. 97–425, title III, §306, Jan. 7, 1983, 96 Stat. 2262.)

SUBCHAPTER IV—NUCLEAR WASTE NEGOTIATOR

§10241. "State" defined

For purposes of this subchapter, the term "State" means each of the several States and the District of Columbia.

(Pub. L. 97–425, title IV, §401, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–243; amended Pub. L. 102–486, title VIII, §802(b), Oct. 24, 1992, 106 Stat. 2923.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1992—Pub. L. 102–486 substituted "several States and the District of Columbia." for "several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, and the Republic of the Marshall Islands."

§10242. Office of Nuclear Waste Negotiator

(a) Establishment

There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

(b) Nuclear Waste Negotiator

(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5.

(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

(Pub. L. 97–425, title IV, §402, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–243; amended Pub. L. 100–507, §1, Oct. 18, 1988, 102 Stat. 2541.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–507 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There is established within the Executive Office of the President the Office of the Nuclear Waste Negotiator."

§10243. Duties of Negotiator

(a) Negotiations with potential hosts

(1) The Negotiator shall—

(A) seek to enter into negotiations on behalf of the United States, with—

(i) the Governor of any State in which a potential site is located; and

(ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this subchapter to the Governor shall be considered to refer instead to such other person or entity.

(b) Consultation with affected States, subdivisions of States, and tribes

In addition to entering into negotiations under subsection (a), the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

(c) Consultation with other Federal agencies

The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

(d) Proposed agreement

(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) and an environmental assessment prepared under section 10244(a) of this title for the site concerned.

(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 10136(c), 10137, and 10138(b) of this title.

(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.

(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a

proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this subchapter only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.

(Pub. L. 97–425, title IV, §403, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–244.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (d)(4), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1982, referred to in subsec. (d)(4), probably means the Energy Reorganization Act of 1974, Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233. Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§5841 et seq.) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10244. Environmental assessment of sites

(a) In general

Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 10243(a) of this title.

(b) Contents

(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

(c) Judicial review

The issuance of an environmental assessment under subsection (a) shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title.

(d) Public hearings

(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) and the site characterization plan described in section 10133(b)(1) of this title.

(e) Public availability

Each environmental assessment prepared under subsection (a) shall be made available to the public.

(f) Evaluation of sites

(1) In preparing an environmental assessment under subsection (a), the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

(A) such preliminary boring or excavation activities were in progress on or before December 22, 1987; or

(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this chapter or any other law.

(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

(Pub. L. 97–425, title IV, §404, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–245.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10245. Site characterization; licensing

(a) Site characterization

Upon enactment of legislation to implement an agreement to site a repository negotiated under section 10243(a) of this title, the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 10133 of this title, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

(b) Licensing

(1) Upon the completion of site characterization activities carried out under subsection (a), the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.

(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

(Pub. L. 97–425, title IV, §405, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–246.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10246. Monitored retrievable storage

(a) Construction and operation

Upon enactment of legislation to implement an agreement negotiated under section 10243(a) of this title to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

(b) Financial assistance

The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

(Pub. L. 97–425, title IV, §406, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–246.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10247. Environmental impact statement

(a) In general

Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 10245(b) of this title shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) Preparation

A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

(c) Adoption

(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

(2)(A) In any such statement prepared with respect to a repository to be constructed under this subchapter at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(B) In any such statement prepared with respect to a repository to be constructed under this subchapter at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.

(Pub. L. 97–425, title IV, §407, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–246.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a) and (b), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10248. Administrative powers of Negotiator

In carrying out his functions under this subchapter, the Negotiator may—

(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

(2) obtain services as authorized by section 3109 of title 5, at rates not to exceed the rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5;

(3) promulgate such rules and regulations as may be necessary to carry out such functions;

(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

(5) for purposes of performing administrative functions under this subchapter, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(7) adopt an official seal, which shall be judicially noticed;

(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

(10) appoint advisory committees under chapter 10 of title 5.

(Pub. L. 97–425, title IV, §408, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–247; amended Pub. L. 117–286, §4(a)(273), Dec. 27, 2022, 136 Stat. 4336.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

2022—Par. (10). Pub. L. 117–286 substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act (5 U.S.C. App.)."

STATUTORY NOTES AND RELATED SUBSIDIARIES

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

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

§10249. Cooperation of other departments and agencies

Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this subchapter.

(Pub. L. 97–425, title IV, §409, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–247.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10250. Termination of Office

The Office shall cease to exist not later than 30 days after the date 7 years after December 22, 1987.

(Pub. L. 97–425, title IV, §410, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–247; amended Pub. L. 102–486, title VIII, §802(a), Oct. 24, 1992, 106 Stat. 2923.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1992—Pub. L. 102–486 substituted "7 years" for "5 years".

§10251. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97–425, title IV, §411, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–248.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

SUBCHAPTER V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

§10261. Definitions

As used in this subchapter:

(1) The term "Chairman" means the Chairman of the Nuclear Waste Technical Review Board.

(2) The term "Board" means the Nuclear Waste Technical Review Board established under section 10262 of this title.

(Pub. L. 97–425, title V, §501, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–248.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10262. Nuclear Waste Technical Review Board

(a) Establishment

There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

(b) Members

(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

(2) The President shall designate a member of the Board to serve as chairman.

(3)(A) The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

(C)(i) Each person nominated for appointment to the Board shall be—

(I) eminent in a field of science or engineering, including environmental sciences; and

(II) selected solely on the basis of established records of distinguished service.

(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this subchapter.

(iii) No person shall be nominated for appointment to the Board who is an employee of—

(I) the Department of Energy;

(II) a national laboratory under contract with the Department of Energy; or

(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

(Pub. L. 97–425, title V, §502, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–248.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONTINUED BOARD SERVICE AFTER EXPIRATION OF TERM

Pub. L. 104–46, title V, §503, Nov. 13, 1995, 109 Stat. 419, provided that: "Without fiscal year limitation and notwithstanding section 502(b)(5) of the Nuclear Waste Policy Act, as amended [42 U.S.C. 10262(b)(5)], or any other provision of law, a member of the Nuclear Waste Technical Review Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office."

§10263. Functions

The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

(1) site characterization activities; and

(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

(Pub. L. 97–425, title V, §503, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–249.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10264. Investigatory powers

(a) Hearings

Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(b) Production of documents

(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this subchapter.

(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

(Pub. L. 97–425, title V, §504, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–249.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10265. Compensation of members

(a) In general

Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

(b) Travel expenses

Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5.

(Pub. L. 97–425, title V, §505, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–249.)

EDITORIAL NOTES

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10266. Staff

(a) Clerical staff

(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

(2) Clerical staff shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) Professional staff

(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

(2) Not more than 10 professional staff members may be appointed under this subsection.

(3) Professional staff members may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

(Pub. L. 97–425, title V, §506, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–249.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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

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

§10267. Support services

(a) General services

To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

(b) Accounting, research, and technology assessment services

The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

(c) Additional support

Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this subchapter.

(d) Mails

The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) Experts and consultants

Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

(Pub. L. 97–425, title V, §507, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–250.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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

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

§10268. Report

The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after December 22, 1987.

(Pub. L. 97–425, title V, §508, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–250.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to reporting to Congress 2 times per year, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 186 of House Document No. 103–7.

§10269. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97–425, title V, §509, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–251.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10270. Termination of Board

The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.

(Pub. L. 97–425, title V, §510, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–251.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

CHAPTER 109—WATER RESOURCES RESEARCH

Sec.

10301. Congressional findings and declarations.
10302. Congressional declaration of purpose.
10303. Water resources research and technology institutes.
10304. Research concerning water resource-related problems deemed to be in national interest.
10305. Development of water-related technology.
10306. Administrative costs.
10307. Types of research and development.
10308. Patent policy.
10309. New spending authority; amounts provided in advance.
10310. Produced water research and development.

§10301. Congressional findings and declarations

The Congress finds and declares that—

(1) the existence of an adequate supply of water of good quality for the production of materials and energy for the Nation's needs and for the efficient use of the Nation's energy and water resources is essential to national economic stability and growth, and to the well-being of the

people;

(2) the management of water resources is closely related to maintaining environmental quality, productivity of natural resources and agricultural systems, and social well-being;

(3) there is an increasing threat of impairment to the quantity and quality of surface and groundwater resources;

(4) the Nation's capabilities for technological assessment and planning and for policy formulation for water resources must be strengthened at the Federal, State, and local governmental levels;

(5) there should be a continuing national investment in water and related research and technology commensurate with growing national needs;

(6) it is necessary to provide for the research and development of technology for the conversion of saline and other impaired waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(7) the Nation must provide programs to strengthen research and associated graduate education because the pool of scientists, engineers, and technicians trained in fields related to water resources constitutes an invaluable natural resource which should be increased, fully utilized, and regularly replenished; and [1]

(8) long-term planning and policy development are essential to ensure the availability of an abundant supply of high quality water for domestic and other uses; and

(9) the States must have the research and problem-solving capacity necessary to effectively manage their water resources.

(Pub. L. 98–242, title I, §102, Mar. 22, 1984, 98 Stat. 97; Pub. L. 104–147, §1, May 24, 1996, 110 Stat. 1375.)

EDITORIAL NOTES

AMENDMENTS

1996—Par. (2). Pub. L. 104–147, §1(1), inserted ", productivity of natural resources and agricultural systems," after "environmental quality".

Pars. (8), (9). Pub. L. 104–147, §1(2)–(4), added pars. (8) and (9).

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 109–471, §1, Jan. 11, 2007, 120 Stat. 3552, provided that: "This Act [amending sections 10303 and 10306 of this title] may be cited as the 'Water Resources Research Act Amendments of 2006'."

SHORT TITLE

Pub. L. 98–242, title I, §101, Mar. 22, 1984, 98 Stat. 97, provided that: "This Act [enacting this chapter, repealing sections 7801, 7802, 7811 to 7819, 7831 to 7835, 7851 to 7853, and 7871 to 7883 of this title, and enacting provisions set out as a note under section 7801 of this title] may be cited as the 'Water Resources Research Act of 1984'."

SAVINGS PROVISION

Rules and regulations issued prior to Mar. 22, 1984, under Pub. L. 95–467 [chapter 87 of this title] to remain in full force and effect under this chapter until superseded by new rules and regulations promulgated under this chapter, see section 110(b) of Pub. L. 98–242, set out as a note under section 7801 of this title.

MORE WATER, MORE ENERGY, AND LESS WASTE

Pub. L. 110–229, title V, §514, May 8, 2008, 122 Stat. 844, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) development of energy resources, including oil, natural gas, coalbed methane, and geothermal resources, frequently results in bringing to the surface water extracted from underground sources;

"(2) some of that produced water is used for irrigation or other purposes, but most of the water is returned to the subsurface or otherwise disposed of as waste;

"(3) reducing the quantity of produced water returned to the subsurface and increasing the quantity of produced water that is made available for irrigation and other uses—

"(A) would augment water supplies;

"(B) could reduce the costs to energy developers for disposing of the water; and

"(C) in some cases, could increase the efficiency of energy development activities; and

"(4) it is in the national interest—

"(A) to limit the quantity of produced water disposed of as waste;

"(B) to optimize the production of energy resources; and

"(C) to remove or reduce obstacles to use of produced water for irrigation or other purposes in ways that will not adversely affect water quality or the environment.

"(b) PURPOSES.—The purposes of this section are—

"(1) to optimize the production of energy resources—

"(A) by minimizing the quantity of produced water; and

"(B) by facilitating the use of produced water for irrigation and other purposes without adversely affecting water quality or the environment; and

"(2) to demonstrate means of accomplishing those results.

"(c) DEFINITIONS.—In this section:

"(1) LOWER BASIN STATE.—The term 'Lower Basin State' means any of the States of—

"(A) Arizona;

"(B) California; and

"(C) Nevada.

"(2) PRODUCED WATER.—The term 'produced water' means water from an underground source that is brought to the surface as part of the process of exploration for, or development of—

"(A) oil;

"(B) natural gas;

"(C) coalbed methane; or

"(D) any other substance to be used as an energy source.

"(3) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(4) UPPER BASIN STATE.—The term 'Upper Basin State' means any of the States of—

"(A) Colorado;

"(B) New Mexico;

"(C) Utah; and

"(D) Wyoming.

"(d) IDENTIFICATION OF PROBLEMS AND SOLUTIONS.—

"(1) STUDY.—The Secretary shall conduct a study to identify—

"(A) the technical, economic, environmental, and other obstacles to reducing the quantity of produced water;

"(B) the technical, economic, environmental, legal, and other obstacles to increasing the extent to which produced water can be used for irrigation and other purposes without adversely affecting water quality, public health, or the environment;

"(C) the legislative, administrative, and other actions that could reduce or eliminate the obstacles identified in subparagraphs (A) and (B); and

"(D) the costs and benefits associated with reducing or eliminating the obstacles identified in subparagraphs (A) and (B).

"(2) REPORT.—Not later than 1 year after the date of enactment of this Act [May 8, 2008], the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the results of the study under paragraph (1).

"(e) IMPLEMENTATION.—

"(1) GRANTS.—Subject to the availability of appropriations, the Secretary shall provide financial assistance for the development of facilities, technologies, and processes to demonstrate the feasibility, effectiveness, and safety of—

"(A) optimizing energy resource production by reducing the quantity of produced water generated; or

"(B) increasing the extent to which produced water may be recovered and made suitable for use for irrigation, municipal, or industrial uses, or other purposes without adversely affecting water quality or the environment.

"(2) LIMITATIONS.—Assistance under this subsection—

"(A) shall be provided for—

"(i) at least 1 project in each of the Upper Basin States; and

"(ii) at least 1 project in at least 1 of the Lower Basin States;

"(B) shall not exceed $1,000,000 for any project;

"(C) shall be used to pay not more than 50 percent of the total cost of a project;

"(D) shall not be used for the operation or maintenance of any facility; and

"(E) may be in addition to assistance provided by the Federal Government pursuant to other provisions of law.

"(f) CONSULTATION, ADVICE, AND COMMENTS.—In carrying out this section, including in preparing the report under subsection (d)(2) and establishing criteria to be used in connection with an award of financial assistance under subsection (e), the Secretary shall—

"(1) consult with the Secretary of Energy, the Administrator of the Environmental Protection Agency, and appropriate Governors and local officials;

"(2)(A) review any relevant information developed in connection with research carried out by others, including research carried out pursuant to subtitle J of title IX of the Energy Policy Act of 2005 ([former] 42 U.S.C. 16371 et seq.); and

"(B) to the extent the Secretary determines to be advisable, include that information in the report under subsection (d)(2);

"(3) seek the advice of—

"(A) individuals with relevant professional or academic expertise; and

"(B) individuals or representatives of entities with industrial experience, particularly experience relating to production of oil, natural gas, coalbed methane, or other energy resources (including geothermal resources); and

"(4) solicit comments and suggestions from the public.

"(g) RELATION TO OTHER LAWS.—Nothing in this section supersedes, modifies, abrogates, or limits—

"(1) the effect of any State law or any interstate authority or compact relating to—

"(A) any use of water; or

"(B) the regulation of water quantity or quality; or

"(2) the applicability or effect of any Federal law (including regulations).

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

"(1) $1,000,000 to carry out subsection (d); and

"(2) $7,500,000 to carry out subsection (e)."

DESALINATION RESEARCH, STUDIES, AND DEMONSTRATION PROJECTS

Pub. L. 104–298, Oct. 11, 1996, 110 Stat. 3622, as amended by Pub. L. 108–7, div. D, title II, §210, Feb. 20, 2003, 117 Stat. 146; Pub. L. 109–13, div. A, title VI, §6015, May 11, 2005, 119 Stat. 284; Pub. L. 109–103, title II, §206, Nov. 19, 2005, 119 Stat. 2268; Pub. L. 109–289, div. B, title II, §20312, as added by Pub. L. 110–5, §2, Feb. 15, 2007, 121 Stat. 19; Pub. L. 112–74, div. B, title II, §204, Dec. 23, 2011, 125 Stat. 865; Pub. L. 114–322, title III, §§3801, 4009(a), Dec. 16, 2016, 130 Stat. 1846, 1867; Pub. L. 116–260, div. FF, title XI, §1112, Dec. 27, 2020, 134 Stat. 3251; Pub. L. 117–58, div. D, title IX, §40908, Nov. 15, 2021, 135 Stat. 1126, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Water Desalination Act of 1996'.

"SEC. 2. DEFINITIONS.

"As used in this Act:

"(1) DESALINATION OR DESALTING.—The terms 'desalination' or 'desalting' mean the use of any process or technique for the removal and, when feasible, adaptation to beneficial use, of organic and inorganic elements and compounds from saline or biologically impaired waters, by itself or in conjunction with other processes.

"(2) SALINE WATER.—The term 'saline water' means sea water, brackish water, and other mineralized or chemically impaired water.

"(3) UNITED STATES.—The term 'United States' means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

"(4) USABLE WATER.—The term 'usable water' means water of a high quality suitable for environmental enhancement, agricultural, industrial, municipal, and other beneficial consumptive or nonconsumptive uses.

"(5) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"SEC. 3. AUTHORIZATION OF RESEARCH AND STUDIES.

"(a) IN GENERAL.—In order to determine the most cost-effective and technologically efficient means by which usable water can be produced from saline water or water otherwise impaired or contaminated, the Secretary is authorized to award grants and to enter into contracts, to the extent provided in advance in appropriation Acts, to conduct, encourage, and assist in the financing of research to develop processes for converting saline water into water suitable for beneficial uses. Awards of research grants and contracts under this section shall be made on the basis of a competitive, merit-reviewed process. Research and study topics authorized by this section include—

"(1) investigating desalination processes;

"(2) ascertaining the optimum mix of investment and operating costs;

"(3) determining the best designs for different conditions of operation;

"(4) investigating methods of increasing the economic efficiency of desalination processes through dual-purpose co-facilities with other processes involving the use of water;

"(5) conducting or contracting for technical work, including the design, construction, and testing of pilot systems and test beds, to develop desalting processes and concepts;

"(6) studying methods for the recovery of byproducts resulting from desalination to offset the costs of treatment and to reduce environmental impacts from those byproducts;

"(7) salinity modeling and toxicity analysis of brine discharges, cost reduction strategies for constructing and operating desalination facilities, and the horticultural effects of desalinated water used for irrigation;

"(8) development of metrics to analyze the costs and benefits of desalination relative to other sources of water (including costs and benefits related to associated infrastructure, energy use, environmental impacts, and diversification of water supplies); and

"(9) development of design and siting specifications that avoid or minimize, adverse economic and environmental impacts.

"(b) PROJECT RECOMMENDATIONS AND REPORTS TO THE CONGRESS.—As soon as practicable and within three years after the date of enactment of this Act [Oct. 11, 1996], the Secretary shall recommend to Congress desalination demonstration projects or full-scale desalination projects to carry out the purposes of this Act and to further evaluate and implement the results of research and studies conducted under the authority of this section. Recommendations for projects shall be accompanied by reports on the engineering and economic feasibility of proposed projects and their environmental impacts.

"(c) AUTHORITY TO ENGAGE OTHERS.—In carrying out research and studies authorized in this section, the Secretary may engage the necessary personnel, industrial or engineering firms, Federal laboratories, water resources research and technology institutes, other facilities, and educational institutions suitable to conduct investigations and studies authorized under this section.

"(d) ALTERNATIVE TECHNOLOGIES.—In carrying out the purposes of this Act, the Secretary shall ensure that at least three separate technologies are evaluated and demonstrated for the purposes of accomplishing desalination.

"(e) PRIORITIZATION.—In carrying out this section, the Secretary shall prioritize funding for research—

"(1) to reduce energy consumption and lower the cost of desalination, including chloride control;

"(2) to reduce the environmental impacts of seawater desalination and develop technology and strategies to minimize those impacts;

"(3) to improve existing reverse osmosis and membrane technology;

"(4) to carry out basic and applied research on next generation desalination technologies, including improved energy recovery systems and renewable energy-powered desalination systems that could significantly reduce desalination costs;

"(5) to develop portable or modular desalination units capable of providing temporary emergency water supplies for domestic or military deployment purposes; and

"(6) to develop and promote innovative desalination technologies, including chloride control, identified by the Secretary.

"SEC. 4. DESALINATION DEMONSTRATION AND DEVELOPMENT.

"(a) IN GENERAL.—In order to further demonstrate the feasibility of desalination processes investigated either independently or in research conducted pursuant to section 3, the Secretary shall administer and conduct a demonstration and development program for water desalination and related activities, including the following:

"(1) DESALINATION PLANTS AND MODULES.—Conduct or contract for technical work, including the design, construction, and testing of plants and modules to develop desalination processes and

concepts, including modules specifically designed for brine management.

"(2) PROJECTS.—

"(A) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Interior may participate in an eligible desalination project in an amount equal to not more than 25 percent of the total cost of the eligible desalination project.

"(B) ELIGIBLE DESALINATION PROJECT.—The term 'eligible desalination project' means any project in a Reclamation State, that—

"(i) involves an ocean or brackish water desalination facility either constructed, operated and maintained; or sponsored by any State, department of a State, subdivision of a State or public agency organized pursuant to a State law; and

"(ii) provides a Federal benefit in accordance with the reclamation laws (including regulations).

"(C) STATE ROLE.—Participation by the Secretary of the Interior in an eligible desalination project under this subsection shall not occur unless—

"(i) the project is included in a state-approved plan or federal participation has been requested by the Governor of the State in which the eligible desalination project is located; and

"(ii) the State or local sponsor determines, and the Secretary of the Interior concurs, that—

"(I) the eligible desalination project is technically and financially feasible and provides a Federal benefit in accordance with the reclamation laws;

"(II) sufficient non-Federal funding is available to complete the eligible desalination project; and

"(III) the eligible desalination project sponsors are financially solvent; and

"(iii) the Secretary of the Interior submits to Congress a written notification of these determinations within 30 days of making such determinations.

"(D) ENVIRONMENTAL LAWS.—When participating in an eligible desalination project under this subsection, the Secretary shall comply with all applicable environmental laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(E) INFORMATION.—When participating in an eligible desalination project under this subsection, the Secretary of the Interior—

"(i) may rely on reports prepared by the sponsor of the eligible desalination project, including feasibility (or equivalent) studies, environmental analyses, and other pertinent reports and analyses; but

"(ii) shall retain responsibility for making the independent determinations described in subparagraph (C).

"(F) AUTHORIZATION OF APPROPRIATIONS.—

"(i) $30,000,000 of funding is authorized to remain available until expended; and

"(ii) Projects can only receive funding if enacted appropriations legislation designates funding to them by name, after the Secretary recommends specific projects for funding pursuant to this subsection and transmits such recommendations to the appropriate committees of Congress.

"(3) BYPRODUCTS.—Study methods for the marketing of byproducts resulting from the desalting of water to offset the costs of treatment and to reduce environmental impacts of those byproducts.

"(4) ECONOMIC SURVEYS.—Conduct economic studies and surveys to determine present and prospective costs of producing water for beneficial purposes in various locations by desalination processes compared to other methods.

"(b) COOPERATIVE AGREEMENTS.—Federal participation in desalination activities may be conducted through cooperative agreements, including cost-sharing agreements, with non-Federal public utilities and State and local governmental agencies and other entities, in order to develop recommendations for Federal participation in processes and plants utilizing desalting technologies for the production of water.

"(c) PRIORITIZATION.—In carrying out demonstration and development activities under this section, the Secretary shall prioritize projects—

"(1) for the benefit of drought-stricken States and communities;

"(2) for the benefit of States that have authorized funding for research and development of desalination technologies and projects;

"(3) that can reduce reliance on imported water supplies that have an impact on species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

"(4) that demonstrably leverage the experience of international partners with considerable expertise in desalination, such as the State of Israel.

"(d) WATER PRODUCTION.—The Secretary shall provide, as part of the annual budget submission to Congress, an estimate of how much water has been produced and delivered in the past fiscal year using

processes and facilities developed or demonstrated using assistance provided under sections 3 and 4. This submission shall include, to the extent practicable, available information on a detailed water accounting by process and facility and the cost per acre foot of water produced and delivered.

"SEC. 5. AVAILABILITY OF INFORMATION.

"All information from studies sponsored or funded under authority of this Act shall be considered public information.

"SEC. 6. TECHNICAL AND ADMINISTRATIVE ASSISTANCE.

"The Secretary may—

"(1) accept technical and administrative assistance from States and public or private agencies in connection with studies, surveys, location, construction, operation, and other work relating to the desalting of water, and

"(2) enter into contracts or agreements stating the purposes for which the assistance is contributed and providing for the sharing of costs between the Secretary and any such agency.

"SEC. 7. COST SHARING.

"The Federal share of the cost of a research, study, or demonstration project or a desalination development project or activity carried out under this Act shall not exceed 50 percent of the total cost of the project or research or study activity. A Federal contribution in excess of 25 percent for a project carried out under this Act may not be made unless the Secretary determines that the project is not feasible without such increased Federal contribution. The Secretary shall prescribe appropriate procedures to implement the provisions of this section. Costs of operation, maintenance, repair, and rehabilitation of facilities funded under the authority of this Act shall be non-Federal responsibilities.

"SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

"(a) SECTION 3.—There are authorized to be appropriated to carry out section 3 of this Act $5,000,000 per year for fiscal years 1997 through 2021. Of these amounts, up to $1,000,000 in each fiscal year may be awarded to institutions of higher education, including United States-Mexico binational research foundations and interuniversity research programs established by the two countries, for research grants without any cost-sharing requirement.

"(b) SECTION 4.—There are authorized to be appropriated to carry out section 4 of this Act $20,000,000 for each of fiscal years 2022 through 2026, in addition to the authorization of appropriations for projects in section 4(a)(2)(F).

"SEC. 9. CONSULTATION AND COORDINATION.

"(a) CONSULTATION.—In carrying out the provisions of this Act, the Secretary shall consult with the heads of other Federal agencies, including the Secretary of the Army, which have experience in conducting desalination research or operating desalination facilities.

"(b) COORDINATION OF FEDERAL DESALINATION RESEARCH AND DEVELOPMENT.—The White House Office of Science and Technology Policy shall develop a coordinated strategic plan that—

"(1) establishes priorities for future Federal investments in desalination;

"(2) coordinates the activities of Federal agencies involved in desalination, including the Bureau of Reclamation, the Corps of Engineers, the United States Army Tank Automotive Research, Development and Engineering Center, the National Science Foundation, the Office of Naval Research of the Department of Defense, the National Laboratories of the Department of Energy, the United States Geological Survey, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration;

"(3) strengthens research and development cooperation with international partners, such as the State of Israel, in the area of desalination technology; and

"(4) promotes public-private partnerships to develop a framework for assessing needs for, and to optimize siting and design of, future ocean desalination projects.

"(c) OTHER DESALINATION PROGRAMS.—The authorization provided for in this Act shall not prohibit other agencies from carrying out separately authorized programs for desalination research or operations."

[For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117–58, including authority of Secretary of Labor, see section 18851 of this title.]

OGALLALA AQUIFER

Pub. L. 99–662, title XI, §1121, Nov. 17, 1986, 100 Stat. 4239, provided that:

"(a) The Congress finds that—

"(1) the Ogallala aquifer lies beneath, and provides needed water supplies to, the 8 States of the High Plains Region: Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming;

"(2) the High Plains region has become an important source of agricultural commodities and livestock for domestic and international markets, providing 15 percent of the Nation's supply of wheat, corn, feed grains, sorghum, and cotton, plus 38 percent of the value of livestock raised in the United States; and

"(3) annual precipitation in the High Plains region ranges from 15 to 22 inches, providing inadequate supplies of surface water and recharging of the Ogallala aquifer needed to sustain the agricultural productivity and economic vitality of the High Plains region.

"(b) It is, therefore, the purpose of this section to establish a comprehensive research and development program to assist those portions of the High Plains region dependent on water from the Ogallala aquifer to—

"(1) plan for the development of an adequate supply of water in the region;

"(2) develop and provide information and technical assistance concerning water-conservation management practices to agricultural producers in the region;

"(3) examine alternatives for the development of an adequate supply of water for the region; and

"(4) develop water-conservation management practices which are efficient for agricultural producers in the region.

"(c) The Water Resources Research Act [of 1984] (Public Law 98–242) [see Short Title note above] is amended by adding at the end thereof the following new title:

" 'TITLE III—OGALLALA AQUIFER RESEARCH AND DEVELOPMENT

" 'SEC. 301. (a) There is hereby established the High Plains Study Council composed of—

" '(1) the Governor of each State of the High Plains region (defined for the purposes of this title as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming and referred to hereinafter in this title as the "High Plains region"), or a designee of the Governor;

" '(2) a representative of the Department of Agriculture; and

" '(3) a representative of the Secretary.

" '(b) The Council established pursuant to this section shall—

" '(1) review research work being performed by each State committee established under section 302 of this Act; and

" '(2) coordinate such research efforts to avoid duplication of research and to assist in the development of research plans within each State of the High Plains region that will benefit the research needs of the entire region.

" 'SEC. 302. (a) The Secretary shall establish within each State of the High Plains region an Ogallala aquifer technical advisory committee (hereinafter in this title referred to as the "State committee"). Each State committee shall be composed of no more than seven members, including—

" '(1) a representative of the United States Department of Agriculture;

" '(2) a representative of the Secretary; and

" '(3) at the appointment of the Governor of the State, five representatives from agencies of that State having jurisdiction over water resources, the agricultural community, the State Water Research Institute (as designated under this Act [see Short Title note above]), and others with a special interest or expertise in water resources.

" '(b) The State committee established pursuant to subsection (a) of this section shall—

" '(1) review existing State laws and institutions concerning water management and, where appropriate, recommend changes to improve State or local management capabilities and more efficiently use the waters of such State, if such a review is not already being undertaken by the State;

" '(2) establish, in coordination with other State committees, State priorities for research and demonstration projects involving water resources; and

" '(3) provide public information, education, extension, and technical assistance on the need for water conservation and information on proven and cost-effective water management.

" '(c) Each State committee established pursuant to this section shall elect a chairman, and shall meet at least once every three months at the call of the chairman, unless the chairman determines, after consultation with a majority of the members of the committee, that such a meeting is not necessary to achieve the purposes of this section.

" 'SEC. 303. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated for this section for research in—

" '(1) water-use efficiency;

" '(2) cultural methods;

" '(3) irrigation technologies;
" '(4) water-efficient crops; and
" '(5) water and soil conservation.

"Funds distributed under this section shall be allocated to each State committee for use by institutions of higher education within each State. To qualify for funds under this section an institution of higher education shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

" 'SEC. 304. The Secretary shall annually divide funds authorized to be appropriated under this section among the States of the High Plains region for research into—

" '(1) precipitation management;
" '(2) weather modification;
" '(3) aquifer recharge opportunities;
" '(4) saline water uses;
" '(5) desalinization technologies;
" '(6) salt tolerant crops; and
" '(7) ground water recovery.

"Funds distributed under this section shall be allocated by the Secretary to the State committee for distribution to institutions of higher education within such State. To qualify for a grant under this section, an institution of higher education shall submit a research proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

" 'SEC. 305. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated under this section for grants to farmers for demonstration projects for—

" '(1) water-efficient irrigation technologies and practices;
" '(2) soil and water conservation management systems; and
" '(3) the growing and marketing of more water-efficient crops.

"Grants under this section shall be made by each State committee in amounts not to exceed 85 percent of the cost of each demonstration project. To qualify for a grant under this section, a farmer shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed project. Proposals shall be selected by the State committee on the basis of merit. Each State committee shall monitor each demonstration project to assure proper implementation and make the results of the project available to other State committees.

" 'SEC. 306. The Secretary, acting through the United States Geological Survey and in cooperation with the States of the High Plains region, is authorized and directed to monitor the levels of the Ogallala aquifer, and report biennially to Congress. [As amended Pub. L. 104–66, title I, §1082(a)(1), Dec. 21, 1995, 109 Stat. 721.]

" 'SEC. 307. The amount of any allocation of funds to a State under this title shall not exceed 75 percent of the cost of carrying out the purposes for which the grant is made.

" 'SEC. 308. Not later than one year after the date of enactment of this title [Nov. 17, 1986], and at intervals of 2 years thereafter, the Secretary shall prepare and transmit to the Congress a report on activities undertaken under this title. [As amended Pub. L. 104–66, title I, §1082(a)(2), Dec. 21, 1995, 109 Stat. 721.]

" 'SEC. 309. (a) For each of the fiscal years ending September 30, 1987, through September 30, 1995, the following sums are authorized to be appropriated to the Secretary to implement the following sections of this title, and such sums shall remain available until expended:

" '(1) $600,000 for the purposes of section 302;
" '(2) $4,300,000 for the purposes of section 303;
" '(3) $2,200,000 for the purposes of section 304;
" '(4) $5,300,000 for the purposes of section 305; and
" '(5) $600,000 for the purposes of section 306.

" '(b) Funds made available under this title for distribution to the States of the High Plains region shall be distributed equally among the States.' " [As amended Pub. L. 101–397, §1(o), Sept. 28, 1990, 104 Stat. 854.]

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 17th and 18th items on page 72 identify reporting provisions which, as subsequently amended, are contained in sections 306 and 308 of Pub. L. 98–242, set out in the note above), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

DESALTING PLANTS

Pub. L. 95–84, §2, Aug. 2, 1977, 91 Stat. 400; Pub. L. 95–467, title II, §205(a), (b), Oct. 17, 1978, 92 Stat. 1311; Pub. L. 96–457, §3, Oct. 15, 1980, 94 Stat. 2032; Pub. L. 98–242, title I, §110(a), Mar. 22, 1984, 98

Stat. 101, provided that:

"(a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further*, That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be sufficient to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by [former] 41 U.S.C. 504 et seq. (the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95–224) [see 31 U.S.C. 6301 et seq.]) with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.

"(b) Funds appropriated pursuant to the authority provided by this section [this note] may not be expended until thirty calendar days (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) have elapsed following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs [now Committee on Natural Resources] of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate. Such report shall present information that includes, but is not limited to, how the plant being proposed differs from others, if any, already constructed under this section, the location of the demonstration plant, the characteristics of the water proposed to be desalted, the process to be utilized, the water supply problems confronting the area in which the plant will be located, alternative sources of water and their probable cost, the capacity of the plant, the initial investment cost of the demonstration plant, the annual operating cost of the demonstration plant, the source of energy for the plant and its cost, the means of reject brine disposal and its environmental consequences, and the unit cost of product water, considering the amortization of all components of the demonstration plant and ancillary facilities. Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be in-kind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The period of participation by the Secretary in the operation and maintenance of any such demonstration shall be four years. The Secretary is authorized to include in the proposed contract a provision for conveying, as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.

"(c) There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of $50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs.

"(d) When appropriations have been made for the commencement or continuation of design, construction, or operation and maintenance of any demonstration plant authorized under this Act [this note], the Secretary may, in connection with such design, construction, or operation and maintenance, enter into contracts and cooperative agreements for miscellaneous services, for materials and supplies, as well as for construction, which may cover such periods of time as the Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriations being made therefor."

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

[1] *So in original. The word "and" probably should not appear.*

§10302. Congressional declaration of purpose

It is the purpose of this chapter to assist the Nation and the States in augmenting their water resources science and technology as a way to—

(1) assure supplies of water sufficient in quantity and quality to meet the Nation's expanding needs for the production of food, materials, and energy;

(2) discover practical solutions to the Nation's water and water resources related problems, particularly those problems related to impaired water quality;

(3) assure the protection and enhancement of environmental and social values in connection with water resources management and utilization;

(4) promote the interest of State and local governments as well as private industry in research and the development of technology that will reclaim waste water and to convert saline and other impaired waters to waters suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) promote more effective coordination of the Nation's water resources research program;

(6) promote the development of a cadre of trained research scientists, engineers, and technicians for future water resources problems; and

(7) encourage long-term planning and research to meet future water management, quality, and supply challenges.

(Pub. L. 98–242, title I, §103, Mar. 22, 1984, 98 Stat. 97; Pub. L. 101–397, §1(a), Sept. 28, 1990, 104 Stat. 852; Pub. L. 104–147, §2, May 24, 1996, 110 Stat. 1375.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 98–242, Mar. 22, 1984, 98 Stat. 97, known as the Water Resources Research Act of 1984. For complete classification of this Act to the Code, see Short Title note set out under section 10301 of this title and Tables.

AMENDMENTS

1996—Par. (5). Pub. L. 104–147, §2(1), struck out "to" before "promote" and "and" after "program;".

Par. (6). Pub. L. 104–147, §2(2), substituted "; and" for period at end.

Par. (7). Pub. L. 104–147, §2(3), added par. (7).

1990—Par. (5). Pub. L. 101–397 substituted "to promote more effective coordination of" for "coordinate more effectively".

§10303. Water resources research and technology institutes

(a) Establishment; designation of site by State legislature or Governor

Subject to the approval of the Secretary of the Interior (hereafter in this chapter referred to as the "Secretary") under this section, one water resources research and technology institute, center, or equivalent agency (hereafter in this chapter referred to as the "institute") may be established in each State (as used in this chapter, the term "State" includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands and the Federated States of Micronesia) at a college or university which was established in accordance with the Act approved July 2, 1862 (12 Stat. 503) [7 U.S.C. 301 et seq.], or at some other institution designated by act of the legislature of the State concerned. If there is more than one such college or university in a State established in accordance with such Act of July 2, 1862, the institute in such State shall, in the absence of a designation to the contrary by act of the legislature of the State, be established at the one such college or university designated by the

Governor of the State. Two or more States may cooperate in the establishment of a single institute or regional institute, in which event the sums otherwise allocated to institutes in each of the cooperating States shall be paid to such single or regional institute.

(b) Scope of research; other activities; cooperation and coordination

Each institute shall—

(1) plan, conduct, or otherwise arrange for competent applied and peer reviewed research that fosters—

(A) improvements in water supply reliability;

(B) the exploration of new ideas that—

(i) address water problems; or

(ii) expand understanding of water and water resources;

(C) the entry of new research scientists, engineers, and technicians into water resources fields; and

(D) the dissemination of research results to water managers and the public; and

(2) cooperate closely with other colleges and universities in the State that have demonstrated capabilities for research, information dissemination, and graduate training in order to develop a statewide program designed to resolve State and regional water and related land problems.

Each institute shall also cooperate closely with other institutes and other organizations in the region to increase the effectiveness of the institutes and for the purpose of promoting regional coordination.

(c) Grants

(1) In general

From the sums appropriated pursuant to subsection (f), the Secretary shall make grants to each institute to be matched on a basis of no less than 1 non-Federal dollar for every 1 Federal dollar.

(2) Report

Not later than December 31 of each fiscal year, the Secretary shall submit to the Committee on Environment and Public Works of the Senate, the Committee on the Budget of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on the Budget of the House of Representatives a report regarding the compliance of each funding recipient with this subsection for the immediately preceding fiscal year.

(d) Submission and approval of water research program; requisite assurances

Prior to and as a condition of the receipt each fiscal year of funds appropriated under subsection (f) of this section, each institute shall submit to the Secretary for his approval a water research program that includes assurances, satisfactory to the Secretary, that such program was developed in close consultation and collaboration with the director of that State's department of water resources or similar agency, other leading water resources officials within the State, and interested members of the public. The program described in the preceding sentence shall include plans to promote research, training, information dissemination, and other activities meeting the needs of the State and Nation, and shall encourage regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character.

(e) Evaluation of water resources research program

(1) In general

The Secretary shall conduct a careful and detailed evaluation of each institute at least once every 5 years to determine—

(A) the quality and relevance of the water resources research of the institute;

(B) the effectiveness of the institute at producing measured results and applied water supply

research; and

(C) whether the effectiveness of the institute as an institution for planning, conducting, and arranging for research warrants continued support under this section.

(2) Prohibition on further support

If, as a result of an evaluation under paragraph (1), the Secretary determines that an institute does not qualify for further support under this section, no further grants to the institute may be provided until the qualifications of the institute are reestablished to the satisfaction of the Secretary.

(f) Authorization of appropriations in general

(1) There is authorized to be appropriated to carry out this section, to remain available until expended, $12,000,000 for each of fiscal years 2022 through 2025.

(2) Any sums appropriated under this subsection but which fail to be obligated by the close of the fiscal year for which they were appropriated shall be transferred by the Secretary and available for obligation during the succeeding fiscal year under the terms of subsection (g) of this section.

(g) Additional appropriations where research focused on water problems of interstate nature

(1) There is further authorized to be appropriated to the Secretary of the Interior the sum of $3,000,000 for each of fiscal years 2022 through 2025 only for reimbursement of the direct cost expenses of additional research or synthesis of the results of research by institutes which focuses on water problems and issues of a regional or interstate nature beyond those of concern only to a single State and which relate to specific program priorities identified jointly by the Secretary and the institutes. Such funds when appropriated shall be matched on a not less than dollar-for-dollar basis by funds made available to institutes or groups of institutes, by States or other non-Federal sources. Funds made available under this subsection shall remain available until expended.

(2) Research funds made available under this subsection shall be made on a competitive basis subject to the merit of the proposal, the need for the information to be produced, and the opportunity such funds will provide for training of water resources scientists or professionals.

(h) Coordination

(1) In general

To carry out this chapter, the Secretary—

(A) shall encourage other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to use and take advantage of the expertise and capabilities that are available through the institutes established by this section, on a cooperative or other basis;

(B) shall encourage cooperation and coordination with other Federal programs concerned with water resources problems and issues;

(C) may enter into contracts, cooperative agreements, and other transactions without regard to section 6101 of title 41;

(D) may accept funds from other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to pay for and add to grants made, and contracts entered into, by the Secretary;

(E) may promulgate such regulations as the Secretary considers appropriate; and

(F) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this chapter.

(2) Reports

The Secretary shall report to Congress annually on coordination efforts with other Federal departments, agencies, and instrumentalities under paragraph (1). As part of the annual budget submission to Congress, the Secretary shall also provide a crosscut budget detailing the expenditures on activities listed under subsection (a)(1) and a report which details the level of applied research and the results of the activities authorized by this chapter, including potential and actual—

(A) increases in annual water supplies;

(B) increases in annual water yields;

(C) advances in water infrastructure and water quality improvements; and

(D) methods for identifying, and determining the effectiveness of, treatment technologies and efficiencies.

(3) Relationship to State rights

Nothing in this chapter shall preempt the rights and authorities of any State with respect to its water resources or management of those resources.

(Pub. L. 98–242, title I, §104, Mar. 22, 1984, 98 Stat. 98; Pub. L. 101–397, §1(b)–(h), (m), Sept. 28, 1990, 104 Stat. 852, 853; Pub. L. 104–147, §§3–6, May 24, 1996, 110 Stat. 1376; Pub. L. 106–374, Oct. 27, 2000, 114 Stat. 1434; Pub. L. 109–471, §2(a)–(e), Jan. 11, 2007, 120 Stat. 3552, 3553; Pub. L. 117–58, div. E, title II, §50221, Nov. 15, 2021, 135 Stat. 1180.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (h), was in the original "this Act", meaning Pub. L. 98–242, Mar. 22, 1984, 98 Stat. 97, known as the Water Resources Research Act of 1984, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 10301 of this title and Tables.

Act approved July 2, 1862, referred to in subsec. (a), is act July 2, 1862, ch. 130, 12 Stat. 503, popularly known as the "Morrill Act" and also as the "First Morrill Act", which is classified generally to subchapter I (§301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

CODIFICATION

In subsec. (h)(1)(C), "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes (41 U.S.C. 5)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2021—Subsec. (b)(1)(B)(ii). Pub. L. 117–58, §50221(a)(1), substituted "water resources" for "water-related phenomena".

Subsec. (b)(1)(D). Pub. L. 117–58, §50221(a)(2), substituted "; and" for period at end.

Subsec. (c). Pub. L. 117–58, §50221(b), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "From the sums appropriated pursuant to subsection (f) of this section, the Secretary shall make grants to each institute to be matched on a basis of no less than 2 non-Federal dollars for every 1 Federal dollar, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program."

Subsec. (e). Pub. L. 117–58, §50221(c), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: "The Secretary shall conduct a careful and detailed evaluation of each institute at least once every 3 years to determine that the quality and relevance of its water resources research and its effectiveness at producing measured results and applied water supply research as an institution for planning, conducting, and arranging for research warrants its continued support under this section. If, as a result of any such evaluation, the Secretary determines that an institute does not qualify for further support under this section, then no further grants to the institute may be made until the institute's qualifications are reestablished to the satisfaction of the Secretary."

Subsec. (f)(1). Pub. L. 117–58, §50221(d), substituted "fiscal years 2022 through 2025" for "fiscal years 2007 through 2011".

Subsec. (g)(1). Pub. L. 117–58, §50221(e), substituted "$3,000,000 for each of fiscal years 2022 through 2025" for "$6,000,000 for each of fiscal years 2007 through 2011".

2007—Subsec. (b)(1). Pub. L. 109–471, §2(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "plan, conduct, or otherwise arrange for competent research that fosters (A) the entry of new research scientists into the water resources fields, (B) the training and education of future water scientists,

engineers, and technicians, (C) the preliminary exploration of new ideas that address water problems or expand understanding of water and water-related phenomena, and (D) the dissemination of research results to water managers and the public, and".

Subsec. (e). Pub. L. 109–471, §2(b), substituted "3" for "5" and inserted "at producing measured results and applied water supply research" after "effectiveness".

Subsec. (f)(1). Pub. L. 109–471, §2(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary the sum of $9,000,000 for fiscal year 2001, $10,000,000 for each of fiscal years 2002 and 2003, and $12,000,000 for each of fiscal years 2004 and 2005, such sums to remain available until expended."

Subsec. (g)(1). Pub. L. 109–471, §2(d), substituted "$6,000,000 for each of fiscal years 2007 through 2011" for "$3,000,000 for fiscal year 2001, $4,000,000 for each of fiscal years 2002 and 2003, and $6,000,000 for each of fiscal years 2004 and 2005".

Subsec. (h)(2). Pub. L. 109–471, §2(e), substituted "Reports" for "Report" in heading and inserted after first sentence "As part of the annual budget submission to Congress, the Secretary shall also provide a crosscut budget detailing the expenditures on activities listed under subsection (a)(1) and a report which details the level of applied research and the results of the activities authorized by this chapter, including potential and actual—" and subpars. (A) to (D).

2000—Subsec. (f)(1). Pub. L. 106–374, §1, substituted "$9,000,000 for fiscal year 2001, $10,000,000 for each of fiscal years 2002 and 2003, and $12,000,000 for each of fiscal years 2004 and 2005" for "$5,000,000 for fiscal year 1996, $7,000,000 for each of fiscal years 1997 and 1998, and $9,000,000 for each of fiscal years 1999 and 2000".

Subsec. (g)(1). Pub. L. 106–374, §2, in first sentence, substituted "$3,000,000 for fiscal year 2001, $4,000,000 for each of fiscal years 2002 and 2003, and $6,000,000 for each of fiscal years 2004 and 2005" for "$3,000,000 for each of fiscal years 1996 through 2000".

1996—Subsec. (c). Pub. L. 104–147, §3, substituted "2 non-Federal dollars for every 1 Federal dollar" for "one non-Federal dollar for every Federal dollar during the fiscal years ending September 30, 1985, and September 30, 1986, one and one-half non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1987, and September 30, 1988, and two non-Federal dollars for each Federal dollar during the fiscal year ending September 30, 1989 and thereafter".

Subsec. (f)(1). Pub. L. 104–147, §4, substituted "of $5,000,000 for fiscal year 1996, $7,000,000 for each of fiscal years 1997 and 1998, and $9,000,000 for each of fiscal years 1999 and 2000" for "of $10,000,000 for each of the fiscal years ending September 30, 1989, through September 30, 1995,".

Subsec. (g)(1). Pub. L. 104–147, §5, substituted "of $3,000,000 for each of fiscal years 1996 through 2000" for "of $5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995".

Subsec. (h). Pub. L. 104–147, §6, added subsec. (h).

1990—Subsec. (a). Pub. L. 101–397, §1(b), substituted "Federated States of Micronesia" for "Trust Territory of the Pacific Islands".

Subsec. (b). Pub. L. 101–397, §1(c), inserted "promoting" after "for the purpose of" in last sentence.

Subsec. (b)(1). Pub. L. 101–397, §1(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "plan, conduct, or otherwise arrange for competent research with respect to water resources, including investigations and experiments of either a basic or practical nature, or both; promote the dissemination and application of the results of these efforts; and provide for the training of scientists and engineers through such research, investigations, and experiments, and".

Subsec. (c). Pub. L. 101–397, §1(e), substituted for period at end "and thereafter, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program."

Subsec. (e). Pub. L. 101–397, §1(f), amended subsec. (e) generally, substituting provisions directing that evaluation be conducted at least once every 5 years for provisions directing evaluation within two years after establishment of institute and at least once every four years thereafter and striking out provisions relating to composition and function of evaluation team and setting forth criteria for determination.

Subsec. (f)(1). Pub. L. 101–397, §1(g), substituted "September 30, 1989, through September 30, 1995," for "September 30, 1985, through September 30, 1989".

Subsec. (f)(2). Pub. L. 101–397, §1(h), substituted reference to subsec. (g) of this section for reference to section 10305 of this title.

Subsec. (g). Pub. L. 101–397, §1(m), added subsec. (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONTRACTS OR COOPERATIVE AGREEMENTS WITH NATIONAL LABORATORIES

Pub. L. 101–397, §2, Sept. 28, 1990, 104 Stat. 854, provided that:

"(a) The Secretary of the Interior, in consultation with the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, is authorized to enter into contracts or cooperative agreements, as the Secretary deems appropriate, with national laboratories (including Los Alamos National Laboratory) to carry out water resources research, development, and demonstration projects within the authorities of Public Law 98–242 [42 U.S.C. 10301 et seq.] (including the effects of potential climate changes on surface and ground water quality and quantity and the elimination of contamination of ground water aquifers).

"(b) The water resources research authorized in this section shall be undertaken under such rules and regulations as the Secretary deems appropriate and shall be carried out in close consultation and collaboration with the institutes established pursuant to Public Law 98–242 [42 U.S.C. 10301 et seq.], to the extent such research work affects the State in which the institute exists, and to the extent such institute agrees to consult and collaborate.

"(c) For the purposes of carrying out this section, there is authorized to be appropriated to the Secretary of the Interior the sum of $10,000,000 for each of the fiscal years 1991 through 1995."

§10304. Research concerning water resource-related problems deemed to be in national interest

(a) Grants; matching funds

(1) In addition to the grants authorized by section 10303 of this title, the Secretary is authorized to make grants, on a dollar-for-dollar matching basis, to the institutes established under such section, as well as other qualified educational institutions, private foundations, private firms, individuals, and agencies of local or State government for research concerning any aspect of a water resource-related problem which the Secretary may deem to be in the national interest. Such grants shall be made with such advice and review by peer or other expert groups of appropriate interdisciplinary composition as the Secretary deems appropriate on the basis of the merits of the project and the need for the knowledge such project is expected to produce upon completion.

(2) Research funded under this section should to the extent possible utilize the best qualified graduate students so the Nation profits from the education and training benefits resulting from the use of the latest in technological developments in solving water problems.

(b) Applications for grants

Each application for a grant under this section shall state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the importance of the project to the Nation as well as to the region and State concerned, its relation to other research projects previously or currently being pursued, and the extent to which it will provide an opportunity for the training of water resources scientists.

(c) Authorization of appropriations

There is authorized to be appropriated to the Secretary the sum of $10,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1985, through September 30, 1995, such sums to remain available until expended.

(Pub. L. 98–242, title I, §105, Mar. 22, 1984, 98 Stat. 100; Pub. L. 101–397, §1(i), (j), Sept. 28, 1990, 104 Stat. 853.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101–397, §1(i), struck out par. (3) which read as follows: "In cases where the Secretary determines, in accordance with criteria established by him, that research under this section is of a basic nature which would not otherwise be undertaken, the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1) of this subsection."

Subsec. (c). Pub. L. 101–397, §1(j), substituted "$10,000,000" for "$20,000,000" and "1995" for "1989".

§10305. Development of water-related technology

(a) Grants; matching funds

(1) The Secretary shall make grants in addition to those authorized under sections 10303 and 10304 of this title for technology development concerning any aspect of water resources including water-related technology which the Secretary may deem to be of State, regional, or national importance. Activities funded under this section may be carried out by educational institutions, private firms, foundations, individuals, or agencies of State or local government. Care shall be taken to protect proprietary information of private individuals or firms associated with the technology.

(2) The Secretary may establish any condition for the matching of funds by the recipient of any grant or contract under this section which the Secretary considers to be in the best interest of the Nation considering the information transfer and technology needs of the Nation. However, in the case of institutes established by section 10303 of this title no match greater than that required under section 10303 of this title may be required.

(b) Applications for grants

Each application for a grant under this section shall state the nature of the project to be undertaken, the qualifications of the personnel who will direct and conduct it, facilities of the organization performing any technology development, the importance of the project to the Nation, region, and State concerned, and the potential benefit to be accrued.

(c) Authorization of appropriations

There is authorized to be appropriated to the Secretary the sum of $6,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1990, through September 30, 1995; such sums to remain available until expended.

(Pub. L. 98–242, title I, §106, Mar. 22, 1984, 98 Stat. 100; Pub. L. 101–397, §1(n), Sept. 28, 1990, 104 Stat. 853.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–397, in amending section generally, in subsec. (a)(1) struck out provision directing that grant be made on basis of merit and feasibility of project, in subsec. (a)(2) inserted provisions relating to match in the case of institutes established by section 10303 of this title, and in subsec. (c) substituted provisions authorizing $6,000,000 appropriation for fiscal years 1990 through 1995, for provisions authorizing the same sum for fiscal years 1985 through 1989, and struck out provisions authorizing obligation of funds under this section and par. (1) and (2) designations.

§10306. Administrative costs

From the sums appropriated pursuant to this chapter, not more than 7.5 per centum shall be utilized for administrative costs.

(Pub. L. 98–242, title I, §107, Mar. 22, 1984, 98 Stat. 101; Pub. L. 109–471, §2(f), Jan. 11, 2007, 120 Stat. 3553.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 98–242, Mar. 22, 1984, 98 Stat. 97, known as the Water Resources Research Act of 1984, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 10301 of this title and Tables.

AMENDMENTS

2007—Pub. L. 109–471 substituted "7.5" for "15".

§10307. Types of research and development

The type of research and development to be undertaken under the authority of sections 10304 and 10305 of this title and to be encouraged by the institutes established under section 10303 of this title shall include the following:

(1) Aspects of the hydrologic cycle;

(2) Supply and demand for water;

(3) Demineralization of saline and other impaired waters;

(4) Conservation and best use of available supplies of water and methods of increasing such supplies;

(5) Water reuse;

(6) Depletion, contamination, and degradation of groundwater supplies;

(7) Improvements in the productivity of water when used for agricultural, municipal, and commercial purposes;

(8) The economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water quality and quantity problems;

(9) Scientific information dissemination activities, including identifying, assembling, and interpreting the results of scientific and engineering research on water resources problems; and

(10) Providing means for improved communication of research results, having due regard for the varying conditions and needs for the respective States and regions.

(Pub. L. 98–242, title I, §108, Mar. 22, 1984, 98 Stat. 101; Pub. L. 101–397, §1(k), (l), Sept. 28, 1990, 104 Stat. 853.)

EDITORIAL NOTES

AMENDMENTS

1990—Par. (6). Pub. L. 101–397, §1(k), which directed that ", contamination," be inserted after "depletion", was executed by making the insertion after "Depletion" to reflect the probable intent of Congress.

Par. (8). Pub. L. 101–397, §1(l), inserted "quality and quantity" after "water".

§10308. Patent policy

Notwithstanding any other provision of law, the Secretary shall be governed by the provisions of sections 5908 (except subsections (l) and (n)) and 5909 of this title with respect to patent policy and to the definition of title to and licensing of inventions made or conceived in the course of work performed, or under any contract or grant made, pursuant to this chapter. Subject to such patent policy, all research or development contracted for, sponsored, cosponsored, or authorized under authority of this chapter shall be provided in such manner that all information, data, and know-how, regardless of their nature or mediums, resulting from such research and development shall (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be usefully available for practice by the general public.

(Pub. L. 98–242, title I, §109, Mar. 22, 1984, 98 Stat. 101.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 98–242, Mar. 22, 1984, 98 Stat. 97, known as the Water Resources Research Act of 1984, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 10301 of this title

and Tables.

§10309. New spending authority; amounts provided in advance

Any new spending authority described in subsection (c)(2)(A) or (B) of section 651 [1] of title 2 which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts.

(Pub. L. 98–242, title I, §111, Mar. 22, 1984, 98 Stat. 101.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 651 of title 2, referred to in text, was amended by Pub. L. 105–33, title X, §10116(a)(3), (5), Aug. 5, 1997, 111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 98–242, Mar. 22, 1984, 98 Stat. 97, known as the Water Resources Research Act of 1984, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 10301 of this title and Tables.

[1] *See References in Text note below.*

§10310. Produced water research and development

(a) Establishment

As soon as possible after December 27, 2020, the Secretary of Energy (in this section referred to as the "Secretary") shall establish a research and development program on produced water to develop—

(1) new technologies and practices to reduce the environmental impact; and

(2) opportunities for reprocessing of produced water at natural gas or oil development sites.

(b) Prioritization

In carrying out the program established under subsection (a), the Secretary shall give priority to projects that develop and bring to market—

(1) effective systems for on-site management or repurposing of produced water; and

(2) new technologies or approaches to reduce the environmental impact of produced water on local water sources and the environment.

(c) Conduct of program

In carrying out the program established under subsection (a), the Secretary shall carry out science-based research and development activities to pursue—

(1) improved efficiency, technologies, and techniques for produced water recycling stations; and

(2) alternative approaches to treating, reusing, storing, or decontaminating produced water.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 2021 through 2025.

(Pub. L. 116–260, div. Z, title IV, §4008, Dec. 27, 2020, 134 Stat. 2546.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy Act of 2020, and not as part of the Water Resources Research Act of 1984 which comprises this chapter.

CHAPTER 109A—MEMBRANE PROCESSES RESEARCH

Sec.
10341. Findings.
10342. Research program.
10343. Goals of research program.
10344. Coordination with other research.
10345. Authorization of appropriations.

§10341. Findings

The Congress finds that—

(1) there is an increasing threat of impairment to the quantity and quality of the Nation's water resources due to, among other things, growing national needs, recurring drought in the Western States, point and nonpoint source pollution, and saltwater intrusion into existing groundwater supplies;

(2) many communities in the United States have water supplies containing high salinity levels or contaminants which pose health risks;

(3) the Nation needs to develop economical processes to treat existing water supplies that are contaminated;

(4) it is necessary to provide for research into new techniques to reclaim waste water and to convert saline and other contaminated waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) there is very little Federal funding being applied to basic research in the field of treatment of contaminated water through membrane processes; and

(6) the treatment of contaminated water through membrane processes will solve a wide variety of water treatment problems, including compliance with the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the Safe Drinking Water Act [42 U.S.C. 300f et seq.].

(Pub. L. 102–490, §2, Oct. 24, 1992, 106 Stat. 3142.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in par. (6), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in par. (6), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 102–490, §1, Oct. 24, 1992, 106 Stat. 3142, provided that: "This Act [enacting this chapter] may be cited as the 'Membrane Processes Research Act of 1992'."

§10342. Research program

The Director of the National Science Foundation shall establish a basic research program on membranes and membrane processes. Such program may be carried out through awarding grants, entering into contracts or cooperative agreements, or direct research.

(Pub. L. 102–490, §3, Oct. 24, 1992, 106 Stat. 3142.)

§10343. Goals of research program

The goals of the research program established under section 10342 of this title shall be—

(1) the development of membranes resistant to degradation, bacterial or otherwise, thereby extending the life of such membranes;

(2) the development of membranes useful for the efficient and cost effective treatment of contaminated water; and

(3) the development of innovative technologies for membrane processes.

(Pub. L. 102–490, §4, Oct. 24, 1992, 106 Stat. 3142.)

§10344. Coordination with other research

The research program established under section 10342 of this title shall be carried out in coordination with any other related Federal research efforts.

(Pub. L. 102–490, §5, Oct. 24, 1992, 106 Stat. 3143.)

§10345. Authorization of appropriations

There are authorized to be appropriated to the Director of the National Science Foundation, from sums otherwise authorized to be appropriated, $2,500,000 for fiscal year 1993, for carrying out this chapter.

(Pub. L. 102–490, §6, Oct. 24, 1992, 106 Stat. 3143.)

CHAPTER 109B—SECURE WATER

Sec.

10361. Findings.
10362. Definitions.
10363. Reclamation climate change and water program.
10364. Water management improvement.
10365. Hydroelectric power assessment.
10366. Climate change and water intragovernmental panel.
10367. Water data enhancement by United States Geological Survey.
10368. National water availability and use assessment program.
10369. Research agreement authority.
10370. Effect.
10371. Water prediction and forecasting.

§10361. Findings

Congress finds that—

(1) adequate and safe supplies of water are fundamental to the health, economy, security, and ecology of the United States;

(2) systematic data-gathering with respect to, and research and development of, the water resources of the United States will help ensure the continued existence of sufficient quantities of water to support—

(A) increasing populations;

(B) economic growth;

(C) irrigated agriculture;

(D) energy production; and

(E) the protection of aquatic ecosystems;

(3) global climate change poses a significant challenge to the protection and use of the water resources of the United States due to an increased uncertainty with respect to the timing, form, and geographical distribution of precipitation, which may have a substantial effect on the supplies of water for agricultural, hydroelectric power, industrial, domestic supply, and environmental needs;

(4) although States bear the primary responsibility and authority for managing the water resources of the United States, the Federal Government should support the States, as well as regional, local, and tribal governments, by carrying out—

(A) nationwide data collection and monitoring activities;

(B) relevant research; and

(C) activities to increase the efficiency of the use of water in the United States;

(5) Federal agencies that conduct water management and related activities have a responsibility—

(A) to take a lead role in assessing risks to the water resources of the United States (including risks posed by global climate change); and

(B) to develop strategies—

(i) to mitigate the potential impacts of each risk described in subparagraph (A); and

(ii) to help ensure that the long-term water resources management of the United States is sustainable and will ensure sustainable quantities of water;

(6) it is critical to continue and expand research and monitoring efforts—

(A) to improve the understanding of the variability of the water cycle; and

(B) to provide basic information necessary—

(i) to manage and efficiently use the water resources of the United States; and

(ii) to identify new supplies of water that are capable of being reclaimed; and

(7) the study of water use is vital—

(A) to the understanding of the impacts of human activity on water and ecological resources; and

(B) to the assessment of whether available surface and groundwater supplies will be available to meet the future needs of the United States.

(Pub. L. 111–11, title IX, §9501, Mar. 30, 2009, 123 Stat. 1329.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2024 AMENDMENT

Pub. L. 118–174, §1, Dec. 23, 2024, 138 Stat. 2602, provided that: "This Act [amending section 10367 of this title] may be cited as the 'Water Monitoring and Tracking Essential Resources (WATER) Data Improvement Act'."

WATER DATA SHARING PILOT PROGRAM

Pub. L. 117–58, div. E, title II, §50213, Nov. 15, 2021, 135 Stat. 1172, provided that:

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—Subject to the availability of appropriations, the Administrator [of the Environmental Protection Agency] shall establish a competitive grant pilot program (referred to in this

section as the 'pilot program') under which the Administrator may award grants to eligible entities under subsection (b) to establish systems that improve the sharing of information concerning water quality, water infrastructure needs, and water technology, including cybersecurity technology, between States or among counties and other units of local government within a State, which may include—

"(A) establishing a website or data hub to exchange water data, including data on water quality or water technology, including new and emerging, but proven, water technology; and

"(B) intercounty communications initiatives related to water data.

"(2) REQUIREMENTS.—

"(A) DATA SHARING.—The Internet of Water principles developed by the Nicholas Institute for Environmental Policy Solutions shall, to the extent practicable, guide any water data sharing efforts under the pilot program.

"(B) USE OF EXISTING DATA.—The recipient of a grant under the pilot program to establish a website or data hub described in paragraph (1)(A) shall, to the extent practicable, leverage existing data sharing infrastructure.

"(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under the pilot program is—

"(1) a State, county, or other unit of local government that—

"(A) has a coastal watershed with significant pollution levels;

"(B) has a water system with significant pollution levels; or

"(C) has significant individual water infrastructure deficits; or

"(2) a regional consortium established under subsection (d).

"(c) APPLICATIONS.—To be eligible to receive a grant under the pilot program, an eligible entity under subsection (b) shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require.

"(d) REGIONAL CONSORTIA.—

"(1) ESTABLISHMENT.—States may establish regional consortia in accordance with this subsection.

"(2) REQUIREMENTS.—A regional consortium established under paragraph (1) shall—

"(A) include not fewer than 2 States that have entered into a memorandum of understanding—

"(i) to exchange water data, including data on water quality; or

"(ii) to share information, protocols, and procedures with respect to projects that evaluate, demonstrate, or install new and emerging, but proven, water technology;

"(B) carry out projects—

"(i) to exchange water data, including data on water quality; or

"(ii) that evaluate, demonstrate, or install new and emerging, but proven, water technology; and

"(C) develop a regional intended use plan, in accordance with paragraph (3), to identify projects to carry out, including projects using grants received under this section.

"(3) REGIONAL INTENDED USE PLAN.—A regional intended use plan of a regional consortium established under paragraph (1)—

"(A) shall identify projects that the regional consortium intends to carry out, including projects that meet the requirements of paragraph (2)(B); and

"(B) may include—

"(i) projects included in an intended use plan of a State prepared under section 606(c) of the Federal Water Pollution Control Act (33 U.S.C. 1386(c)) within the regional consortium; and

"(ii) projects not included in an intended use plan of a State prepared under section 606(c) of the Federal Water Pollution Control Act (33 U.S.C. 1386(c)) within the regional consortium.

"(e) REPORT.—Not later than 2 years after the date of enactment of this Act [Nov. 15, 2021], the Administrator shall submit to Congress a report that describes the implementation of the pilot program, which shall include—

"(1) a description of the use and deployment of amounts made available under the pilot program; and

"(2) an accounting of all grants awarded under the program, including a description of each grant recipient and each project funded using a grant under the pilot program.

"(f) FUNDING.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the pilot program $15,000,000 for each of fiscal years 2022 through 2026, to remain available until expended.

"(2) REQUIREMENT.—Of the funds made available under paragraph (1), not more than 35 percent may be used to provide grants to regional consortia established under subsection (d)."

§10362. Definitions

In this chapter:

(1) Administrator

The term "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(2) Advisory Committee

The term "Advisory Committee" means the National Advisory Committee on Water Information established—

(A) under the Office of Management and Budget Circular 92–01; and

(B) to coordinate water data collection activities.

(3) Assessment program

The term "assessment program" means the water availability and use assessment program established by the Secretary under section 10368(a) of this title.

(4) Climate division

The term "climate division" means 1 of the 359 divisions in the United States that represents 2 or more regions located within a State that are as climatically homogeneous as possible, as determined by the Administrator.

(5) Commissioner

The term "Commissioner" means the Commissioner of Reclamation.

(6) Director

The term "Director" means the Director of the United States Geological Survey.

(7) Eligible applicant

The term "eligible applicant" means—

(A) any State, Indian tribe, irrigation district, or water district;

(B) any State, regional, or local authority, the members of which include 1 or more organizations with water or power delivery authority;

(C) any other organization with water or power delivery authority; and

(D) any nonprofit conservation organization, if—

(i) the nonprofit conservation organization is acting in partnership with and with the agreement of an entity described in subparagraph (A), (B), or (C); or

(ii) in the case of an application for a project to improve the condition of a natural feature or nature-based feature on Federal land, the entities described in subparagraph (A), (B), or (C) from the applicable service area have been notified of the project application and there is no written objection to the project.

(8) Federal Power Marketing Administration

The term "Federal Power Marketing Administration" means—

(A) the Bonneville Power Administration;

(B) the Southeastern Power Administration;

(C) the Southwestern Power Administration; and

(D) the Western Area Power Administration.

(9) Hydrologic accounting unit

The term "hydrologic accounting unit" means 1 of the 352 river basin hydrologic accounting units used by the United States Geological Survey.

(10) Indian tribe

The term "Indian tribe" has the meaning given the term in section 5304 of title 25.

(11) Major aquifer system

The term "major aquifer system" means a groundwater system that is—

(A) identified as a significant groundwater system by the Director; and

(B) included in the Groundwater Atlas of the United States, published by the United States Geological Survey.

(12) Major reclamation river basin

(A) In general

The term "major reclamation river basin" means each major river system (including tributaries)—

(i) that is located in a service area of the Bureau of Reclamation; and

(ii) at which is located a federally authorized project of the Bureau of Reclamation.

(B) Inclusions

The term "major reclamation river basin" includes—

(i) the Colorado River;

(ii) the Columbia River;

(iii) the Klamath River;

(iv) the Missouri River;

(v) the Rio Grande;

(vi) the Sacramento River;

(vii) the San Joaquin River; and

(viii) the Truckee River.

(13) Natural feature

The term "natural feature" means a feature that is created through the action of physical, geological, biological, and chemical processes over time.

(14) Nature-based feature

The term "nature-based feature" means a feature that is created by human design, engineering, and construction to provide a means to reduce water supply and demand imbalances or drought or flood risk by acting in concert with natural processes.

(15) Non-Federal participant

The term "non-Federal participant" means—

(A) a State, regional, or local authority;

(B) an Indian tribe or tribal organization; or

(C) any other qualifying entity, such as a water conservation district, water conservancy district, or rural water district or association, or a nongovernmental organization.

(16) Panel

The term "panel" means the climate change and water intragovernmental panel established by the Secretary under section 10366(a) of this title.

(17) Program

The term "program" means the regional integrated sciences and assessments program—

(A) established by the Administrator; and

(B) that is comprised of 8 regional programs that use advances in integrated climate sciences to assist decisionmaking processes.

(18) Secretary

(A) In general

Except as provided in subparagraph (B), the term "Secretary" means the Secretary of the Interior.

(B) Exceptions

The term "Secretary" means—

(i) in the case of sections 10363, 10364, and 10369 of this title, the Secretary of the Interior (acting through the Commissioner); and

(ii) in the case of sections 10367 and 10368 of this title, the Secretary of the Interior (acting through the Director).

(19) Service area

The term "service area" means any area that encompasses a watershed that contains a federally authorized reclamation project that is located in any State or area described in section 391 of title 43.

(Pub. L. 111–11, title IX, §9502, Mar. 30, 2009, 123 Stat. 1330; Pub. L. 116–260, div. FF, title XI, §1106(a), Dec. 27, 2020, 134 Stat. 3240.)

EDITORIAL NOTES

AMENDMENTS

2020—Pub. L. 116–260, §1106(a)(1), substituted "chapter" for "section" in introductory provisions.

Par. (7). Pub. L. 116–260, §1106(a)(2), added par. (7) and struck out former par. (7). Prior to amendment, text read as follows: "The term 'eligible applicant' means any State, Indian tribe, irrigation district, water district, or other organization with water or power delivery authority."

Par. (10). Pub. L. 116–260, §1106(a)(3), made technical amendment to reference in original act which appears in text as a reference to section 5304 of title 25.

Pars. (13) to (19). Pub. L. 116–260, §1106(a)(4), (5), added pars. (13) and (14) and redesignated former pars. (13) to (17) as (15) to (19), respectively.

§10363. Reclamation climate change and water program

(a) In general

The Secretary shall establish a climate change adaptation program—

(1) to coordinate with the Administrator and other appropriate agencies to assess each effect of, and risk resulting from, global climate change with respect to the quantity of water resources located in a service area; and

(2) to ensure, to the maximum extent possible, that strategies are developed at watershed and aquifer system scales to address potential water shortages, conflicts, and other impacts to water users located at, and the environment of, each service area.

(b) Required elements

In carrying out the program described in subsection (a), the Secretary shall—

(1) coordinate with the United States Geological Survey, the National Oceanic and Atmospheric Administration, the program, and each appropriate State water resource agency, to ensure that the Secretary has access to the best available scientific information with respect to presently observed and projected future impacts of global climate change on water resources;

(2) assess specific risks to the water supply of each major reclamation river basin, including any risk relating to—

(A) a change in snowpack;

(B) changes in the timing and quantity of runoff;

(C) changes in groundwater recharge and discharge; and

(D) any increase in—

(i) the demand for water as a result of increasing temperatures; and

(ii) the rate of reservoir evaporation;

(3) with respect to each major reclamation river basin, analyze the extent to which changes in the water supply of the United States will impact—

(A) the ability of the Secretary to deliver water to the contractors of the Secretary;

(B) hydroelectric power generation facilities;
(C) recreation at reclamation facilities;
(D) fish and wildlife habitat;
(E) applicable species listed as an endangered, threatened, or candidate species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
(F) water quality issues (including salinity levels of each major reclamation river basin);
(G) flow and water dependent ecological resiliency; and
(H) flood control management;

(4) in consultation with appropriate non-Federal participants, consider and develop appropriate strategies to mitigate each impact of water supply changes analyzed by the Secretary under paragraph (3), including strategies relating to—
(A) the modification of any reservoir storage or operating guideline in existence as of March 30, 2009;
(B) the development of new water management, operating, or habitat restoration plans;
(C) water conservation;
(D) improved hydrologic models and other decision support systems; and
(E) groundwater and surface water storage needs; and

(5) in consultation with the Director, the Administrator, the Secretary of Agriculture (acting through the Chief of the Natural Resources Conservation Service), and applicable State water resource agencies, develop a monitoring plan to acquire and maintain water resources data—
(A) to strengthen the understanding of water supply trends; and
(B) to assist in each assessment and analysis conducted by the Secretary under paragraphs (2) and (3).

(c) Reporting

Not later than 2 years after March 30, 2009, and every 5 years thereafter, the Secretary shall submit to the appropriate committees of Congress a report that describes—
(1) each effect of, and risk resulting from, global climate change with respect to the quantity of water resources located in each major reclamation river basin;
(2) the impact of global climate change with respect to the operations of the Secretary in each major reclamation river basin;
(3) each mitigation and adaptation strategy considered and implemented by the Secretary to address each effect of global climate change described in paragraph (1);
(4) each coordination activity conducted by the Secretary with—
(A) the Director;
(B) the Administrator;
(C) the Secretary of Agriculture (acting through the Chief of the Natural Resources Conservation Service); or
(D) any appropriate State water resource agency; and

(5) the implementation by the Secretary of the monitoring plan developed under subsection (b)(5).

(d) Feasibility studies

(1) Authority of Secretary

The Secretary, in cooperation with any non-Federal participant, may conduct 1 or more studies to determine the feasibility and impact on ecological resiliency of implementing each mitigation and adaptation strategy described in subsection (c)(3), including the construction of any water supply, water management, environmental, or habitat enhancement water infrastructure that the Secretary determines to be necessary to address the effects of global climate change on water resources located in each major reclamation river basin.

(2) Cost sharing

(A) Federal share

(i) In general

Except as provided in clause (ii), the Federal share of the cost of a study described in paragraph (1) shall not exceed 50 percent of the cost of the study.

(ii) Exception relating to financial hardship

The Secretary may increase the Federal share of the cost of a study described in paragraph (1) to exceed 50 percent of the cost of the study if the Secretary determines that, due to a financial hardship, the non-Federal participant of the study is unable to contribute an amount equal to 50 percent of the cost of the study.

(B) Non-Federal share

The non-Federal share of the cost of a study described in paragraph (1) may be provided in the form of any in-kind services that substantially contribute toward the completion of the study, as determined by the Secretary.

(e) No effect on existing authority

Nothing in this section amends or otherwise affects any existing authority under reclamation laws that govern the operation of any Federal reclamation project.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2009 through 2023,[1] to remain available until expended.

(Pub. L. 111–11, title IX, §9503, Mar. 30, 2009, 123 Stat. 1332.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (b)(3)(E), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXTENSION OF AUTHORIZATION OF APPROPRIATIONS

Pub. L. 119–74, div. B, title II, §207, Jan. 23, 2026, 140 Stat. 74, provided that: "Section 9503(f) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10363(f)) shall be applied by substituting '2026' for '2023'."

Similar provisions were contained in the following prior appropriation act:

Pub. L. 118–42, div. D, title II, §207, Mar. 9, 2024, 138 Stat. 195.

[1] *See Extension of Authorization of Appropriations note below.*

§10364. Water management improvement

(a) Authorization of grants and cooperative agreements

(1) Authority of Secretary

The Secretary may provide any grant to, or enter into an agreement with, any eligible applicant to assist the eligible applicant in planning, designing, or constructing any improvement or carrying out any activity—

(A) to conserve water;

(B) to increase water use efficiency;

(C) to facilitate water markets;

(D) to enhance water management, including increasing the use of renewable energy in the management and delivery of water;

(E) to accelerate the adoption and use of advanced water treatment technologies to increase water supply;

(F) to assist States and water users in complying with interstate compacts or reducing basin water supply-demand imbalances;

(G) to achieve the prevention of the decline of species that the United States Fish and Wildlife Service and National Marine Fisheries Service have proposed for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (or candidate species that are being considered by those agencies for such listing but are not yet the subject of a proposed rule);

(H) to achieve the acceleration of the recovery of threatened species, endangered species, and designated critical habitats that are adversely affected by Federal reclamation projects or are subject to a recovery plan or conservation plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) under which the Commissioner of Reclamation has implementation responsibilities;

(I) to improve the condition of a natural feature; or

(J) to carry out any other activity—

(i) to address any climate-related impact to the water supply of the United States that increases ecological resiliency to the impacts of climate change;

(ii) to prevent any water-related crisis or conflict at any watershed that has a nexus to a Federal reclamation project located in a service area; or

(iii) to plan for or address the impacts of drought.

(2) Application

To be eligible to receive a grant, or enter into an agreement with the Secretary under paragraph (1), an eligible applicant shall—

(A) be located within—

(i) the States and areas referred to in section 391 of title 43;

(ii) the State of Alaska;

(iii) the State of Hawaii; or

(iv) the Commonwealth of Puerto Rico; and

(B) submit to the Secretary an application that includes—

(i) a proposal of the improvement or activity to be planned, designed, constructed, or implemented by the eligible applicant; and

(ii) for a project that is intended to have a quantifiable water savings and would receive a grant of $500,000 or more—

(I) a proposal for a monitoring plan of at least 5 years that would demonstrate ways in which the proposed improvement or activity would result in improved streamflows or aquatic habitat; or

(II) for a project that does not anticipate improved streamflows or aquatic habitat, an analysis of ways in which the proposed improvement or activity would contribute to 1 or more of the other objectives described in paragraph (1).

(3) Requirements of grants and cooperative agreements

(A) Compliance with requirements

Each grant and agreement entered into by the Secretary with any eligible applicant under paragraph (1) shall be in compliance with each requirement described in subparagraphs (B) through (F).

(B) Agricultural operations

(i) In general

Except as provided in clause (ii), in carrying out paragraph (1), the Secretary shall not provide a grant, or enter into an agreement, for an improvement to conserve irrigation water unless the eligible applicant agrees not—

(I) to use any associated water savings to increase the total irrigated acreage of the eligible applicant; or

(II) to otherwise increase the consumptive use of water in the operation of the eligible applicant, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.

(ii) Indian tribes

In the case of an eligible applicant that is an Indian tribe, in carrying out paragraph (1), the Secretary shall not provide a grant, or enter into an agreement, for an improvement to conserve irrigation water unless the Indian tribe agrees not—

(I) to use any associated water savings to increase the total irrigated acreage more than the water right of that Indian tribe, as determined by—

(aa) a court decree;

(bb) a settlement;

(cc) a law; or

(dd) any combination of the authorities described in items (aa) through (cc); or

(II) to otherwise increase the consumptive use of water more than the water right of the Indian tribe described in subclause (I).

(C) Nonreimbursable funds

Any funds provided by the Secretary to an eligible applicant through a grant or agreement under paragraph (1) shall be nonreimbursable.

(D) Title to improvements

If an infrastructure improvement to a federally owned facility is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1), the Federal Government shall continue to hold title to the facility and improvements to the facility.

(E) Cost sharing

(i) Federal share

(I) In general

Except as provided in subclause (II), the Federal share of the cost of any infrastructure improvement or activity that is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1) shall not exceed 50 percent of the cost of the infrastructure improvement or activity.

(II) Increased Federal share for certain infrastructure improvements and activities

The Federal share of the cost of an infrastructure improvement or activity shall not exceed 75 percent of the cost of the infrastructure improvement or activity, if—

(aa) the infrastructure improvement or activity was developed as part of a collaborative process by—

(AA) a watershed group (as defined in section 1015 of title 16); or

(BB) a water user and 1 or more stakeholders with diverse interests; and

(bb) the majority of the benefits of the infrastructure improvement or activity, as determined by the Secretary, are for the purpose of advancing 1 or more components of an established strategy or plan to increase the reliability of water supply for consumptive and nonconsumptive ecological values.

(ii) Calculation of non-Federal share

In calculating the non-Federal share of the cost of an infrastructure improvement or activity proposed by an eligible applicant through an application submitted by the eligible

applicant under paragraph (2), the Secretary shall—

(I) consider the value of any in-kind services that substantially contributes toward the completion of the improvement or activity, as determined by the Secretary; and

(II) not consider any other amount that the eligible applicant receives from a Federal agency.

(iii) Maximum amount

The amount provided to an eligible applicant through a grant or other agreement under paragraph (1) shall be not more than $5,000,000.

(iv) Operation and maintenance costs

The non-Federal share of the cost of operating and maintaining any infrastructure improvement that is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1) shall be 100 percent.

(F) Liability

(i) In general

Except as provided under chapter 171 of title 28 (commonly known as the "Federal Tort Claims Act"), the United States shall not be liable for monetary damages of any kind for any injury arising out of an act, omission, or occurrence that arises in relation to any facility created or improved under this section, the title of which is not held by the United States.

(ii) Tort Claims Act

Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28 (commonly known as the "Federal Tort Claims Act").

(4) Priority

In providing grants to, and entering into agreements for, projects intended to have a quantifiable water savings under this subsection, the Secretary shall give priority to projects that enhance drought resilience by benefitting the water supply and ecosystem.

(b) Research agreements

(1) Authority of Secretary

The Secretary may enter into 1 or more agreements with any university, nonprofit research institution, or eligible applicant to fund any research activity that is designed—

(A) to conserve water resources;

(B) to increase the efficiency of the use of water resources;

(C) to restore a natural feature or use a nature-based feature to reduce water supply and demand imbalances or the risk of drought or flood; or

(D) to enhance the management of water resources, including increasing the use of renewable energy in the management and delivery of water.

(2) Terms and conditions of Secretary

(A) In general

An agreement entered into between the Secretary and any university, institution, or organization described in paragraph (1) shall be subject to such terms and conditions as the Secretary determines to be appropriate.

(B) Availability

The agreements under this subsection shall be available to all Reclamation projects and programs that may benefit from project-specific or programmatic cooperative research and development.

(c) Mutual benefit

Grants or other agreements made under this section may be for the mutual benefit of the United States and the entity that is provided the grant or enters into the cooperative agreement.

(d) Relationship to project-specific authority

This section shall not supersede any existing project-specific funding authority.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section $1,000,000,000, to remain available until expended.

(Pub. L. 111–11, title IX, §9504, Mar. 30, 2009, 123 Stat. 1334; Pub. L. 113–235, div. D, title II, §203, Dec. 16, 2014, 128 Stat. 2311; Pub. L. 114–113, div. D, title II, §206, Dec. 18, 2015, 129 Stat. 2407; Pub. L. 114–322, title III, §4009(d), Dec. 16, 2016, 130 Stat. 1870; Pub. L. 115–244, div. A, title II, §205(b), Sept. 21, 2018, 132 Stat. 2906; Pub. L. 116–9, title VIII, §8501, Mar. 12, 2019, 133 Stat. 826; Pub. L. 116–94, div. C, title II, §203, Dec. 20, 2019, 133 Stat. 2669; Pub. L. 116–260, div. D, title II, §203, div. FF, title XI, §1106(b)–(d), Dec. 27, 2020, 134 Stat. 1363, 3241, 3242; Pub. L. 117–103, div. D, title II, §203, Mar. 15, 2022, 136 Stat. 221; Pub. L. 117–328, div. D, title II, §203, Dec. 29, 2022, 136 Stat. 4631; Pub. L. 118–42, div. D, title II, §203, Mar. 9, 2024, 138 Stat. 194; Pub. L. 119–74, div. B, title II, §203, Jan. 23, 2026, 140 Stat. 73.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (a)(1)(G), (H), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

Section 206 of the Energy and Water Development and Related Agencies Appropriations Act, 2015, referred to in subsec. (e), is section 206 of div. D of Pub. L. 113–235, which is set out as a note under section 620 of Title 43, Public Lands.

CODIFICATION

Pub. L. 116–260, §203 and §1106(d), both amended subsec. (e) of this section by striking "$530,000,000" and inserting different new dollar amounts. In addition, section 1106(d) inserted the following condition: "subject to the condition that $50,000,000 of that amount shall be used to carry out section 206 of the Energy and Water Development and Related Agencies Appropriations Act, 2015 (43 U.S.C. 620 note; Public Law 113–235)". The amendment by section 1106(d) could not be executed as written because "$530,000,000" no longer appeared in text after the amendment by section 203, and therefore, the text does not reflect the insertion of the condition. Pub. L. 117–103, §203, subsequently amended subsec. (e) as it read after the amendment by section 203 of Pub. L. 116–260.

AMENDMENTS

2026—Subsec. (e). Pub. L. 119–74 substituted "$1,000,000,000" for "$920,000,000".

2024—Subsec. (e). Pub. L. 118–42 substituted "$920,000,000" for "$820,000,000".

2022—Subsec. (e). Pub. L. 117–328 substituted "$820,000,000" for "$750,000,000".

Pub. L. 117–103 substituted "$750,000,000" for "$610,000,000". See Codification note above.

2020—Subsec. (a)(1). Pub. L. 116–260, §1106(b)(1)(A), inserted "or carrying out any activity" after "any improvement" in introductory provisions.

Subsec. (a)(1)(F). Pub. L. 116–260, §1106(b)(1)(C), added subpar. (F). Former subpar. (F) redesignated (G).

Subsec. (a)(1)(G). Pub. L. 116–260, §1106(b)(1)(D), substituted "to achieve the prevention of" for "to prevent".

Pub. L. 116–260, §1106(b)(1)(B), redesignated subpar. (F) as (G). Former subpar. (G) redesignated (H).

Subsec. (a)(1)(H). Pub. L. 116–260, §1106(b)(1)(E), substituted "to achieve the acceleration of" for "to accelerate" and struck out "or" at end.

Pub. L. 116–260, §1106(b)(1)(B), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (J).

Subsec. (a)(1)(I). Pub. L. 116–260, §1106(b)(1)(F), added subpar. (I).

Subsec. (a)(1)(J). Pub. L. 116–260, §1106(b)(1)(B), redesignated subpar. (H) as (J).

Subsec. (a)(1)(J)(iii). Pub. L. 116–260, §1106(b)(1)(G), added cl. (iii).

Subsec. (a)(2)(A)(iv). Pub. L. 116–260, §1106(b)(2)(A), added cl. (iv).

Subsec. (a)(2)(B). Pub. L. 116–260, §1106(b)(2)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: "submit to the Secretary an application that includes a proposal of the improvement or activity to be planned, designed, constructed, or implemented by the eligible applicant."

Subsec. (a)(3)(E)(i). Pub. L. 116–260, §1106(b)(3), added cl. (i) and struck out former cl. (i). Prior to amendment, text read as follows: "The Federal share of the cost of any infrastructure improvement or activity that is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1) shall not exceed 50 percent of the cost of the infrastructure improvement or activity."

Subsec. (a)(4). Pub. L. 116–260, §1106(b)(4), added par. (4).

Subsec. (b)(1). Pub. L. 116–260, §1106(c)(1), substituted "or eligible applicant" for "or organization with water or power delivery authority" in introductory provisions.

Subsec. (b)(1)(C), (D). Pub. L. 116–260, §1106(c)(2)–(4), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (e). Pub. L. 116–260, §1106(d), which directed substitution of "$700,000,000, subject to the condition that $50,000,000 of that amount shall be used to carry out section 206 of the Energy and Water Development and Related Agencies Appropriations Act, 2015 (43 U.S.C. 620 note; Public Law 113–235)" for "$530,000,000", could not be executed because "$530,000,000" did not appear in text after the intervening amendment by Pub. L. 116–260, §203. See Codification note above and note below.

Pub. L. 116–260, §203, substituted "$610,000,000" for "$530,000,000". See Codification note above.

2019—Subsec. (a)(2)(A). Pub. L. 116–9, §8501(1), substituted "within—" for "within", inserted cl. (i) designation before "the States", and added cls. (ii) and (iii).

Subsec. (a)(3)(B). Pub. L. 116–9, §8501(2), designated existing provisions as cl. (i) and inserted heading, substituted "Except as provided in clause (ii), in carrying" for "In carrying" in introductory provisions, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and realigned margins, and added cl. (ii).

Subsec. (e). Pub. L. 116–94 substituted "$530,000,000" for "$480,000,000".

2018—Subsec. (e). Pub. L. 115–244 substituted "$480,000,000" for "$450,000,000".

2016—Subsec. (e). Pub. L. 114–322 substituted "$450,000,000" for "$350,000,000".

2015—Subsec. (e). Pub. L. 114–113 substituted "$350,000,000" for "$300,000,000".

2014—Subsec. (e). Pub. L. 113–235 substituted "$300,000,000" for "$200,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

FUNDING

Pub. L. 114–322, title III, §4009(d), Dec. 16, 2016, 130 Stat. 1870, as amended by Pub. L. 116–260, div. FF, title XI, §1106(e), Dec. 27, 2020, 134 Stat. 3243, provided that: "Section 9504 of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364) is amended in subsection (e) by striking '$350,000,000' and inserting '$450,000,000'."

[Amendment of section 4009(d) of Pub. L. 114–322, set out above, by section 1106(e) of div. FF of Pub. L. 116–260 struck out before period at end "on the condition that of that amount, $50,000,000 of it is used to carry out section 206 of the Energy and Water Development and Related Agencies Appropriations Act, 2015 (43 U.S.C. 620 note; Public Law 113–235)".]

§10365. Hydroelectric power assessment

(a) Duty of Secretary of Energy

The Secretary of Energy, in consultation with the Administrator of each Federal Power Marketing Administration, shall assess each effect of, and risk resulting from, global climate change with respect to water supplies that are required for the generation of hydroelectric power at each Federal water project that is applicable to a Federal Power Marketing Administration.

(b) Access to appropriate data

(1) In general

In carrying out each assessment under subsection (a), the Secretary of Energy shall consult with the United States Geological Survey, the National Oceanic and Atmospheric Administration, the program, and each appropriate State water resource agency, to ensure that the Secretary of Energy

has access to the best available scientific information with respect to presently observed impacts and projected future impacts of global climate change on water supplies that are used to produce hydroelectric power.

(2) Access to data for certain assessments

In carrying out each assessment under subsection (a), with respect to the Bonneville Power Administration and the Western Area Power Administration, the Secretary of Energy shall consult with the Commissioner to access data and other information that—

(A) is collected by the Commissioner; and

(B) the Secretary of Energy determines to be necessary for the conduct of the assessment.

(c) Report

Not later than 2 years after March 30, 2009, and every 5 years thereafter, the Secretary of Energy shall submit to the appropriate committees of Congress a report that describes—

(1) each effect of, and risk resulting from, global climate change with respect to—

(A) water supplies used for hydroelectric power generation; and

(B) power supplies marketed by each Federal Power Marketing Administration, pursuant to—

(i) long-term power contracts;

(ii) contingent capacity contracts; and

(iii) short-term sales; and

(2) each recommendation of the Administrator of each Federal Power Marketing Administration relating to any change in any operation or contracting practice of each Federal Power Marketing Administration to address each effect and risk described in paragraph (1), including the use of purchased power to meet long-term commitments of each Federal Power Marketing Administration.

(d) Authority

The Secretary of Energy may enter into contracts, grants, or other agreements with appropriate entities to carry out this section.

(e) Costs

(1) Nonreimbursable

Any costs incurred by the Secretary of Energy in carrying out this section shall be nonreimbursable.

(2) PMA costs

Each Federal Power Marketing Administration shall incur costs in carrying out this section only to the extent that appropriated funds are provided by the Secretary of Energy for that purpose.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2009 through 2023, to remain available until expended.

(Pub. L. 111–11, title IX, §9505, Mar. 30, 2009, 123 Stat. 1336.)

§10366. Climate change and water intragovernmental panel

(a) Establishment

The Secretary and the Administrator shall establish and lead a climate change and water intragovernmental panel—

(1) to review the current scientific understanding of each impact of global climate change on the quantity and quality of freshwater resources of the United States; and

(2) to develop any strategy that the panel determines to be necessary to improve observational

capabilities, expand data acquisition, or take other actions—

(A) to increase the reliability and accuracy of modeling and prediction systems to benefit water managers at the Federal, State, and local levels; and

(B) to increase the understanding of the impacts of climate change on aquatic ecosystems.

(b) Membership

The panel shall be comprised of—

(1) the Secretary;

(2) the Director;

(3) the Administrator;

(4) the Secretary of Agriculture (acting through the Under Secretary for Natural Resources and Environment);

(5) the Commissioner;

(6) the Secretary of the Army, acting through the Chief of Engineers;

(7) the Administrator of the Environmental Protection Agency; and

(8) the Secretary of Energy.

(c) Review elements

In conducting the review and developing the strategy under subsection (a), the panel shall consult with State water resource agencies, the Advisory Committee, drinking water utilities, water research organizations, and relevant water user, environmental, and other nongovernmental organizations—

(1) to assess the extent to which the conduct of measures of streamflow, groundwater levels, soil moisture, evapotranspiration rates, evaporation rates, snowpack levels, precipitation amounts, flood risk, and glacier mass is necessary to improve the understanding of the Federal Government and the States with respect to each impact of global climate change on water resources;

(2) to identify data gaps in current water monitoring networks that must be addressed to improve the capability of the Federal Government and the States to measure, analyze, and predict changes to the quality and quantity of water resources, including flood risks, that are directly or indirectly affected by global climate change;

(3) to establish data management and communication protocols and standards to increase the quality and efficiency by which each Federal agency acquires and reports relevant data;

(4) to consider options for the establishment of a data portal to enhance access to water resource data—

(A) relating to each nationally significant freshwater watershed and aquifer located in the United States; and

(B) that is collected by each Federal agency and any other public or private entity for each nationally significant freshwater watershed and aquifer located in the United States;

(5) to facilitate the development of hydrologic and other models to integrate data that reflects groundwater and surface water interactions; and

(6) to apply the hydrologic and other models developed under paragraph (5) to water resource management problems identified by the panel, including the need to maintain or improve ecological resiliency at watershed and aquifer system scales.

(d) Report

Not later than 2 years after March 30, 2009, the Secretary shall submit to the appropriate committees of Congress a report that describes the review conducted, and the strategy developed, by the panel under subsection (a).

(e) Demonstration, research, and methodology development projects

(1) Authority of Secretary

The Secretary, in consultation with the panel and the Advisory Committee, may provide grants to, or enter into any contract, cooperative agreement, interagency agreement, or other transaction with, an appropriate entity to carry out any demonstration, research, or methodology development

project that the Secretary determines to be necessary to assist in the implementation of the strategy developed by the panel under subsection (a)(2).

(2) Requirements

(A) Maximum amount of Federal share

The Federal share of the cost of any demonstration, research, or methodology development project that is the subject of any grant, contract, cooperative agreement, interagency agreement, or other transaction entered into between the Secretary and an appropriate entity under paragraph (1) shall not exceed $1,000,000.

(B) Report

An appropriate entity that receives funds from a grant, contract, cooperative agreement, interagency agreement, or other transaction entered into between the Secretary and the appropriate entity under paragraph (1) shall submit to the Secretary a report describing the results of the demonstration, research, or methodology development project conducted by the appropriate entity.

(f) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out subsections (a) through (d) $2,000,000 for each of fiscal years 2009 through 2011, to remain available until expended.

(2) Demonstration, research, and methodology development projects

There is authorized to be appropriated to carry out subsection (e) $10,000,000 for the period of fiscal years 2009 through 2013, to remain available until expended.

(Pub. L. 111–11, title IX, §9506, Mar. 30, 2009, 123 Stat. 1338.)

§10367. Water data enhancement by United States Geological Survey

(a) Federal priority streamgage program

(1) In general

The Secretary, in consultation with the Advisory Committee and the Panel and consistent with this section, shall proceed with implementation of the Federal priority streamgage program.

(2) Requirements

In conducting the Federal priority streamgage program, the Secretary shall—

(A) measure streamflow and related environmental variables in nationally significant watersheds—

(i) in a reliable and continuous manner; and

(ii) to develop a comprehensive source of information on which public and private decisions relating to the management of water resources may be based;

(B) provide for a better understanding of hydrologic extremes (including floods and droughts) through the conduct of intensive data collection activities during and following hydrologic extremes;

(C) establish a base network that provides resources that are necessary for—

(i) the monitoring of long-term changes in streamflow; and

(ii) the conduct of assessments to determine the extent to which each long-term change monitored under clause (i) is related to global climate change;

(D) integrate the Federal priority streamgage program with data collection activities of Federal agencies and appropriate State water resource agencies (including the National Integrated Drought Information System)—

(i) to enhance the comprehensive understanding of water availability;
(ii) to improve flood-hazard assessments;
(iii) to identify any data gap with respect to water resources; and
(iv) to improve hydrologic forecasting; and

(E) incorporate principles of adaptive management in the conduct of periodic reviews of information collected under the Federal priority streamgage program to assess whether the objectives of the Federal priority streamgage program are being adequately addressed.

(3) Improved methodologies

The Secretary shall—

(A) improve methodologies relating to the analysis and delivery of data; and

(B) investigate, develop, and implement new methodologies and technologies to estimate or measure streamflow in a more cost-efficient manner.

(4) Network enhancement

(A) In general

Not later than 10 years after March 30, 2023, in accordance with subparagraph (B), the Secretary shall—

(i) increase the number of streamgages funded by the national streamflow information program to a quantity of not less than 4,700 sites; and

(ii) ensure all streamgages are flood-hardened and equipped with precipitation water-quality sensors and modernized telemetry.

(B) Requirements of sites

Each site described in subparagraph (A) shall conform with the Federal needs established through regular solicitation of feedback, such as that documented in the report titled "Re-prioritization of the U.S. Geological Survey Federal Priority streamgage program, 2022" [1] (Open-file Report 2023–1032).

(5) Federal share

The Federal share of the Federal priority streamgage network established pursuant to this subsection shall be 100 percent of the cost of carrying out the Federal priority streamgage network.

(6) Authorization of appropriations

(A) In general

Except as provided in subparagraph (B), there are authorized to be appropriated such sums as are necessary to operate the Federal priority streamgage program for the period of fiscal years 2009 through 2028, to remain available until expended.

(B) Network enhancement funding

There is authorized to be appropriated to carry out the network enhancements described in paragraph (4) $10,000,000 for each of fiscal years 2009 through 2028, to remain available until expended.

(b) National groundwater resources monitoring

(1) In general

The Secretary shall develop a systematic groundwater monitoring program for each major aquifer system located in the United States.

(2) Program elements

In developing the monitoring program described in paragraph (1), the Secretary shall—

(A) establish appropriate criteria for monitoring wells to ensure the acquisition of long-term, high-quality data sets, including, to the maximum extent possible, the inclusion of real-time

instrumentation and reporting;

(B) in coordination with the Advisory Committee and State and local water resource agencies and Tribes—

(i) assess the current scope of groundwater monitoring based on the access availability and capability of each monitoring well in existence as of March 30, 2009; and

(ii) develop and carry out a monitoring plan that maximizes coverage for each major aquifer system that is located in the United States; and

(C) prior to initiating any specific monitoring activities within a State or Tribal lands after March 30, 2009, consult and coordinate with the applicable State water resource agency or Tribe with jurisdiction over the aquifer that is the subject of the monitoring activities, and comply with all applicable laws (including regulations) of the State.

(3) Program objectives

In carrying out the monitoring program described in paragraph (1), the Secretary shall—

(A) provide data that is necessary for the improvement of understanding with respect to surface water and groundwater interactions;

(B) by expanding the network of monitoring wells to reach each climate division, support the groundwater climate response network to improve the understanding of the effects of global climate change on groundwater recharge and availability; and

(C) support the objectives of the assessment program.

(4) Improved methodologies

The Secretary shall—

(A) improve methodologies relating to the analysis and delivery of data; and

(B) investigate, develop, and implement new methodologies and technologies to estimate or measure groundwater recharge, discharge, and storage in a more cost-efficient manner.

(5) Federal share

The Federal share of the monitoring program described in paragraph (1) may be 100 percent of the cost of carrying out the monitoring program.

(6) Priority

In selecting monitoring activities consistent with the monitoring program described in paragraph (1), the Secretary shall give priority to those activities for which a State, a Tribe or local governmental entity agrees to provide for a substantial share of the cost of establishing or operating a monitoring well or other measuring device to carry out a monitoring activity.

(7) Authorization of appropriations

There are authorized to be appropriated $4,000,000 per fiscal year to carry out this subsection for the period of fiscal years 2023 through 2028, to remain available until expended.

(c) Improved water estimation, measurement, and monitoring technologies

(1) Authority of Secretary

The Secretary may provide grants on a nonreimbursable basis to appropriate entities with expertise in water resource data acquisition and reporting, including Federal agencies, the Water Resources Research Institutes and other academic institutions, and private entities, to—

(A) investigate, develop, and implement new methodologies and technologies to estimate or measure water resources data in a cost-efficient manner; and

(B) improve methodologies relating to the analysis and delivery of data.

(2) Priority

In providing grants to appropriate entities under paragraph (1), the Secretary shall give priority to appropriate entities that propose the development of new methods and technologies for—

(A) predicting and measuring streamflows;

(B) estimating changes in the storage of groundwater;

(C) improving data standards and methods of analysis (including the validation of data entered into geographic information system databases);

(D) measuring precipitation and potential evapotranspiration; and

(E) water withdrawals, return flows, and consumptive use.

(3) Partnerships

In recognition of the value of collaboration to foster innovation and enhance research and development efforts, the Secretary shall encourage partnerships, including public-private partnerships, between and among Federal agencies, academic institutions, and private entities to promote the objectives described in paragraph (1).

(4) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2009 through 2028.

(Pub. L. 111–11, title IX, §9507, Mar. 30, 2009, 123 Stat. 1339; Pub. L. 118–174, §2, Dec. 23, 2024, 138 Stat. 2602.)

EDITORIAL NOTES

AMENDMENTS

2024—Subsec. (a). Pub. L. 118–174, §2(1)(A), substituted "Federal priority streamgage program" for "National streamflow information program" in heading.

Subsec. (a)(1). Pub. L. 118–174, §2(1)(B), substituted "Federal priority streamgage program" for "national streamflow information program, as reviewed by the National Research Council in 2004".

Subsec. (a)(2). Pub. L. 118–174, §2(1)(C), substituted "Federal priority streamgage program" for "national streamflow information program" wherever appearing.

Subsec. (a)(4)(A). Pub. L. 118–174, §2(1)(D)(i)(I), substituted "2023" for "2009" in introductory provisions.

Subsec. (a)(4)(A)(ii). Pub. L. 118–174, §2(1)(D)(i)(II), inserted "precipitation" before "water-quality sensors".

Subsec. (a)(4)(B). Pub. L. 118–174, §2(1)(D)(ii), which directed the substitution of "Federal needs established through regular solicitation of feedback, such as that documented in the report titled 'Re-prioritization of the U.S. Geological Survey Federal Priority streamgage program, 2022' (Open-file Report 2023–1032)." for "National Streamflow Information Program as reviewed by the National Research Council." was executed by making the substitution for "National Streamflow Information Program plan as reviewed by the National Research Council.", to reflect the probable intent of Congress.

Subsec. (a)(5). Pub. L. 118–174, §2(1)(E), substituted "Federal priority streamgage network" for "national streamgaging network" in two places.

Subsec. (a)(6)(A). Pub. L. 118–174, §2(1)(F)(i), substituted "Federal priority streamgage program" for "national streamflow information program" and "2028" for "2023".

Subsec. (a)(6)(B). Pub. L. 118–174, §2(1)(F)(ii), substituted "2028" for "2019".

Subsec. (b)(2)(B). Pub. L. 118–174, §2(2)(A)(i), inserted "and Tribes" after "agencies" in introductory provisions.

Subsec. (b)(2)(C). Pub. L. 118–174, §2(2)(A)(ii), inserted "or Tribal lands" after "within a State" and "or Tribe" after "water resource agency".

Subsec. (b)(6). Pub. L. 118–174, §2(2)(B), inserted ", a Tribe" after "a State".

Subsec. (b)(7). Pub. L. 118–174, §2(2)(C), substituted "$4,000,000 per fiscal year" for "such sums as are necessary" and "2023 through 2028" for "2009 through 2023".

Subsec. (c). Pub. L. 118–174, §2(3), (4), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to brackish groundwater assessment study and report.

Subsec. (c)(4). Pub. L. 118–174, §2(5), substituted "2028" for "2019".

Subsec. (d). Pub. L. 118–174, §2(4), redesignated subsec. (d) as (c).

[1] *So in original. Probably should be "Re-Prioritization of the U.S. Geological Survey Federal Priority Streamgage Network, 2022".*

§10368. National water availability and use assessment program

(a) Establishment

The Secretary, in coordination with the Advisory Committee and State and local water resource agencies, shall establish a national assessment program to be known as the "national water availability and use assessment program"—

(1) to provide a more accurate assessment of the status of the water resources of the United States;

(2) to assist in the determination of the quantity of water that is available for beneficial uses;

(3) to assist in the determination of the quality of the water resources of the United States;

(4) to identify long-term trends in water availability;

(5) to use each long-term trend described in paragraph (4) to provide a more accurate assessment of the change in the availability of water in the United States; and

(6) to develop the basis for an improved ability to forecast the availability of water for future economic, energy production, and environmental uses.

(b) Program elements

(1) Water use

In carrying out the assessment program, the Secretary shall conduct any appropriate activity to carry out an ongoing assessment of water use in hydrologic accounting units and major aquifer systems located in the United States, including—

(A) the maintenance of a comprehensive national water use inventory to enhance the level of understanding with respect to the effects of spatial and temporal patterns of water use on the availability and sustainable use of water resources;

(B) the incorporation of water use science principles, with an emphasis on applied research and statistical estimation techniques in the assessment of water use;

(C) the integration of any dataset maintained by any other Federal or State agency into the dataset maintained by the Secretary; and

(D) a focus on the scientific integration of any data relating to water use, water flow, or water quality to generate relevant information relating to the impact of human activity on water and ecological resources.

(2) Water availability

In carrying out the assessment program, the Secretary shall conduct an ongoing assessment of water availability by—

(A) developing and evaluating nationally consistent indicators that reflect each status and trend relating to the availability of water resources in the United States, including—

(i) surface water indicators, such as streamflow and surface water storage measures (including lakes, reservoirs, perennial snowfields, and glaciers);

(ii) groundwater indicators, including groundwater level measurements and changes in groundwater levels due to—

(I) natural recharge;

(II) withdrawals;

(III) saltwater intrusion;

(IV) mine dewatering;

(V) land drainage;

(VI) artificial recharge; and

(VII) other relevant factors, as determined by the Secretary; and

(iii) impaired surface water and groundwater supplies that are known, accessible, and used to meet ongoing water demands;

(B) maintaining a national database of water availability data that—

(i) is comprised of maps, reports, and other forms of interpreted data;
(ii) provides electronic access to the archived data of the national database; and
(iii) provides for real-time data collection; and

(C) developing and applying predictive modeling tools that integrate groundwater, surface water, and ecological systems.

(c) Grant program

(1) Authority of Secretary

The Secretary may provide grants to State water resource agencies to assist State water resource agencies in—

(A) developing water use and availability datasets that are integrated with each appropriate dataset developed or maintained by the Secretary; or

(B) integrating any water use or water availability dataset of the State water resource agency into each appropriate dataset developed or maintained by the Secretary.

(2) Criteria

To be eligible to receive a grant under paragraph (1), a State water resource agency shall demonstrate to the Secretary that the water use and availability dataset proposed to be established or integrated by the State water resource agency—

(A) is in compliance with each quality and conformity standard established by the Secretary to ensure that the data will be capable of integration with any national dataset; and

(B) will enhance the ability of the officials of the State or the State water resource agency to carry out each water management and regulatory responsibility of the officials of the State in accordance with each applicable law of the State.

(3) Maximum amount

The amount of a grant provided to a State water resource agency under paragraph (1) shall be an amount not more than $250,000.

(d) Report

Not later than December 31, 2012, and every 5 years thereafter, the Secretary shall submit to the appropriate committees of Congress a report that provides a detailed assessment of—

(1) the current availability of water resources in the United States, including—
(A) historic trends and annual updates of river basin inflows and outflows;
(B) surface water storage;
(C) groundwater reserves; and
(D) estimates of undeveloped potential resources (including saline and brackish water and wastewater);

(2) significant trends affecting water availability, including each documented or projected impact to the availability of water as a result of global climate change;

(3) the withdrawal and use of surface water and groundwater by various sectors, including—
(A) the agricultural sector;
(B) municipalities;
(C) the industrial sector;
(D) thermoelectric power generators; and
(E) hydroelectric power generators;

(4) significant trends relating to each water use sector, including significant changes in water use due to the development of new energy supplies;

(5) significant water use conflicts or shortages that have occurred or are occurring; and

(6) each factor that has caused, or is causing, a conflict or shortage described in paragraph (5).

(e) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out subsections (a), (b), and (d) $20,000,000 for each of fiscal years 2009 through 2023, to remain available until expended.

(2) Grant program

There is authorized to be appropriated to carry out subsection (c) $12,500,000 for the period of fiscal years 2009 through 2013, to remain available until expended.

(Pub. L. 111–11, title IX, §9508, Mar. 30, 2009, 123 Stat. 1343.)

§10369. Research agreement authority

The Secretary may enter into contracts, grants, or cooperative agreements, for periods not to exceed 5 years, to carry out research within the Bureau of Reclamation.

(Pub. L. 111–11, title IX, §9509, Mar. 30, 2009, 123 Stat. 1346.)

§10370. Effect

(a) In general

Nothing in this chapter supersedes or limits any existing authority provided, or responsibility conferred, by any provision of law.

(b) Effect on State water law

(1) In general

Nothing in this chapter preempts or affects any—

(A) State water law; or

(B) interstate compact governing water.

(2) Compliance required

The Secretary shall comply with applicable State water laws in carrying out this chapter.

(Pub. L. 111–11, title IX, §9510, Mar. 30, 2009, 123 Stat. 1346.)

§10371. Water prediction and forecasting

(a) National Water Center

(1) Establishment

(A) In general

The Under Secretary of Commerce for Oceans and Atmosphere shall establish a center—

(i) to serve as the research and operational center of excellence for hydrologic analyses, forecasting, and related decision support services within the National Oceanic and Atmospheric Administration and the National Weather Service; and

(ii) to facilitate collaboration across Federal and State departments and agencies, academia, and the private sector on matters relating to water resources.

(B) Designation

The center established under subparagraph (A) shall be known as the "National Water Center".

(2) Functions

The functions of the National Water Center shall include the following:

(A) Improving understanding of water resources, stakeholder needs regarding water resources, and identifying science and services gaps relating to water resources.

(B) Developing and implementing advanced water resources modeling capabilities.

(C) Facilitating the transition of hydrologic research into operations.

(D) Delivering analyses, forecasts, and inundation information and guidance for all hydrologic events in the United States, including flash flooding, riverine flooding, and water resources outlooks.

(E) In coordination with warning coordination meteorologists, providing decision-support services to inform emergency management and water resources decisions.

(b) National instructions

(1) In general

Not later than one year after December 31, 2020, the Under Secretary, acting through the Director of the National Weather Service, shall make public an operations and services policy directive for the National Water Center.

(2) Contents

The directive required by paragraph (1) shall include national instructions to perform the functions of the National Water Center, including the following:

(A) Operational staff responsibilities.

(B) Guidelines for content, format, and provision of hydrologic and inundation products developed by the National Water Center.

(C) Procedures for cooperation and coordination between the National Water Center, the National Weather Service National Centers for Environmental Prediction, National Weather Service River Forecast Centers, and National Weather Service Weather Forecast Offices.

(c) Total water prediction

The Under Secretary, acting through the Director of the Office of Water Prediction of the National Weather Service, shall—

(1) initiate and lead research and development activities to develop operational water resource prediction and related decision support products;

(2) collaborate with, and provide decision support regarding total water prediction to—

(A) the relevant Federal agencies represented on the National Science and Technology Council, Committee on Environment, Natural Resources, and Sustainability and the Subcommittee on Disaster Reduction;

(B) State water resource agencies; and

(C) State and local emergency management agencies; and

(3) in carrying out the responsibilities described in paragraphs (1) and (2), collaboratively develop capabilities necessary for total water predictive capacity, including observations, modeling, data management, supercomputing, social science, and communications.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out the activities under this section amounts as follows:

(1) $44,500,000 for fiscal year 2021.

(2) $45,000,000 for fiscal year 2022.

(3) $45,500,000 for fiscal year 2023.

(4) $46,000,000 for fiscal year 2024.

(e) Derivation of funds

Funds to carry out this section shall be derived from amounts authorized to be appropriated to the National Weather Service and the National Ocean Service that are enacted after December 31, 2020.

(Pub. L. 116–271, title III, §301, Dec. 31, 2020, 134 Stat. 3347.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Coordinated Ocean Observations and Research Act of 2020, and not as part of subtitle F of title IX of Pub. L. 111–11 which comprises this chapter.

CHAPTER 110—FAMILY VIOLENCE PREVENTION AND SERVICES

Sec.

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EDITORIAL NOTES

CODIFICATION

The Family Violence Prevention and Services Act, comprising this chapter, was originally enacted by Pub. L. 98–457, title III, Oct. 9, 1984, 98 Stat. 1757, and amended by Pub. L. 100–294, title III, Apr. 25, 1988, 102 Stat. 124; Pub. L. 102–295, title III, §§302–309(a), 310–321, May 28, 1992, 106 Stat. 201–210; Pub. L. 103–322, title IV, §§40211, 40241, 40251, 40261, 40271, 40272, Sept. 13, 1994, 108 Stat. 1925, 1934–1937; Pub. L. 104–208, div. A, title I, §101(e) [title II, §213], Sept. 30, 1996, 110 Stat. 3009–233, 3009–254; Pub. L. 104–235, title II, §§201–203, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 105–392, title IV, §407(a), Nov. 13, 1998, 112 Stat. 3589; Pub. L. 106–386, div. B, title II, §§1202–1204, title IV, §1403, Oct. 28, 2000, 114 Stat. 1505–1507, 1514; Pub. L. 108–36, title IV, §§401–415, June 25, 2003, 117 Stat. 825–830; Pub. L. 109–162, title II, §206, Jan. 5, 2006, 119 Stat. 3002. Such Act is shown herein, however, as having been added by Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3484, without reference to such intervening amendments because of the extensive revision of the Act's provisions by Pub. L. 111–320.

§10401. Short title; purpose

(a) Short title

This chapter may be cited as the "Family Violence Prevention and Services Act".

(b) Purpose

It is the purpose of this chapter to—

(1) assist States and Indian tribes in efforts to increase public awareness about, and primary and secondary prevention of, family violence, domestic violence, and dating violence;

(2) assist States and Indian tribes in efforts to provide immediate shelter and supportive services for victims of family violence, domestic violence, or dating violence, and their dependents;

(3) provide for a national domestic violence hotline;

(4) provide for technical assistance and training relating to family violence, domestic violence, and dating violence programs to States and Indian tribes, local public agencies (including law enforcement agencies, courts, and legal, social service, and health care professionals in public

agencies), nonprofit private organizations (including faith-based and charitable organizations, community-based organizations, and voluntary associations), tribal organizations, and other persons seeking such assistance and training.

(Pub. L. 98–457, title III, §301, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3484.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10401, Pub. L. 98–457, title III, §302, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 102–295, title III, §302, May 28, 1992, 106 Stat. 201; Pub. L. 108–36, title IV, §415(1), June 25, 2003, 117 Stat. 830, related to declaration of purpose, prior to the general amendment of this chapter by Pub. L. 111–320. See subsec. (b) of this section.

A prior section 301 of Pub. L. 98–457, title III, Oct. 9, 1984, 98 Stat. 1757, provided a short title for title III of Pub. L. 98–457 and was set out as a note under former section 10401 of this title, prior to the general amendment of this chapter by Pub. L. 111–320.

STATUTORY NOTES AND RELATED SUBSIDIARIES

PROGRAMS FOR SURVIVORS OF SEXUAL ASSAULT AND DOMESTIC VIOLENCE

Pub. L. 117–2, title II, §2204(b)–(d), Mar. 11, 2021, 135 Stat. 34, 35, provided that:

"(b) COVID–19 PUBLIC HEALTH EMERGENCY DEFINED.—In this section [amending section 10403 of this title], the term 'COVID–19 public health emergency' means the public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to COVID–19, including any renewal of the declaration.

"(c) GRANTS TO SUPPORT CULTURALLY SPECIFIC POPULATIONS.—

"(1) IN GENERAL.—In addition to amounts otherwise made available, there is appropriated, out of any amounts in the Treasury not otherwise appropriated, to the Secretary of Health and Human Services (in this section referred to as the 'Secretary'), $49,500,000 for fiscal year 2021, to be available until expended, to carry out this subsection (excluding Federal administrative costs, for which funds are appropriated under subsection (e)).

"(2) USE OF FUNDS.—From amounts appropriated under paragraph (1), the Secretary acting through the Director of the Family Violence Prevention and Services Program, shall—

"(A) support culturally specific community-based organizations to provide culturally specific activities for survivors of sexual assault and domestic violence, to address emergent needs resulting from the COVID–19 public health emergency and other public health concerns; and

"(B) support culturally specific community-based organizations that provide culturally specific activities to promote strategic partnership development and collaboration in responding to the impact of COVID–19 and other public health concerns on survivors of sexual assault and domestic violence.

"(d) GRANTS TO SUPPORT SURVIVORS OF SEXUAL ASSAULT.—

"(1) IN GENERAL.—In addition to amounts otherwise made available, there is appropriated, out of any amounts in the Treasury not otherwise appropriated, to the Secretary, $198,000,000 for fiscal year 2021, to be available until expended, to carry out this subsection (excluding Federal administrative costs, for which funds are appropriated under subsection (e)).

"(2) USE OF FUNDS.—From amounts appropriated under paragraph (1), the Secretary acting through the Director of the Family Violence Prevention and Services Program, shall assist rape crisis centers in transitioning to virtual services and meeting the emergency needs of survivors."

STUDY OF TRAINING NEEDS OF HEALTH PROFESSIONALS

Pub. L. 105–392, title IV, §407(b), Nov. 13, 1998, 112 Stat. 3589, related to study by the Institute of Medicine concerning the training needs of health professionals with respect to the detection and referral of victims of family or acquaintance violence and required the Institute to submit a report to Congress concerning such study not later than 2 years after Nov. 13, 1998.

§10402. Definitions

In this chapter:

(1) Alaska Native

The term "Alaska Native" has the meaning given the term "Native" in section 1602 of title 43.

(2) Dating violence

The term "dating violence" has the meaning given such term in section 12291(a) of this title.

(3) Domestic violence

The term "domestic violence" has the meaning given such term in section 12291(a) of this title.

(4) Family violence

The term "family violence" means any act or threatened act of violence, including any forceful detention of an individual, that—

(A) results or threatens to result in physical injury; and

(B) is committed by a person against another individual (including an elderly individual) to or with whom such person—

(i) is related by blood;

(ii) is or was related by marriage or is or was otherwise legally related; or

(iii) is or was lawfully residing.

(5) Indian; Indian tribe; tribal organization

The terms "Indian", "Indian tribe", and "tribal organization" have the meanings given such terms in section 5304 of title 25.

(6) Native Hawaiian

The term "Native Hawaiian" has the meaning given the term in section 7517 of title 20.

(7) Personally identifying information

The term "personally identifying information" has the meaning given the term in section 12291(a) of this title.

(8) Secretary

The term "Secretary" means the Secretary of Health and Human Services.

(9) Shelter

The term "shelter" means the provision of temporary refuge and supportive services in compliance with applicable State law (including regulation) governing the provision, on a regular basis, of shelter, safe homes, meals, and supportive services to victims of family violence, domestic violence, or dating violence, and their dependents.

(10) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, except as otherwise provided, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(11) State Domestic Violence Coalition

The term "State Domestic Violence Coalition" means a statewide nongovernmental nonprofit private domestic violence organization that—

(A) has a membership that includes a majority of the primary-purpose domestic violence service providers in the State;

(B) has board membership that is representative of primary-purpose domestic violence service providers, and which may include representatives of the communities in which the services are being provided in the State;

(C) has as its purpose to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain shelter and supportive services for victims of domestic violence and their dependents; and

(D) serves as an information clearinghouse, primary point of contact, and resource center on

domestic violence for the State and supports the development of polices, protocols, and procedures to enhance domestic violence intervention and prevention in the State.

(12) Supportive services

The term "supportive services" means services for adult and youth victims of family violence, domestic violence, or dating violence, and dependents exposed to family violence, domestic violence, or dating violence, that are designed to—

(A) meet the needs of such victims of family violence, domestic violence, or dating violence, and their dependents, for short-term, transitional, or long-term safety; and

(B) provide counseling, advocacy, or assistance for victims of family violence, domestic violence, or dating violence, and their dependents.

(13) Tribally designated official

The term "tribally designated official" means an individual designated by an Indian tribe, tribal organization, or nonprofit private organization authorized by an Indian tribe, to administer a grant under section 10409 of this title.

(14) Underserved populations

The term "underserved populations" has the meaning given the term in section 12291(a) of this title. For the purposes of this chapter, the Secretary has the same authority to determine whether a population is an underserved population as the Attorney General has under that section 12291(a) [1] of this title.

(Pub. L. 98–457, title III, §302, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3484; amended Pub. L. 114–95, title IX, §9215(ii), Dec. 10, 2015, 129 Stat. 2175.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10402, Pub. L. 98–457, title III, §303, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 100–294, title III, §302, Apr. 25, 1988, 102 Stat. 124; Pub. L. 102–295, title III, §§303–309(a), 310, 311(a), May 28, 1992, 106 Stat. 201–203; Pub. L. 103–322, title IV, §40271, Sept. 13, 1994, 108 Stat. 1937; Pub. L. 104–235, title II, §201, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 108–36, title IV, §§401, 415(2), (3), June 25, 2003, 117 Stat. 825, 830, related to authorization of State grants, prior to the general amendment of this chapter by Pub. L. 111–320. See section 10406 of this title.

A prior section 302 of Pub. L. 98–457 was classified to section 10401 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

AMENDMENTS

2015—Par. (6). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to 7517 of title 20.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

[1] *So in original.*

§10403. Authorization of appropriations

(a) Formula grants to States

(1) In general

There is authorized to be appropriated to carry out sections 10401 through 10412 of this title, $175,000,000 for each of fiscal years 2011 through 2015.

(2) Allocations

(A) Formula grants to States

(i) Reservation of funds

For any fiscal year for which the amounts appropriated under paragraph (1) exceed $130,000,000, not less than 25 percent of such excess funds shall be made available to carry out section 10412 of this title.

(ii) Formula grants

Of the amounts appropriated under paragraph (1) for a fiscal year and not reserved under clause (i), not less than 70 percent shall be used for making grants under section 10406(a) of this title.

(B) Grants to tribes

Of the amounts appropriated under paragraph (1) for a fiscal year and not reserved under subparagraph (A)(i), not less than 10 percent shall be used to carry out section 10409 of this title.

(C) Technical assistance and training centers

Of the amounts appropriated under paragraph (1) for a fiscal year and not reserved under subparagraph (A)(i), not less than 6 percent shall be used by the Secretary for making grants under section 10410 of this title.

(D) Grants for State Domestic Violence Coalitions

Of the amounts appropriated under paragraph (1) for a fiscal year and not reserved under subparagraph (A)(i), not less than 10 percent of such amounts shall be used by the Secretary for making grants under section 10411 of this title.

(E) Administration, evaluation and monitoring

Of the amount appropriated under paragraph (1) for a fiscal year and not reserved under subparagraph (A)(i), not more than 2.5 percent shall be used by the Secretary for evaluation, monitoring, and other administrative costs under this chapter.

(b) National domestic violence hotline

There is authorized to be appropriated to carry out section 10413 of this title $3,500,000 for each of fiscal years 2011 through 2015.

(c) Domestic Violence Prevention Enhancement and Leadership Through Alliances

There is authorized to be appropriated to carry out section 10414 of this title $6,000,000 for each of fiscal years 2011 through 2015.

(d) Additional funding

For the purposes of carrying out this chapter, in addition to amounts otherwise made available for such purposes, there are appropriated, out of any amounts in the Treasury not otherwise appropriated, for fiscal year 2021, to remain available until expended except as otherwise provided in this subsection, each of the following:

(1) $180,000,000 to carry out sections 10401 through 10412 of this title, to be allocated in the manner described in subsection (a)(2), except that—

(A) a reference in subsection (a)(2) to an amount appropriated under subsection (a)(1) shall be considered to be a reference to an amount appropriated under this paragraph;

(B) the matching requirement in section 10406(c)(4) of this title and condition in section 10408(d)(3) [1] of this title shall not apply; and

(C) each reference in section 10405(e) of this title to "the end of the following fiscal year"

shall be considered to be a reference to "the end of fiscal year 2025"; and

(D) funds made available to a State in a grant under section 10406(a) of this title and obligated in a timely manner shall be available for expenditure, by the State or a recipient of funds from the grant, through the end of fiscal year 2025;[2]

(2) $18,000,000 to carry out section 10409 of this title.

(3) $2,000,000 to carry out section 10413 of this title, of which $1,000,000 shall be allocated to support Indian communities.

(Pub. L. 98–457, title III, §303, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3486; amended Pub. L. 117–2, title II, §2204(a), Mar. 11, 2021, 135 Stat. 34.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10403, Pub. L. 98–457, title III, §304, Oct. 9, 1984, 98 Stat. 1759; Pub. L. 102–295, title III, §312, May 28, 1992, 106 Stat. 204; Pub. L. 104–208, div. A, title I, §101(e) [title II, §213], Sept. 30, 1996, 110 Stat. 3009–233, 3009–254; Pub. L. 104–235, title II, §202, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 106–386, div. B, title II, §1202(b), Oct. 28, 2000, 114 Stat. 1505, related to allotment of funds, prior to the general amendment of this chapter by Pub. L. 111–320. See section 10405 of this title.

A prior section 303 of Pub. L. 98–457 was classified to section 10402 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

AMENDMENTS

2021—Subsec. (d). Pub. L. 117–2 added subsec. (d).

[1] So in original. There is no par. (3) of section 10408(d) of this title.

[2] So in original. The semicolon probably should be a period.

§10404. Authority of Secretary

(a) Authorities

In order to carry out the provisions of this chapter, the Secretary is authorized to—

(1) appoint and fix the compensation of such personnel as are necessary;

(2) procure, to the extent authorized by section 3109 of title 5, such temporary and intermittent services of experts and consultants as are necessary;

(3) make grants to eligible entities or enter into contracts with for-profit or nonprofit nongovernmental entities and establish reporting requirements for such grantees and contractors;

(4) prescribe such regulations and guidance as are reasonably necessary in order to carry out the objectives and provisions of this chapter, including regulations and guidance on implementing new grant conditions established or provisions modified by amendments made to this chapter by the CAPTA Reauthorization Act of 2010, to ensure accountability and transparency of the actions of grantees and contractors, or as determined by the Secretary to be reasonably necessary to carry out this chapter; and

(5) coordinate programs within the Department of Health and Human Services, and seek to coordinate those programs with programs administered by other Federal agencies, that involve or affect efforts to prevent family violence, domestic violence, and dating violence or the provision of assistance for adult and youth victims of family violence, domestic violence, or dating violence.

(b) Administration

The Secretary shall—

(1) assign 1 or more employees of the Department of Health and Human Services to carry out the provisions of this chapter, including carrying out evaluation and monitoring under this chapter,

which employees shall, prior to such appointment, have expertise in the field of family violence and domestic violence prevention and services and, to the extent practicable, have expertise in the field of dating violence;

(2) provide technical assistance in the conduct of programs for the prevention and treatment of family violence, domestic violence, and dating violence;

(3) provide for and coordinate research into the most effective approaches to the intervention in and prevention of family violence, domestic violence, and dating violence, by—

(A) consulting with experts and program providers within the family violence, domestic violence, and dating violence field to identify gaps in research and knowledge, establish research priorities, and disseminate research findings;

(B) collecting and reporting data on the provision of family violence, domestic violence, and dating violence services, including assistance and programs supported by Federal funds made available under this chapter and by other governmental or nongovernmental sources of funds; and

(C) coordinating family violence, domestic violence, and dating violence research efforts within the Department of Health and Human Services with relevant research administered or carried out by other Federal agencies and other researchers, including research on the provision of assistance for adult and youth victims of family violence, domestic violence, or dating violence; and

(4) support the development and implementation of effective policies, protocols, and programs within the Department and at other Federal agencies that address the safety and support needs of adult and youth victims of family violence, domestic violence, or dating violence.

(c) Reports

Every 2 years, the Secretary shall review and evaluate the activities conducted by grantees, subgrantees, and contractors under this chapter and the effectiveness of the programs administered pursuant to this chapter, and submit a report containing the evaluation to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate. Such report shall also include a summary of the documentation provided to the Secretary through performance reports submitted under section 10406(d) of this title. The Secretary shall make publicly available on the Department of Health and Human Services website the evaluation reports submitted to Congress under this subsection, including the summary of the documentation provided to the Secretary under section 10406(d) of this title.

(Pub. L. 98–457, title III, §304, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3487.)

EDITORIAL NOTES

REFERENCES IN TEXT

The CAPTA Reauthorization Act of 2010, referred to in subsec. (a)(4), is Pub. L. 111–320, Dec. 20, 2010, 124 Stat. 3459. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 5101 of this title and Tables.

PRIOR PROVISIONS

A prior section 10404, Pub. L. 98–457, title III, §305, Oct. 9, 1984, 98 Stat. 1760; Pub. L. 102–295, title III, §313, May 28, 1992, 106 Stat. 204; Pub. L. 108–36, title IV, §§402, 415(4), June 25, 2003, 117 Stat. 825, 830, related to Secretarial responsibilities, prior to the general amendment of this chapter by Pub. L. 111–320.

A prior section 304 of Pub. L. 98–457 was classified to section 10403 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§10405. Allotment of funds

(a) In general

From the sums appropriated under section 10403 of this title and available for grants to States under section 10406(a) of this title for any fiscal year—

(1) Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than 1/8 of 1 percent of the amounts available for grants under section 10406(a) of this title for the fiscal year for which the allotment is made; and

(2) each State shall be allotted for a grant under section 10406(a) of this title, $600,000, with the remaining funds to be allotted to each State in an amount that bears the same ratio to such remaining funds as the population of such State bears to the population of all States.

(b) Population

For the purpose of this section, the population of each State, and the total population of all the States, shall be determined by the Secretary on the basis of the most recent census data available to the Secretary, and the Secretary shall use for such purpose, if available, the annual interim current census data produced by the Secretary of Commerce pursuant to section 181 of title 13.

(c) Ratable reduction

If the sums appropriated under section 10403 of this title for any fiscal year and available for grants to States under section 10406(a) of this title are not sufficient to pay in full the total amounts that all States are entitled to receive under subsection (a) for such fiscal year, then the maximum amounts that all States are entitled to receive under subsection (a) for such fiscal year shall be ratably reduced. In the event that additional funds become available for making such grants for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(d) Reallotment

If, at the end of the sixth month of any fiscal year for which sums are appropriated under section 10403 of this title, the amount allotted to a State has not been made available to such State in a grant under section 10406(a) of this title because of the failure of such State to meet the requirements for such a grant, then the Secretary shall reallot such amount to States that meet such requirements.

(e) Continued availability of funds

All funds allotted to a State for a fiscal year under this section, and made available to such State in a grant under section 10406(a) of this title, shall remain available for obligation by the State until the end of the following fiscal year. All such funds that are not obligated by the State by the end of the following fiscal year shall be made available to the Secretary for discretionary activities under section 10414 of this title. Such funds shall remain available for obligation, and for expenditure by a recipient of the funds under section 10414 of this title, for not more than 1 year from the date on which the funds are made available to the Secretary.

(f) Definition

In subsection (a)(2), the term "State" does not include any jurisdiction specified in subsection (a)(1).

(Pub. L. 98–457, title III, §305, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3488.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10405, Pub. L. 98–457, title III, §306, Oct. 9, 1984, 98 Stat. 1760; Pub. L. 102–295, title III, §314, May 28, 1992, 106 Stat. 204; Pub. L. 108–36, title IV, §403, June 25, 2003, 117 Stat. 825, related to evaluation of the effectiveness of the programs administered and operated pursuant to this chapter, prior to the general amendment of this chapter by Pub. L. 111–320. See section 10404(c) of this title.

A prior section 305 of Pub. L. 98–457 was classified to section 10404 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

§10406. Formula grants to States

(a) Formula grants to States

The Secretary shall award grants to States in order to assist in supporting the establishment, maintenance, and expansion of programs and projects—

(1) to prevent incidents of family violence, domestic violence, and dating violence;

(2) to provide immediate shelter, supportive services, and access to community-based programs for victims of family violence, domestic violence, or dating violence, and their dependents; and

(3) to provide specialized services for children exposed to family violence, domestic violence, or dating violence, underserved populations, and victims who are members of racial and ethnic minority populations.

(b) Administrative expenses

(1) Administrative costs

Each State may use not more than 5 percent of the grant funds for State administrative costs.

(2) Subgrants to eligible entities

The State shall use the remainder of the grant funds to make subgrants to eligible entities for approved purposes as described in section 10408 of this title.

(c) Grant conditions

(1) Approved activities

In carrying out the activities under this chapter, grantees and subgrantees may collaborate with and provide information to Federal, State, local, and tribal public officials and agencies, in accordance with limitations on disclosure of confidential or private information as described in paragraph (5), to develop and implement policies to reduce or eliminate family violence, domestic violence, and dating violence.

(2) Discrimination prohibited

(A) Application of civil rights provisions

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), programs and activities funded in whole or in part with funds made available under this chapter are considered to be programs and activities receiving Federal financial assistance.

(B) Prohibition on discrimination on basis of sex, religion

(i) In general

No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. Nothing in this chapter shall require any such program or activity to include any individual in any program or activity without taking into consideration that individual's sex in those certain instances where sex is

a bona fide occupational qualification or programmatic factor reasonably necessary to the normal or safe operation of that particular program or activity.

(ii) Enforcement

The Secretary shall enforce the provisions of clause (i) in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Section 603 of such Act (42 U.S.C. 2000d–2) shall apply with respect to any action taken by the Secretary to enforce such clause.

(iii) Construction

This subparagraph shall not be construed as affecting any legal remedy provided under any other provision of law.

(C) Enforcement authorities of Secretary

Whenever the Secretary finds that a State, Indian tribe, or other entity that has received financial assistance under this chapter has failed to comply with a provision of law referred to in subparagraph (A), with subparagraph (B), or with an applicable regulation (including one prescribed to carry out subparagraph (B)), the Secretary shall notify the chief executive officer of the State involved or the tribally designated official of the tribe involved and shall request such officer or official to secure compliance. If, within a reasonable period of time, not to exceed 60 days, the chief executive officer or official fails or refuses to secure compliance, the Secretary may—

(i) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(ii) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), sections 504 and 505 of the Rehabilitation Act of 1973 [29 U.S.C. 794, 794a], or title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as may be applicable; or

(iii) take such other action as may be provided by law.

(D) Enforcement authority of Attorney General

When a matter is referred to the Attorney General pursuant to subparagraph (C)(i), or whenever the Attorney General has reason to believe that a State, an Indian tribe, or an entity described in subparagraph (C) is engaged in a pattern or practice in violation of a provision of law referred to in subparagraph (A) or in violation of subparagraph (B), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(3) Income eligibility standards

No income eligibility standard may be imposed upon individuals with respect to eligibility for assistance or services supported with funds appropriated to carry out this chapter. No fees may be levied for assistance or services provided with funds appropriated to carry out this chapter.

(4) Match

No grant shall be made under this section to any entity other than a State or an Indian tribe unless the entity agrees that, with respect to the costs to be incurred by the entity in carrying out the program or project for which the grant is awarded, the entity will make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than $1 for every $5 of Federal funds provided under the grant. The non-Federal contributions required under this paragraph may be in cash or in kind.

(5) Nondisclosure of confidential or private information

(A) In general

In order to ensure the safety of adult, youth, and child victims of family violence, domestic violence, or dating violence, and their families, grantees and subgrantees under this chapter shall protect the confidentiality and privacy of such victims and their families.

(B) Nondisclosure

Subject to subparagraphs (C), (D), and (E), grantees and subgrantees shall not—

(i) disclose any personally identifying information collected in connection with services requested (including services utilized or denied), through grantees' and subgrantees' programs; or

(ii) reveal personally identifying information without informed, written, reasonably time-limited consent by the person about whom information is sought, whether for this program or any other Federal or State grant program, which consent—

(I) shall be given by—

(aa) the person, except as provided in item (bb) or (cc);

(bb) in the case of an unemancipated minor, the minor and the minor's parent or guardian; or

(cc) in the case of an individual with a guardian, the individual's guardian; and

(II) may not be given by the abuser or suspected abuser of the minor or individual with a guardian, or the abuser or suspected abuser of the other parent of the minor.

(C) Release

If release of information described in subparagraph (B) is compelled by statutory or court mandate—

(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the release of the information; and

(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(D) Information sharing

Grantees and subgrantees may share—

(i) nonpersonally identifying information, in the aggregate, regarding services to their clients and demographic nonpersonally identifying information in order to comply with Federal, State, or tribal reporting, evaluation, or data collection requirements;

(ii) court-generated information and law enforcement-generated information contained in secure, governmental registries for protective order enforcement purposes; and

(iii) law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

(E) Oversight

Nothing in this paragraph shall prevent the Secretary from disclosing grant activities authorized in this chapter to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate and exercising congressional oversight authority. In making all such disclosures, the Secretary shall protect the confidentiality of individuals and omit personally identifying information, including location information about individuals and shelters.

(F) Statutorily permitted reports of abuse or neglect

Nothing in this paragraph shall prohibit a grantee or subgrantee from reporting abuse and neglect, as those terms are defined by law, where mandated or expressly permitted by the State or Indian tribe involved.

(G) Preemption

Nothing in this paragraph shall be construed to supersede any provision of any Federal, State, tribal, or local law that provides greater protection than this paragraph for victims of family violence, domestic violence, or dating violence.

(H) Confidentiality of location

The address or location of any shelter facility assisted under this chapter that otherwise maintains a confidential location shall, except with written authorization of the person or

persons responsible for the operation of such shelter, not be made public.

(6) Supplement not supplant

Federal funds made available to a State or Indian tribe under this chapter shall be used to supplement and not supplant other Federal, State, tribal, and local public funds expended to provide services and activities that promote the objectives of this chapter.

(d) Reports and evaluation

Each grantee shall submit an annual performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe the grantee and subgrantee activities that have been carried out with grant funds made available under subsection (a) or section 10409 of this title, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may reasonably require.

(Pub. L. 98–457, title III, §306, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3489.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(A), (C)(ii), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (c)(2)(A), (C)(ii), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(A), (C)(ii), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

PRIOR PROVISIONS

A prior section 10406, Pub. L. 98–457, title III, §307, Oct. 9, 1984, 98 Stat. 1761, related to prohibition of discrimination, prior to the general amendment of this chapter by Pub. L. 111–320. See subsec. (c)(2) of this section.

A prior section 306 of Pub. L. 98–457 was classified to section 10405 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§10407. State application

(a) Application

(1) In general

The chief executive officer of a State seeking funds under section 10406(a) of this title or a tribally designated official seeking funds under section 10409(a) of this title shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

(2) Contents

Each such application shall—

(A) provide a description of the procedures that have been developed to ensure compliance with the provisions of sections 10406(c) and 10408(d) of this title;

(B) provide, with respect to funds described in paragraph (1), assurances that—

(i) not more than 5 percent of such funds will be used for administrative costs;

(ii) the remaining funds will be distributed to eligible entities as described in section 10408(a) of this title for approved activities as described in section 10408(b) of this title; and

(iii) in the distribution of funds by a State under section 10408(a) of this title, the State will give special emphasis to the support of community-based projects of demonstrated effectiveness, that are carried out by nonprofit private organizations and that—

(I) have as their primary purpose the operation of shelters for victims of family violence, domestic violence, and dating violence, and their dependents; or

(II) provide counseling, advocacy, and self-help services to victims of family violence, domestic violence, and dating violence, and their dependents;

(C) in the case of an application submitted by a State, provide an assurance that there will be an equitable distribution of grants and grant funds within the State and between urban and rural areas within such State;

(D) in the case of an application submitted by a State, provide an assurance that the State will consult with and provide for the participation of the State Domestic Violence Coalition in the planning and monitoring of the distribution of grants to eligible entities as described in section 10408(a) of this title and the administration of the grant programs and projects;

(E) describe how the State or Indian tribe will involve community-based organizations, whose primary purpose is to provide culturally appropriate services to underserved populations, including how such community-based organizations can assist the State or Indian tribe in addressing the unmet needs of such populations;

(F) describe how activities and services provided by the State or Indian tribe are designed to reduce family violence, domestic violence, and dating violence, including how funds will be used to provide shelter, supportive services, and prevention services in accordance with section 10408(b) of this title;

(G) specify the State agency or tribally designated official to be designated as responsible for the administration of programs and activities relating to family violence, domestic violence, and dating violence, that are carried out by the State or Indian tribe under this chapter, and for coordination of related programs within the jurisdiction of the State or Indian tribe;

(H) provide an assurance that the State or Indian tribe has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate; and

(I) meet such requirements as the Secretary reasonably determines are necessary to carry out the objectives and provisions of this chapter.

(b) Approval of application

(1) In general

The Secretary shall approve any application that meets the requirements of subsection (a) and section 10406 of this title. The Secretary shall not disapprove any application under this subsection unless the Secretary gives the applicant reasonable notice of the Secretary's intention to disapprove and a 6-month period providing an opportunity for correction of any deficiencies.

(2) Correction of deficiencies

The Secretary shall give such notice, within 45 days after the date of submission of the application, if any of the provisions of subsection (a) or section 10406 of this title have not been satisfied in such application. If the State or Indian tribe does not correct the deficiencies in such application within the 6-month period following the receipt of the Secretary's notice, the Secretary

shall withhold payment of any grant funds under section 10406 of this title to such State or under section 10409 of this title to such Indian tribe until such date as the State or Indian tribe provides documentation that the deficiencies have been corrected.

(3) State or tribal Domestic Violence Coalition participation in determinations of compliance

State Domestic Violence Coalitions, or comparable coalitions for Indian tribes, shall be permitted to participate in determining whether grantees for corresponding States or Indian tribes are in compliance with subsection (a) and section 10406(c) of this title, except that no funds made available under section 10411 of this title shall be used to challenge a determination about whether a grantee is in compliance with, or to seek the enforcement of, the requirements of this chapter.

(4) Failure to report; nonconforming expenditures

The Secretary shall suspend funding for an approved application if the applicant fails to submit an annual performance report under section 10406(d) of this title, or if funds are expended for purposes other than those set forth in section 10406(b) of this title, after following the procedures set forth in paragraphs (1), (2), and (3).

(Pub. L. 98–457, title III, §307, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3493.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10407, Pub. L. 98–457, title III, §308, Oct. 9, 1984, 98 Stat. 1761; Pub. L. 102–295, title III, §315, May 28, 1992, 106 Stat. 204; Pub. L. 103–322, title IV, §40272(b), Sept. 13, 1994, 108 Stat. 1937; Pub. L. 108–36, title IV, §404, June 25, 2003, 117 Stat. 826, related to information and technical assistance centers, prior to the general amendment of this chapter by Pub. L. 111–320. See section 10410 of this title.

A prior section 307 of Pub. L. 98–457 was classified to section 10406 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

§10408. Subgrants and uses of funds

(a) Subgrants

A State that receives a grant under section 10406(a) of this title shall use grant funds described in section 10406(b)(2) of this title to provide subgrants to eligible entities for programs and projects within such State, that is [1] designed to prevent incidents of family violence, domestic violence, and dating violence by providing immediate shelter and supportive services for adult and youth victims of family violence, domestic violence, or dating violence (and their dependents), and that may provide prevention services to prevent future incidents of family violence, domestic violence, and dating violence.

(b) Use of funds

(1) In general

Funds awarded to eligible entities under subsection (a) shall be used to provide shelter, supportive services, or prevention services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, which may include—

(A) provision, on a regular basis, of immediate shelter and related supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, including paying for the operating and administrative expenses of the facilities for such shelter;

(B) assistance in developing safety plans, and supporting efforts of victims of family violence, domestic violence, or dating violence to make decisions related to their ongoing safety and well-being;

(C) provision of individual and group counseling, peer support groups, and referral to

community-based services to assist family violence, domestic violence, and dating violence victims, and their dependents, in recovering from the effects of the violence;

(D) provision of services, training, technical assistance, and outreach to increase awareness of family violence, domestic violence, and dating violence and increase the accessibility of family violence, domestic violence, and dating violence services;

(E) provision of culturally and linguistically appropriate services;

(F) provision of services for children exposed to family violence, domestic violence, or dating violence, including age-appropriate counseling, supportive services, and services for the nonabusing parent that support that parent's role as a caregiver, which may, as appropriate, include services that work with the nonabusing parent and child together;

(G) provision of advocacy, case management services, and information and referral services, concerning issues related to family violence, domestic violence, or dating violence intervention and prevention, including—

(i) assistance in accessing related Federal and State financial assistance programs;

(ii) legal advocacy to assist victims and their dependents;

(iii) medical advocacy, including provision of referrals for appropriate health care services (including mental health, alcohol, and drug abuse treatment), but which shall not include reimbursement for any health care services;

(iv) assistance locating and securing safe and affordable permanent housing and homelessness prevention services;

(v) provision of transportation, child care, respite care, job training and employment services, financial literacy services and education, financial planning, and related economic empowerment services; and

(vi) parenting and other educational services for victims and their dependents; and

(H) prevention services, including outreach to underserved populations.

(2) Shelter and supportive services

Not less than 70 percent of the funds distributed by a State under subsection (a) shall be distributed to entities for the primary purpose of providing immediate shelter and supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, as described in paragraph (1)(A). Not less than 25 percent of the funds distributed by a State under subsection (a) shall be distributed to entities for the purpose of providing supportive services and prevention services as described in subparagraphs (B) through (H) of paragraph (1).

(c) Eligible entities

To be eligible to receive a subgrant from a State under this section, an entity shall be—

(1) a local public agency, or a nonprofit private organization (including faith-based and charitable organizations, community-based organizations, tribal organizations, and voluntary associations), that assists victims of family violence, domestic violence, or dating violence, and their dependents, and has a documented history of effective work concerning family violence, domestic violence, or dating violence; or

(2) a partnership of 2 or more agencies or organizations that includes—

(A) an agency or organization described in paragraph (1); and

(B) an agency or organization that has a demonstrated history of serving populations in their communities, including providing culturally appropriate services.

(d) Conditions

(1) Direct payments to victims or dependants

No funds provided under this chapter may be used as direct payment to any victim of family violence, domestic violence, or dating violence, or to any dependent of such victim.

(2) Voluntarily accepted services

Receipt of supportive services under this chapter shall be voluntary. No condition may be applied for the receipt of emergency shelter as described in subsection (b)(1)(A).

(Pub. L. 98–457, title III, §308, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3494.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10408, Pub. L. 98–457, title III, §309, Oct. 9, 1984, 98 Stat. 1762; Pub. L. 102–295, title III, §311(b), May 28, 1992, 106 Stat. 203; Pub. L. 103–322, title IV, §40272(a), Sept. 13, 1994, 108 Stat. 1937; Pub. L. 108–36, title IV, §405, June 25, 2003, 117 Stat. 826, which related to definitions, was renumbered section 320 of Pub. L. 98–457 by Pub. L. 108–36, title IV, §415(5), June 25, 2003, 117 Stat. 830, and transferred to section 10421 of this title, prior to the general amendment of this chapter by Pub. L. 111–320.

A prior section 308 of Pub. L. 98–457 was classified to section 10407 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

[1] So in original. Probably should be "are".

§10409. Grants for Indian tribes

(a) Grants authorized

The Secretary, in consultation with tribal governments pursuant to Executive Order No. 13175 (25 U.S.C. 450 note) [1] and in accordance with section 20126 of title 34, shall continue to award grants for Indian tribes from amounts appropriated under section 10403(a)(2)(B) of this title to carry out this section.

(b) Eligible entities

To be eligible to receive a grant under this section, an entity shall be an Indian tribe, or a tribal organization or nonprofit private organization authorized by an Indian tribe. An Indian tribe shall have the option to authorize a tribal organization or a nonprofit private organization to submit an application and administer the grant funds awarded under this section.

(c) Conditions

Each recipient of such a grant shall comply with requirements that are consistent with the requirements applicable to grantees under section 10406 of this title.

(d) Grantee application

To be eligible to receive a grant under this section, an entity shall submit an application to the Secretary under section 10407 of this title at such time, in such manner, and containing such information as the Secretary determines to be essential to carry out the objectives and provisions of this chapter. The Secretary shall approve any application that meets requirements consistent with the requirements of section 10406(c) of this title and section 10407(a) of this title.

(e) Use of funds

An amount provided under a grant to an eligible entity shall be used for the services described in section 10408(b) of this title.

(Pub. L. 98–457, title III, §309, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3496.)

EDITORIAL NOTES

REFERENCES IN TEXT

Executive Order No. 13175, referred to in subsec. (a), was set out as a note under section 450 of Title 25,

Indians, prior to editorial reclassification as a note under section 5301 of Title 25.

PRIOR PROVISIONS

A prior section 10409, Pub. L. 98–457, title III, §310, Oct. 9, 1984, 98 Stat. 1763; Pub. L. 100–294, title III, §301, Apr. 25, 1988, 102 Stat. 124; Pub. L. 102–295, title III, §316, May 28, 1992, 106 Stat. 206; Pub. L. 103–322, title IV, §40241, Sept. 13, 1994, 108 Stat. 1934; Pub. L. 104–235, title II, §203, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 106–386, div. B, title II, §1202(a), Oct. 28, 2000, 114 Stat. 1505; Pub. L. 108–36, title IV, §406(a), (b), June 25, 2003, 117 Stat. 827, related to authorization of appropriations, prior to the general amendment of this chapter by Pub. L. 111–320. See section 10403 of this title.

A prior section 309 of Pub. L. 98–457 was renumbered section 320 and transferred to section 10421 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

[1] *See References in Text note below.*

§10410. National resource centers and training and technical assistance centers

(a) Purpose and grants authorized

(1) Purpose

The purpose of this section is to provide resource information, training, and technical assistance relating to the objectives of this chapter to improve the capacity of individuals, organizations, governmental entities, and communities to prevent family violence, domestic violence, and dating violence and to provide effective intervention services.

(2) Grants authorized

From the amounts appropriated under this chapter and reserved under section 10403(a)(2)(C) of this title, the Secretary—

(A) shall award grants to eligible entities for the establishment and maintenance of—

(i) 2 national resource centers (as provided for in subsection (b)(1)); and

(ii) at least 7 special issue resource centers addressing key areas of domestic violence, and intervention and prevention (as provided for in subsection (b)(2)); and

(B) may award grants, to—

(i) State resource centers to reduce disparities in domestic violence in States with high proportions of Indian (including Alaska Native) or Native Hawaiian populations (as provided for in subsection (b)(3)); and

(ii) support training and technical assistance that address emerging issues related to family violence, domestic violence, or dating violence, to entities demonstrating related expertise.

(b) Domestic violence resource centers

(1) National resource centers

In accordance with subsection (a)(2), the Secretary shall award grants to eligible entities for—

(A) a National Resource Center on Domestic Violence, which shall—

(i) offer a comprehensive array of technical assistance and training resources to Federal, State, and local governmental agencies, domestic violence service providers, community-based organizations, and other professionals and interested parties, related to domestic violence service programs and research, including programs and research related to victims and their children who are exposed to domestic violence; and

(ii) maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics related to—

(I) the incidence and prevention of family violence and domestic violence; and

(II) the provision of shelter, supportive services, and prevention services to adult and youth victims of domestic violence (including services to prevent repeated incidents of violence); and

(B) a National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women, which shall—

(i) offer a comprehensive array of technical assistance and training resources to Indian tribes and tribal organizations, specifically designed to enhance the capacity of the tribes and organizations to respond to domestic violence and the findings of section 901 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 3796gg–10 note); [1]

(ii) enhance the intervention and prevention efforts of Indian tribes and tribal organizations to respond to domestic violence and increase the safety of Indian women in support of the purposes of section 902 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 [42 U.S.C. 3796gg–10 note]; [1] and

(iii) coordinate activities with other Federal agencies, offices, and grantees that address the needs of Indians (including Alaska Natives), and Native Hawaiians that experience domestic violence, including the Office of Justice Services at the Bureau of Indian Affairs, the Indian Health Service of the Department of Health and Human Services, and the Office on Violence Against Women of the Department of Justice.

(2) Special issue resource centers

In accordance with subsection (a)(2)(A)(ii), the Secretary shall award grants to eligible entities for special issue resource centers, which shall be national in scope and shall provide information, training, and technical assistance to State and local domestic violence service providers. Each special issue resource center shall focus on enhancing domestic violence intervention and prevention efforts in at least one of the following areas:

(A) The response of the criminal and civil justice systems to domestic violence victims, which may include the response to the use of the self-defense plea by domestic violence victims and the issuance and use of protective orders.

(B) The response of child protective service agencies to victims of domestic violence and their dependents and child custody issues in domestic violence cases.

(C) The response of the interdisciplinary health care system to victims of domestic violence and access to health care resources for victims of domestic violence.

(D) The response of mental health systems, domestic violence service programs, and other related systems and programs to victims of domestic violence and to their children who are exposed to domestic violence.

(E) In the case of 3 specific resource centers, enhancing domestic violence intervention and prevention efforts for victims of domestic violence who are members of racial and ethnic minority groups, to enhance the cultural and linguistic relevancy of service delivery, resource utilization, policy, research, technical assistance, community education, and prevention initiatives.

(3) State resource centers to reduce tribal disparities

(A) In general

In accordance with subsection (a)(2), the Secretary may award grants to eligible entities for State resource centers, which shall provide statewide information, training, and technical assistance to Indian tribes, tribal organizations, and local domestic violence service organizations serving Indians (including Alaska Natives) or Native Hawaiians, in a culturally sensitive and relevant manner.

(B) Requirements

An eligible entity shall use a grant provided under this paragraph—

(i) to offer a comprehensive array of technical assistance and training resources to Indian tribes, tribal organizations, and providers of services to Indians (including Alaska Natives) or Native Hawaiians, specifically designed to enhance the capacity of the tribes, organizations, and providers to respond to domestic violence, including offering the resources in States in

which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 2.5 percent of the total population of the State;

(ii) to coordinate all projects and activities with the national resource center described in paragraph (1)(B), including projects and activities that involve working with nontribal State and local governments to enhance their capacity to understand the unique needs of Indians (including Alaska Natives) and Native Hawaiians; and

(iii) to provide comprehensive community education and domestic violence prevention initiatives in a culturally sensitive and relevant manner.

(c) Eligibility

(1) In general

To be eligible to receive a grant under subsection (b)(1)(A) or subparagraph (A), (B), (C), or (D) of subsection (b)(2), an entity shall be a nonprofit private organization that focuses primarily on domestic violence and that—

(A) provides documentation to the Secretary demonstrating experience working directly on issues of domestic violence, and (in the case of an entity seeking a grant under subsection (b)(2)) demonstrating experience working directly in the corresponding specific special issue area described in subsection (b)(2);

(B) includes on the entity's advisory board representatives who are from domestic violence service programs and who are geographically and culturally diverse; and

(C) demonstrates the strong support of domestic violence service programs from across the Nation for the entity's designation as a national resource center or a special issue resource center, as appropriate.

(2) National Indian Resource Center

To be eligible to receive a grant under subsection (b)(1)(B), an entity shall be a tribal organization or a nonprofit private organization that focuses primarily on issues of domestic violence within Indian tribes and that submits documentation to the Secretary demonstrating—

(A) experience working with Indian tribes and tribal organizations to respond to domestic violence and the findings of section 901 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 3796gg–10 note); [1]

(B) experience providing Indian tribes and tribal organizations with assistance in developing tribally-based prevention and intervention services addressing domestic violence and safety for Indian women consistent with the purposes of section 902 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. 3796gg–10 note); [1]

(C) strong support for the entity's designation as the National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women from advocates working within Indian tribes to address domestic violence and the safety of Indian women;

(D) a record of demonstrated effectiveness in assisting Indian tribes and tribal organizations with prevention and intervention services addressing domestic violence; and

(E) the capacity to serve Indian tribes (including Alaska Native villages and regional and village corporations) across the United States.

(3) Special issue resource centers concerned with racial and ethnic minority groups

To be eligible to receive a grant under subsection (b)(2)(E), an entity shall be an entity that—

(A) is a nonprofit private organization that focuses primarily on issues of domestic violence in a racial or ethnic community, or is a public or private nonprofit educational institution that has a domestic violence institute, center, or program related to culturally specific issues in domestic violence; and

(B)(i) has documented experience in the areas of domestic violence prevention and services, and experience relevant to the specific racial or ethnic population to which information, training, technical assistance, and outreach would be provided under the grant;

(ii) demonstrates the strong support, of advocates from across the Nation who are working to address domestic violence; and

(iii) has a record of demonstrated effectiveness in enhancing the cultural and linguistic relevancy of service delivery.

(4) State resource centers to reduce tribal disparities

To be eligible to receive a grant under subsection (b)(3), an entity shall—

(A)(i) be located in a State in which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 10 percent of the total population of the State; or

(ii) be an Indian tribe, tribal organization, or Native Hawaiian organization that focuses primarily on issues of domestic violence among Indians or Native Hawaiians, or an institution of higher education; and

(B) demonstrate the ability to serve all regions of the State, including underdeveloped areas and areas that are geographically distant from population centers.

(d) Reports and evaluation

Each entity receiving a grant under this section shall submit a performance report to the Secretary annually and in such manner as shall be reasonably required by the Secretary. Such performance report shall describe the activities that have been carried out with such grant funds, contain an evaluation of the effectiveness of the activities, and provide such additional information as the Secretary may reasonably require.

(Pub. L. 98–457, title III, §310, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3497.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 901 and 902 of the Violence Against Women and Department of Justice Reauthorization Act of 2005, referred to in subsecs. (b)(1)(B)(i), (ii) and (c)(2)(A), (B), are sections 901 and 902, respectively, of Pub. L. 109–162, which were set out as a note under section 3796gg–10 of this title, prior to editorial reclassification as a note under section 10452 of Title 34, Crime Control and Law Enforcement.

PRIOR PROVISIONS

A prior section 10410, Pub. L. 98–457, title III, §311, Oct. 9, 1984, 98 Stat. 1763; Pub. L. 100–294, title III, §303(b), Apr. 25, 1988, 102 Stat. 125; Pub. L. 102–295, title III, §317, May 28, 1992, 106 Stat. 206; Pub. L. 103–322, title IV, §40272(c), Sept. 13, 1994, 108 Stat. 1938; Pub. L. 108–36, title IV, §§406(c), 407, 415(6), June 25, 2003, 117 Stat. 827, 830, related to grants for State domestic violence coalitions, prior to the general amendment of this chapter by Pub. L. 111–320. See section 10411 of this title.

A prior section 310 of Pub. L. 98–457 was classified to section 10409 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

[1] *See References in Text note below.*

§10411. Grants to State Domestic Violence Coalitions

(a) Grants

The Secretary shall award grants for the funding of State Domestic Violence Coalitions.

(b) Allotment of funds

(1) In general

From the amount appropriated under section 10403(a)(2)(D) of this title for each fiscal year, the Secretary shall allot to each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the covered territories an amount equal to 1/56 of the amount so appropriated for such fiscal year.

(2) Definition

For purposes of this subsection, the term "covered territories" means Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(c) Application

Each State Domestic Violence Coalition desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary determines to be essential to carry out the objectives of this section. The application submitted by the coalition for the grant shall provide documentation of the coalition's work, satisfactory to the Secretary, demonstrating that the coalition—

(1) meets all of the applicable requirements set forth in this chapter; and

(2) demonstrates the ability to conduct appropriately all activities described in this section, as indicated by—

(A) documented experience in administering Federal grants to conduct the activities described in subsection (d); or

(B) a documented history of active participation in the activities described in paragraphs (1), (3), (4), and (5) of subsection (d) and a demonstrated capacity to conduct the activities described in subsection (d)(2).

(d) Use of funds

A coalition that receives a grant under this section shall use the grant funds for administration and operations to further the purposes of family violence, domestic violence, and dating violence intervention and prevention, through activities that shall include—

(1) working with local family violence, domestic violence, and dating violence service programs and providers of direct services to encourage appropriate and comprehensive responses to family violence, domestic violence, and dating violence against adults or youth within the State involved, including providing training and technical assistance and conducting State needs assessments;

(2) participating in planning and monitoring the distribution of subgrants and subgrant funds within the State under section 10408(a) of this title;

(3) working in collaboration with service providers and community-based organizations to address the needs of family violence, domestic violence, and dating violence victims, and their dependents, who are members of racial and ethnic minority populations and underserved populations;

(4) collaborating with and providing information to entities in such fields as housing, health care, mental health, social welfare, or business to support the development and implementation of effective policies, protocols, and programs that address the safety and support needs of adult and youth victims of family violence, domestic violence, or dating violence;

(5) encouraging appropriate responses to cases of family violence, domestic violence, or dating violence against adults or youth, including by working with judicial and law enforcement agencies;

(6) working with family law judges, criminal court judges, child protective service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in cases of child exposure to family violence, domestic violence, or dating violence and in cases in which—

(A) family violence, domestic violence, or dating violence is present; and

(B) child abuse is present;

(7) providing information to the public about prevention of family violence, domestic violence, and dating violence, including information targeted to underserved populations; and

(8) collaborating with Indian tribes and tribal organizations (and corresponding Native Hawaiian groups or communities) to address the needs of Indian (including Alaska Native) and Native Hawaiian victims of family violence, domestic violence, or dating violence, as applicable in the State.

(e) Limitation on use of funds

A coalition that receives a grant under this section shall not be required to use funds received under this chapter for the purposes described in paragraph (5) or (6) of subsection (d) if the coalition provides an annual assurance to the Secretary that the coalition is—

(1) using funds received under section 2001(c)(1) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg(c)(1)) [1] for such purposes; and

(2) coordinating the activities carried out by the coalition under subsection (d) with the State's activities under part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) [1] that address those purposes.

(f) Prohibition on lobbying

No funds made available to entities under this section shall be used, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by Congress, or by any State or local legislative body, or State proposals by initiative petition, except that the representatives of the entity may testify or make other appropriate communication—

(1) when formally requested to do so by a legislative body, a committee, or a member of the body or committee; or

(2) in connection with legislation or appropriations directly affecting the activities of the entity.

(g) Reports and evaluation

Each entity receiving a grant under this section shall submit a performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe the activities that have been carried out with such grant funds, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may reasonably require.

(h) Indian representatives

For purposes of this section, a State Domestic Violence Coalition may include representatives of Indian tribes and tribal organizations.

(Pub. L. 98–457, title III, §311, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3501.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (e), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197. Section 2001 of the Act was classified to section 3796gg of this title, prior to editorial reclassification and renumbering as section 10441 of Title 34, Crime Control and Law Enforcement. Part T of title I of the Act was classified generally to subchapter XII–H (§3796gg et seq.) of chapter 46 of this title, prior to editorial reclassification and renumbering as subchapter XIX (§10441 et seq.) of chapter 101 of Title 34. For complete classification of this Act to the Code, see Short Title of 1968 Act note set out under section 10101 of Title 34 and Tables.

PRIOR PROVISIONS

A prior section 10411, Pub. L. 98–457, title III, §312, Oct. 9, 1984, 98 Stat. 1763, related to authority of Secretary to carry out provisions of this chapter, competitive awarding of grants and contracts, and delegation of authority and transfer of funds to Attorney General, prior to repeal by Pub. L. 100–294, title III, §303(a), Apr. 25, 1988, 102 Stat. 124.

A prior section 311 of Pub. L. 98–457 was classified to section 10410 of this title prior to the general amendment of this chapter by Pub. L. 111–320.

[1] *See References in Text note below.*

§10412. Specialized services for abused parents and their children

(a) In general

(1) Program

The Secretary shall establish a grant program to expand the capacity of family violence, domestic violence, and dating violence service programs and community-based programs to prevent future domestic violence by addressing, in an appropriate manner, the needs of children exposed to family violence, domestic violence, or dating violence.

(2) Grants

The Secretary may make grants to eligible entities through the program established under paragraph (1) for periods of not more than 2 years. If the Secretary determines that an entity has received such a grant and been successful in meeting the objectives of the grant application submitted under subsection (c), the Secretary may renew the grant for 1 additional period of not more than 2 years.

(b) Eligible entities

To be eligible to receive a grant under this section, an entity shall be a local agency, a nonprofit private organization (including faith-based and charitable organizations, community-based organizations, and voluntary associations), or a tribal organization, with a demonstrated record of serving victims of family violence, domestic violence, or dating violence and their children.

(c) Application

An entity seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including—

(1) a description of how the entity will prioritize the safety of, and confidentiality of information about—

(A) victims of family violence, victims of domestic violence, and victims of dating violence; and

(B) children of victims described in subparagraph (A);

(2) a description of how the entity will provide developmentally appropriate and age-appropriate services, and culturally and linguistically appropriate services, to the victims and children; and

(3) a description of how the entity will ensure that professionals working with the children receive the training and technical assistance appropriate and relevant to the unique needs of children exposed to family violence, domestic violence, or dating violence.

(d) Use of funds

An entity that receives a grant under this section for a family violence, domestic violence, and dating violence service or community-based program described in subsection (a)—

(1) shall use the funds made available through the grant—

(A) to provide direct counseling, appropriate services consistent with subsection (c)(2), or advocacy on behalf of victims of family violence, domestic violence, or dating violence and their children, including coordinating services with services provided by the child welfare system;

(B) to provide services for nonabusing parents to support those parents' roles as caregivers and their roles in responding to the social, emotional, and developmental needs of their children; and

(C) where appropriate, to provide the services described in this subsection while working with such a nonabusing parent and child together; and

(2) may use the funds made available through the grant—

(A) to provide early childhood development and mental health services;

(B) to coordinate activities with and provide technical assistance to community-based organizations serving victims of family violence, domestic violence, or dating violence or children exposed to family violence, domestic violence, or dating violence; and

(C) to provide additional services and referrals to services for children, including child care, transportation, educational support, respite care, supervised visitation, or other necessary services.

(e) Reports and evaluation

Each entity receiving a grant under this section shall submit a performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe the activities that have been carried out with such grant funds, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may reasonably require.

(Pub. L. 98–457, title III, §312, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3503.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10412, Pub. L. 98–457, title III, §312, Oct. 9, 1984, 98 Stat. 1764; Pub. L. 102–295, title III, §318, May 28, 1992, 106 Stat. 208; Pub. L. 108–36, title IV, §408, June 25, 2003, 117 Stat. 827, related to authority of Secretary, construction with State and local law, and funding for evaluation, monitoring, and other administrative costs, prior to the general amendment of this chapter by Pub. L. 111–320.

A prior section 312 of Pub. L. 98–457, which was classified to section 10411 of this title, was repealed by section 303(a) of Pub. L. 100–294.

§10413. National domestic violence hotline grant

(a) In general

The Secretary shall award a grant to 1 or more private entities to provide for the ongoing operation of a 24-hour, national, toll-free telephone hotline to provide information and assistance to adult and youth victims of family violence, domestic violence, or dating violence, family and household members of such victims, and persons affected by the victimization. The Secretary shall give priority to applicants with experience in operating a hotline that provides assistance to adult and youth victims of family violence, domestic violence, or dating violence.

(b) Term

The Secretary shall award a grant under this section for a period of not more than 5 years.

(c) Conditions on payment

The provision of payments under a grant awarded under this section shall be subject to annual approval by the Secretary and subject to the availability of appropriations for each fiscal year to make the payments.

(d) Application

To be eligible to receive a grant under this section, an entity shall submit an application to the Secretary that shall—

(1) contain such agreements, assurances, and information, be in such form, and be submitted in such manner, as the Secretary shall prescribe;

(2) include a complete description of the applicant's plan for the operation of a national domestic violence hotline, including descriptions of—

(A) the training program for hotline personnel, including technology training to ensure that all persons affiliated with the hotline are able to effectively operate any technological systems used by the hotline;

(B) the hiring criteria and qualifications for hotline personnel;

(C) the methods for the creation, maintenance, and updating of a resource database;

(D) a plan for publicizing the availability of the hotline;

(E) a plan for providing service to non-English speaking callers, including service through hotline personnel who have non-English language capability;

(F) a plan for facilitating access to the hotline by persons with hearing impairments; and

(G) a plan for providing assistance and referrals to youth victims of domestic violence and for victims of dating violence who are minors, which may be carried out through a national teen dating violence hotline;

(3) demonstrate that the applicant has recognized expertise in the area of family violence, domestic violence, or dating violence and a record of high quality service to victims of family violence, domestic violence, or dating violence, including a demonstration of support from advocacy groups and State Domestic Violence Coalitions;

(4) demonstrate that the applicant has the capacity and the expertise to maintain a domestic violence hotline and a comprehensive database of service providers;

(5) demonstrate the ability to provide information and referrals for callers, directly connect callers to service providers, and employ crisis interventions meeting the standards of family violence, domestic violence, and dating violence providers;

(6) demonstrate that the applicant has a commitment to diversity and to the provision of services to underserved populations, including to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities;

(7) demonstrate that the applicant complies with nondisclosure requirements as described in section 10406(c)(5) of this title and follows comprehensive quality assurance practices; and

(8) contain such other information as the Secretary may require.

(e) Hotline activities

(1) In general

An entity that receives a grant under this section for activities described, in whole or in part, in subsection (a) shall use funds made available through the grant to establish and operate a 24-hour, national, toll-free telephone hotline to provide information and assistance to adult and youth victims of family violence, domestic violence, or dating violence, and other individuals described in subsection (a).

(2) Activities

In establishing and operating the hotline, the entity—

(A) shall contract with a carrier for the use of a toll-free telephone line;

(B) shall employ, train (including providing technology training), and supervise personnel to answer incoming calls, provide counseling and referral services for callers on a 24-hour-a-day basis, and directly connect callers to service providers;

(C) shall assemble and maintain a database of information relating to services for adult and youth victims of family violence, domestic violence, or dating violence to which callers may be referred throughout the United States, including information on the availability of shelters and supportive services for victims of family violence, domestic violence, or dating violence;

(D) shall widely publicize the hotline throughout the United States, including to potential users;

(E) shall provide assistance and referrals to meet the needs of underserved populations and individuals with disabilities;

(F) shall provide assistance and referrals for youth victims of domestic violence and for victims of dating violence who are minors, which may be carried out through a national teen dating violence hotline;

(G) may provide appropriate assistance and referrals for family and household members of victims of family violence, domestic violence, or dating violence, and persons affected by the victimization described in subsection (a); and

(H) at the discretion of the hotline operator, may provide assistance, or referrals for counseling or intervention, for identified adult and youth perpetrators, including self-identified perpetrators, of family violence, domestic violence, or dating violence, but shall not be required to provide such assistance or referrals in any circumstance in which the hotline operator fears the safety of a victim may be impacted by an abuser or suspected abuser.

(f) Reports and evaluation

The entity receiving a grant under this section shall submit a performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe the activities that have been carried out with such grant funds, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may reasonably require.

(Pub. L. 98–457, title III, §313, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3504.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10413, Pub. L. 98–457, title III, §313, as added Pub. L. 100–294, title III, §303(c), Apr. 25, 1988, 102 Stat. 125; amended Pub. L. 102–295, title III, §319, May 28, 1992, 106 Stat. 209, related to family member abuse information and documentation project, prior to repeal by Pub. L. 108–36, title IV, §409, June 25, 2003, 117 Stat. 827.

§10414. Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA)

(a) In general

The Secretary shall enter into cooperative agreements with State Domestic Violence Coalitions for the purposes of establishing, operating, and maintaining local community projects to prevent family violence, domestic violence, and dating violence, including violence committed by and against youth, using a coordinated community response model and through prevention and education programs.

(b) Term

The Secretary shall enter into a cooperative agreement under this section for a period of not more than 5 fiscal years.

(c) Conditions on payment

The provision of payments under a cooperative agreement under this section shall be subject to—

(1) annual approval by the Secretary; and

(2) the availability of appropriations for each fiscal year to make the payments.

(d) Eligibility

To be eligible to enter into a cooperative agreement under this section, an organization shall—

(1) be a State Domestic Violence Coalition; and

(2) include representatives of pertinent sectors of the local community, which may include—

(A) health care providers and State or local health departments;

(B) the education community;

(C) the faith-based community;

(D) the criminal justice system;

(E) family violence, domestic violence, and dating violence service program advocates;

(F) human service entities such as State child services divisions;

(G) business and civic leaders; and

(H) other pertinent sectors.

(e) Applications

An organization that desires to enter into a cooperative agreement under this section shall submit to the Secretary an application, in such form and in such manner as the Secretary shall require, that—

(1) demonstrates the capacity of the applicant, who may enter into a partnership with a local family violence, domestic violence, or dating violence service provider or community-based organization, to undertake the project involved;

(2) demonstrates that the project will include a coordinated community response to improve and expand prevention strategies through increased communication and coordination among all affected sectors of the local community;

(3) includes a complete description of the applicant's plan for the establishment and implementation of the coordinated community response, including a description of—

(A) the method to be used for identification and selection of an administrative committee made up of persons knowledgeable about comprehensive family violence, domestic violence, and dating violence prevention planning to oversee the project, hire staff, assure compliance with the project outline, and secure annual evaluation of the project;

(B) the method to be used for identification and selection of project staff and a project evaluator;

(C) the method to be used for identification and selection of a project council consisting of representatives of the community sectors listed in subsection (d)(2); and

(D) the method to be used for identification and selection of a steering committee consisting of representatives of the various community sectors who will chair subcommittees of the project council, each of which will focus on 1 of the sectors;

(4) demonstrates that the applicant has experience in providing, or the capacity to provide, prevention-focused training and technical assistance;

(5) demonstrates that the applicant has the capacity to carry out collaborative community initiatives to prevent family violence, domestic violence, and dating violence; and

(6) contains such other information, agreements, and assurances as the Secretary may require.

(f) Geographical dispersion

The Secretary shall enter into cooperative agreements under this section with organizations in States geographically dispersed throughout the Nation.

(g) Use of funds

(1) In general

An organization that enters into a cooperative agreement under subsection (a) shall use the funds made available through the agreement to establish, operate, and maintain comprehensive family violence, domestic violence, and dating violence prevention programming.

(2) Technical assistance, evaluation and monitoring

The Secretary may use a portion of the funds provided under this section to—

(A) provide technical assistance;

(B) monitor the performance of organizations carrying out activities under the cooperative agreements; and

(C) conduct an independent evaluation of the program carried out under this section.

(3) Requirements

In establishing and operating a project under this section, an eligible organization shall—

(A) establish protocols to improve and expand family violence, domestic violence, and dating violence prevention and intervention strategies within affected community sectors described in subsection (d)(2);

(B) develop comprehensive prevention plans to coordinate prevention efforts with other community sectors;

(C) provide for periodic evaluation of the project, and analysis to assist in replication of the

prevention strategies used in the project in other communities, and submit a report under subsection (h) that contains the evaluation and analysis;

(D) develop, replicate, or conduct comprehensive, evidence-informed primary prevention programs that reduce risk factors and promote protective factors that reduce the likelihood of family violence, domestic violence, and dating violence, which may include—

(i) educational workshops and seminars;

(ii) training programs for professionals;

(iii) the preparation of informational material;

(iv) developmentally appropriate education programs;

(v) other efforts to increase awareness of the facts about, or to help prevent, family violence, domestic violence, and dating violence; and

(vi) the dissemination of information about the results of programs conducted under this subparagraph;

(E) utilize evidence-informed prevention program planning; and

(F) recognize, in applicable cases, the needs of underserved populations, racial and linguistic populations, and individuals with disabilities.

(h) Reports and evaluation

Each organization entering into a cooperative agreement under this section shall submit a performance report to the Secretary at such time as shall be reasonably required by the Secretary. Such performance report shall describe activities that have been carried out with the funds made available through the agreement, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may reasonably require. The Secretary shall make the evaluations received under this subsection publicly available on the Department of Health and Human Services website. The reports shall also be submitted to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

(Pub. L. 98–457, title III, §314, as added Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3507.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10414, Pub. L. 98–457, title III, §314, as added Pub. L. 102–295, title III, §320, May 28, 1992, 106 Stat. 209, related to grants for public information campaigns, prior to the general amendment of this chapter by Pub. L. 111–320.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§10415. Repealed. Pub. L. 108–36, title IV, §410, June 25, 2003, 117 Stat. 827

Section, Pub. L. 98–457, title III, §315, as added Pub. L. 102–295, title III, §321, May 28, 1992, 106 Stat. 210, related to model State leadership grants for domestic violence intervention.

§10416. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 98–457, title III, §316, as added Pub. L. 103–322, title IV, §40211, Sept. 13, 1994, 108 Stat. 1925; amended Pub. L. 106–386, div. B, title II, §1204, Oct. 28, 2000, 114 Stat. 1507; Pub. L. 108–36, title IV, §411, June 25, 2003, 117 Stat. 827; Pub. L. 109–162, title II, §206, Jan. 5, 2006, 119 Stat. 3002, which provided for national domestic violence hotline and Internet grants, was omitted in the general amendment of this chapter by Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3484. See section 10413 of this title.

§10417. Repealed. Pub. L. 108–36, title IV, §412, June 25, 2003, 117 Stat. 829

Section, Pub. L. 98–457, title III, §317, as added Pub. L. 103–322, title IV, §40251, Sept. 13, 1994, 108 Stat. 1935, related to programs for education of young people about domestic violence and violence among intimate partners.

§§10418, 10419. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 10418 and 10419 were omitted in the general amendment of this chapter by Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3484.

Section 10418, Pub. L. 98–457, title III, §318, as added Pub. L. 103–322, title IV, §40261, Sept. 13, 1994, 108 Stat. 1935; amended Pub. L. 105–392, title IV, §407(a), Nov. 13, 1998, 112 Stat. 3589; Pub. L. 106–386, div. B, title IV, §1403, Oct. 28, 2000, 114 Stat. 1514; Pub. L. 108–36, title IV, §413, June 25, 2003, 117 Stat. 830, related to demonstration grants for community initiatives.

Section 10419, Pub. L. 98–457, title III, §319, as added Pub. L. 106–386, div. B, title II, §1203, Oct. 28, 2000, 114 Stat. 1506; amended Pub. L. 108–36, title IV, §414, June 25, 2003, 117 Stat. 830, related to transitional housing assistance.

§10420. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10420 was editorially reclassified as section 12464 of Title 34, Crime Control and Law Enforcement.

§10421. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 98–457, title III, §320, formerly §309, Oct. 9, 1984, 98 Stat. 1762; Pub. L. 102–295, title III, §311(b), May 28, 1992, 106 Stat. 203; Pub. L. 103–322, title IV, §40272(a), Sept. 13, 1994, 108 Stat. 1937; renumbered §320 and amended Pub. L. 108–36, title IV, §§405, 415(5), June 25, 2003, 117 Stat. 826, 830, which defined terms as used in this chapter, was omitted in the general amendment of this chapter by Pub. L. 111–320, title II, §201, Dec. 20, 2010, 124 Stat. 3484. See section 10402 of this title.

CHAPTER 111—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

Sec.
10501 to 10513. Repealed or Transferred.

§10501. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10501 was editorially reclassified as section 50101 of Title 34, Crime Control and Law Enforcement.

§10502. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10502 was editorially reclassified as section 50102 of Title 34, Crime Control and Law Enforcement.

§10503. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10503 was editorially reclassified as section 50103 of Title 34, Crime Control and Law Enforcement.

§10504. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10504 was editorially reclassified as section 50104 of Title 34, Crime Control and Law Enforcement.

§10505. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10505 was editorially reclassified as section 50105 of Title 34, Crime Control and Law

Enforcement.

§10506. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10506 was editorially reclassified as section 50106 of Title 34, Crime Control and Law Enforcement.

§10507. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10507 was editorially reclassified as section 50107 of Title 34, Crime Control and Law Enforcement.

§10508. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10508 was editorially reclassified as section 50108 of Title 34, Crime Control and Law Enforcement.

§10509. Repealed. Pub. L. 105–362, title X, §1001(a), Nov. 10, 1998, 112 Stat. 3291

Section, Pub. L. 98–473, title II, §609U, Oct. 12, 1984, 98 Stat. 2106, related to Attorney General's annual report to Congress and the President on emergency Federal law enforcement assistance.

§10510. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10510 was editorially reclassified as section 50109 of Title 34, Crime Control and Law Enforcement.

§10511. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10511 was editorially reclassified as section 50110 of Title 34, Crime Control and Law Enforcement.

§10512. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10512 was editorially reclassified as section 50111 of Title 34, Crime Control and Law Enforcement.

§10513. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10513 was editorially reclassified as section 50112 of Title 34, Crime Control and Law Enforcement.

CHAPTER 112—VICTIM COMPENSATION AND ASSISTANCE

Sec.

10601 to 10605. Transferred.
10606. Repealed.
10607 to 10609. Transferred.

§10601. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10601 was editorially reclassified as section 20101 of Title 34, Crime Control and Law Enforcement.

§10602. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10602 was editorially reclassified as section 20102 of Title 34, Crime Control and Law Enforcement.

§10603. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10603 was editorially reclassified as section 20103 of Title 34, Crime Control and Law Enforcement.

§10603a. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10603a was editorially reclassified as section 20104 of Title 34, Crime Control and Law Enforcement.

§10603b. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10603b was editorially reclassified as section 20105 of Title 34, Crime Control and Law Enforcement.

§10603c. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10603c was editorially reclassified as section 20106 of Title 34, Crime Control and Law Enforcement.

§10603d. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10603d was editorially reclassified as section 20107 of Title 34, Crime Control and Law Enforcement.

§10603e. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10603e was editorially reclassified as section 20108 of Title 34, Crime Control and Law Enforcement.

§10603f. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10603f was editorially reclassified as section 20109 of Title 34, Crime Control and Law Enforcement.

§10604. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10604 was editorially reclassified as section 20110 of Title 34, Crime Control and Law Enforcement.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPORTS ON AMOUNTS RECEIVED AND DISTRIBUTED FROM FINES FOR VIOLATIONS OF TRADE SECRETS PROVISIONS

Pub. L. 104–294, title I, §101(c), Oct. 11, 1996, 110 Stat. 3491, required the Attorney General to report to Congress no later than 2 years and 4 years after Oct. 11, 1996, on fines for offenses under chapter 90 of title 18 deposited in the Crime Victims Fund.

§10605. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10605 was editorially reclassified as section 20111 of Title 34, Crime Control and Law Enforcement.

§10606. Repealed. Pub. L. 108–405, title I, §102(c), Oct. 30, 2004, 118 Stat. 2264

Section, Pub. L. 101–647, title V, §502, Nov. 29, 1990, 104 Stat. 4820, related to rights of crime victims. See section 3771 of Title 18, Crimes and Criminal Procedure.

§10607. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10607 was editorially reclassified as section 20141 of Title 34, Crime Control and Law Enforcement.

§10608. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10608 was editorially reclassified as section 20142 of Title 34, Crime Control and Law Enforcement.

§10609. Transferred

EDITORIAL NOTES

CODIFICATION

Section 10609 was editorially reclassified as section 20144 of Title 34, Crime Control and Law Enforcement.

CHAPTER 113—STATE JUSTICE INSTITUTE

Sec.

10701. Definitions.
10702. Establishment of Institute; duties.
10703. Board of Directors.
10704. Officers and employees.
10705. Grants and contracts.
10706. Limitations on grants and contracts.
10707. Restrictions on activities of Institute.
10708. Administrative provisions.
10709. Presidential coordination.
10710. Records and reports.
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10712. Report by Attorney General.
10713. Authorization of appropriations.

§10701. Definitions

As used in this chapter, the term—

(1) "Board" means the Board of Directors of the Institute;

(2) "Director" means the Executive Director of the Institute;

(3) "Governor" means the Chief Executive Officer of a State;

(4) "Institute" means the State Justice Institute;

(5) "recipient" means any grantee, contractor, or recipient of financial assistance under this chapter;

(6) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(7) "Supreme Court" means the highest appellate court within a State unless, for the purposes of this chapter, a constitutionally or legislatively established judicial council acts in place of that court; and

(8) "domestic violence" means—

(A) any action that constitutes—

(i) attempting to cause or intentionally, knowingly, or recklessly causing bodily injury or physical illness;

(ii) rape, sexual assault, or causing involuntary deviate sexual intercourse;

(iii) placing by physical menace another in fear of imminent serious bodily injury; or

(iv) the infliction of false imprisonment;

if such action is taken by one of 2 spouses, former spouses, or sexual or intimate partners against the other spouse, former spouse, or partner and the 2 of whom share biological parenthood of, have adopted, are legal custodians of, or are stepparents of a minor child; or

(B) physically or sexually abusing such minor child if such abuse is inflicted by either of such spouses, former spouses, or partners.

(Pub. L. 98–620, title II, §202, Nov. 8, 1984, 98 Stat. 3336; Pub. L. 102–528, §1, Oct. 27, 1992, 106 Stat. 3461.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note below and Tables.

AMENDMENTS

1992—Par. (8). Pub. L. 102–528 added par. (8).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 98–620, title II, §216, Nov. 8, 1984, 98 Stat. 3346, provided that: "The provisions of this title [enacting this chapter and amending section 620 of Title 28, Judiciary and Judicial Procedure] shall take effect on October 1, 1985."

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–372, §1, Oct. 25, 2004, 118 Stat. 1754, provided that: "This Act [amending sections 3793, 10703, 10704, and 10713 of this title] may be cited as the 'State Justice Institute Reauthorization Act of 2004'."

SHORT TITLE

Pub. L. 98–620, title II, §201, Nov. 8, 1984, 98 Stat. 3336, provided that: "This title [enacting this chapter and amending section 620 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'State Justice Institute Act of 1984'."

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§10702. Establishment of Institute; duties

(a) Establishment; purpose; incorporation; powers

There is established a private nonprofit corporation which shall be known as the State Justice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. The Institute may be incorporated in any State pursuant to section 10703(a)(6) of this title. To the extent consistent with the provisions of this

chapter, the Institute may exercise the powers conferred upon a nonprofit corporation by the laws of the State in which it is incorporated.

(b) Duties

The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to a fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this chapter;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(4) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) Duplication of functions; responsibility of State agencies

The Institute shall not duplicate functions adequately performed by existing nonprofit organizations and shall promote, on the part of agencies of State judicial administration, responsibility for the success and effectiveness of State court improvement programs supported by Federal funding.

(d) Maintenance of offices in State of incorporation; agent for receipt of service of process

The Institute shall maintain its principal offices in the State in which it is incorporated and shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) Tax status of Institute and programs assisted thereby

The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of title 26 and as an organization described in section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. If such treatments are conferred in accordance with the provisions of title 26, the Institute, and programs assisted by the Institute, shall be subject to all provisions of title 26 relevant to the conduct of organizations exempt from taxation.

(f) Rules, regulations, etc.; notice and comment

The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this chapter, and it shall publish in the Federal Register all rules, regulations, guidelines, and instructions.

(Pub. L. 98–620, title II, §203, Nov. 8, 1984, 98 Stat. 3336; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–690, title VII, §7321(b)(1), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100–702, title VI, §601, Nov. 19, 1988, 102 Stat. 4652; Pub. L. 102–528, §3(1), Oct. 27, 1992, 106 Stat. 3462.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(1)(C), and (f), was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–528 struck out at end "The publication of a substantive rule shall not be made less than thirty days before the effective date of such rule, except as otherwise provided by the Institute

for good cause found and published with the rule."

1988—Subsec. (f). Pub. L. 100–690 and Pub. L. 100–702 made substantially identical amendments, striking out ", at least thirty days prior to their effective date," after "Federal Register" and inserting sentence at end relating to publication of a substantive rule.

1986—Subsec. (e). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

BATTERED WOMEN'S TESTIMONY

Pub. L. 102–527, Oct. 27, 1992, 106 Stat. 3459, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Battered Women's Testimony Act of 1992'.

"SEC. 2. AUTHORITY OF STATE JUSTICE INSTITUTE.

"The State Justice Institute shall—

"(1) collect nationwide and analyze information regarding—

"(A) the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, and

"(B) sources of, and methods to obtain, funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants,

"(2) develop training materials to assist—

"(A) battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use such expert testimony in appropriate cases, particularly appropriate cases involving indigent women defendants, and

"(B) individuals with expertise in the experiences of battered women to develop skills appropriate to providing such expert testimony, and

"(3) disseminate such information and such training materials, and provide related technical assistance, to battered women, such operators, such advocates, such attorneys, and such individuals.

"SEC. 3. ADMINISTRATIVE PROVISIONS.

"For purposes of this Act—

"(1) subsections (d) and (e) of section 206 of the State Justice Institute Act of 1984 [42 U.S.C. 10705(d), (e)], and

"(2) subsections (a) and (b) of section 207 of such Act [42 U.S.C. 10706(a), (b)],

shall apply in the same manner as such subsections apply with respect to grants and contracts made under such Act [42 U.S.C. 10701 et seq.].

"SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated $600,000 to carry out this Act."

§10703. Board of Directors

(a) Appointment and membership

(1) The Institute shall be supervised by a Board of Directors, consisting of eleven voting members to be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four members from the public sector, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates submitted to the President by the Conference of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the Conference considers best qualified to serve on the Board. Whenever the term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members, the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so rejected, the President shall request the Conference to submit to him another list of qualified individuals. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals concerned with the administration of justice and the objectives of this chapter.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after October 1, 1985. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The Conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

(6) The initial members of the Board of Directors shall be the incorporators of the Institute and shall determine the State in which the Institute is to be incorporated.

(b) Term of office

(1) Except as provided in paragraph (2), the term of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve an unexpired term which has arisen by virtue of the death, disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

(c) Reappointment

No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Compensation; reimbursement for expenses

Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) Status of members of Board as officers and employees of United States

The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Voting rights of Board members; quorum; action of Board on concurrence of majority

Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a

simple majority of the membership present and voting.

(g) Chairman; initial selection and term of office; subsequent annual election

The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years. Thereafter, the Board shall annually elect a chairman from among its voting members.

(h) Grounds for removal of members

A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Quarterly meetings of Board; special meetings

Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting at his own discretion or pursuant to the petition of any seven members.

(j) Open meetings

All meetings of the Board, any executive committee of the Board (on any occasion on which that committee has been delegated the authority to act on behalf of the Board), and any council established in connection with this chapter, shall be open and subject to the requirements and provisions of section 552b of title 5 relating to open meetings.

(k) Duties and functions of Board

In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish policies and develop such programs for the Institute that will further the achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorities;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities whose programs or activities relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 10705(a) of this title.

(Pub. L. 98–620, title II, §204, Nov. 8, 1984, 98 Stat. 3337; Pub. L. 102–572, title VIII, §803(a), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 108–372, §3(c), Oct. 25, 2004, 118 Stat. 1754.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3) and (j), was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

AMENDMENTS

2004—Subsec. (j). Pub. L. 108–372 inserted "(on any occasion on which that committee has been delegated the authority to act on behalf of the Board)" after "executive committee of the Board".

1992—Subsec. (a)(3). Pub. L. 102–572 substituted "Conference" for "conference" after "whom the" in second sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–572, title VIII, §804, Oct. 29, 1992, 106 Stat. 4516, provided that: "The provisions of this title [amending this section and sections 10705 and 10713 of this title] shall take effect on the date of the enactment of this Act [Oct. 29, 1992]."

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

§10704. Officers and employees

(a) Duties of Director; appointment and removal of employees; political tests or qualifications prohibited

(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this chapter.

(b) Compensation

Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5.

(c) Status of Institute as department, agency, or instrumentality of Federal Government; authority of Office of Management and Budget

(1) Except as otherwise specifically provided in this chapter, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This chapter does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute's annual budget request at the time it is transmitted to the Congress.

(3) The Institute may purchase goods and services from the General Services Administration in order to carry out its functions.

(d) Status of officers and employees of Institute as officers and employees of United States

(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5: Subchapter I of chapter 81 (relating to compensation for work injuries); chapters 83 and 84 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance), notwithstanding section 8914 of such title. The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

(e) Freedom of information requirements

The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5 relating to freedom of information.

(Pub. L. 98–620, title II, §205, Nov. 8, 1984, 98 Stat. 3339; Pub. L. 100–690, title VII, §7321(b)(2), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100–702, title VI, §602, Nov. 19, 1988, 102 Stat. 4653; Pub. L. 108–372, §3(a), (b), Oct. 25, 2004, 118 Stat. 1754.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (c)(1), (2), was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

AMENDMENTS

2004—Subsec. (c)(3). Pub. L. 108–372, §3(a), added par. (3).

Subsec. (d)(2). Pub. L. 108–372, §3(b), inserted ", notwithstanding section 8914 of such title" after "(relating to health insurance)".

1988—Subsec. (d)(2). Pub. L. 100–690 and Pub. L. 100–702 amended par. (2) identically, substituting "chapters 83 and 84" for "chapter 83".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

§10705. Grants and contracts

(a) Authority of Institute; purposes of grants

The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b), in order to—

(1) conduct research, demonstrations, or special projects pertaining to the purposes described in this chapter, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) serve as a clearinghouse and information center, where not otherwise adequately provided, for the preparation, publication, and dissemination of information regarding State judicial systems;

(3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this chapter;

(4) evaluate, when appropriate, the programs and projects carried out under this chapter to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this chapter;

(5) encourage and assist in the furtherance of judicial education;

(6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

(7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) Priority in making awards; alternative recipients; approval of applications; receipt and administration of funds; accountability

The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute may award grants to or enter into cooperative agreements or contracts with—

(A) State and local courts and their agencies;

(B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

(C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

(2) The Institute may, if the objective can better be served thereby, award grants to or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education;

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration.

(3) Upon application by an appropriate State or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of State or local government other than a court.

(4) The Institute may enter into contracts with Federal agencies to carry out the purposes of this chapter.

(5) Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Permissible uses of funds

Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to support studies of the appropriateness of [1] efficacy of court organization and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(5) to support State court planning and budgeting staffs and to provide technical assistance in resource allocation and service forecasting techniques;

(6) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(7) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

(8) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;

(9) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts;

(10) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and to test the utility of those alternative approaches;

(11) to support studies of the outcomes of cases in selected subject matter areas to identify

instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(12) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(13) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens;

(14) conduct [2] not more than 5 projects at an aggregate cost of not to exceed $600,000—

(A) to investigate, and carry out research regarding State judicial decisions relating to child custody litigation involving domestic violence;

(B) to develop training curricula to assist State courts to develop an understanding of, and appropriate responses to, child custody litigation involving domestic violence; and

(C) to disseminate the results of the investigation and research carried out under subparagraph (A), and the curricula developed under subparagraph (B), to State courts; and

(15) to carry out such other programs, consistent with the purposes of this chapter, as may be deemed appropriate by the Institute.

(d) Matching fund requirements

The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a State or local court (or other unit of State or local government) is the recipient, the requirement that the recipient provide a match, from private or public sources, not less than 50 per centum of the total cost of such grant, cooperative agreement, or contract, except that such requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the State and a majority of the Board of Directors.

(e) Compliance monitoring and evaluation by Institute

The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this chapter to ensure that the provisions of this chapter, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this chapter, are carried out.

(f) Independent study of financial and technical assistance programs

The Institute shall provide for an independent study of the financial and technical assistance programs under this chapter.

(Pub. L. 98–620, title II, §206, Nov. 8, 1984, 98 Stat. 3340; Pub. L. 100–690, title VII, §7321(b)(3), (4), Nov. 18, 1988, 102 Stat. 4466, 4467; Pub. L. 100–702, title VI, §§603, 604, Nov. 19, 1988, 102 Stat. 4653; Pub. L. 102–528, §§2, 3(2), Oct. 27, 1992, 106 Stat. 3461, 3462; Pub. L. 102–572, title VIII, §§802, 803(b), Oct. 29, 1992, 106 Stat. 4515, 4516.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (3), (4), (b)(4), (c)(15), (e), and (f), was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–572, §802(1), substituted "may award grants to or enter into cooperative agreements or contracts" for "shall give priority to grants, cooperative agreements, or contracts" in introductory provisions and substituted semicolon for comma in subpar. (A).

Subsec. (b)(2). Pub. L. 102–572, §802(2), inserted "to" after "award grants".

Subsec. (b)(3). Pub. L. 102–572, §802(3), added par. (3) and struck out former par. (3) which read as follows: "Upon application by an appropriate Federal, State, or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court."

Subsec. (b)(4), (5). Pub. L. 102–572, §802(4), (5), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c)(3). Pub. L. 102–528, §3(2), struck out "judicial and" before "nonjudicial" the second place appearing.

Subsec. (c)(4) to (6). Pub. L. 102–528, §3(2)(B), (C), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 102–572, §803(b), substituted "affect" for "effect".

Pub. L. 102–528, §3(2)(B), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (c)(8) to (12). Pub. L. 102–528, §3(2)(B), redesignated pars. (7) to (11) as (8) to (12), respectively. Former par. (12) redesignated (13).

Subsec. (c)(13). Pub. L. 102–528, §3(2)(B), redesignated par. (12) as (13). Former par. (13) redesignated (14).

Pub. L. 102–528, §2, added par. (13) and redesignated former par. (13) as (14).

Subsec. (c)(14). Pub. L. 102–528, §3(2)(B), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Pub. L. 102–528, §2, redesignated par. (13) as (14).

Subsec. (c)(15). Pub. L. 102–528, §3(2)(B), redesignated par. (14) as (15).

1988—Subsec. (c)(3). Pub. L. 100–702, §603(1), inserted "judicial and" before "nonjudicial".

Pub. L. 100–690, §7321(b)(3)(A), inserted "judicial and" before "nonjudicial".

Subsec. (c)(4) to (15). Pub. L. 100–702, §603(2), (3), which directed the striking out of par. (4) and redesignation of pars. (5) to (15) as (4) to (14), respectively, was executed by striking out par. (4) and redesignating pars. (5) to (14) as (4) to (13), respectively, in view of the intervening redesignation of pars. (5) to (15) as (4) to (14), respectively, by Pub. L. 100–690, §7321(b)(3)(C). See below. Prior to amendment, par. (4) read as follows: "to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;".

Pub. L. 100–690, §7321(b)(3)(B), (C), redesignated pars. (5) to (15) as (4) to (14), respectively, and struck out former par. (4) which read as follows: "to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;".

Subsec. (d). Pub. L. 100–702, §604, which directed the substitution of "court (or other unit of State or local government)" for "judicial system", could not be executed due to prior amendment by Pub. L. 100–690, §7321(b)(4). See below.

Pub. L. 100–690, §7321(b)(4), substituted "court (or other unit of State or local government)" for "judicial system".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

[1] So in original. Probably should be "and".

[2] So in original. Probably should be "to conduct".

§10706. Limitations on grants and contracts

(a) Duties of Institute

With respect to grants made and contracts or cooperative agreements entered into under this chapter, the Institute shall—

(1) ensure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation or constitutional amendment by the Congress of the United States, or by any State or local legislative body, or any State proposal by initiative petition, or of any referendum, unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this chapter of the recipient or the Institute; and

(2) ensure all personnel engaged in grant, cooperative agreement or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity.

(b) Use of funds for training programs for advocacy of nonjudicial public policies or encouraging nonjudicial political activities

No funds made available by the Institute under this chapter, either by grant, cooperative agreement, or contract, may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) Authority coextensive with appropriation Acts

The authorization to enter into cooperative agreements, contracts or any other obligation under this chapter shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

(d) Prohibited uses of funds

To ensure that funds made available under this chapter are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

(1) to supplant State or local funds currently supporting a program or activity; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

(Pub. L. 98–620, title II, §207, Nov. 8, 1984, 98 Stat. 3342; Pub. L. 100–702, title VI, §605, Nov. 19, 1988, 102 Stat. 4653.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", except in subsec. (d) where it was in the original "this Act", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which enacted this chapter and amended section 620 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Short Title note set out under section 17101 of this title and Tables.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100–702 struck out par. (3) which read as follows: "ensure that each recipient that files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

"(A) the application for refunding has been approved and funds pursuant thereto received; or

"(B) the application for refunding has been finally denied in accordance with section 10708 of this title."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

§10707. Restrictions on activities of the Institute

(a) Litigation; interference with independence of State judiciary; funding of State judicial system activities other than pursuant to this chapter; legislative lobbying

The Institute shall not—

(1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

(2) interfere with the independent nature of any State judicial system or allow financial assistance to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this chapter; or

(3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

(A) when formally requested to do so by a legislative body, committee, or a member thereof;

(B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

(C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this chapter.

(b) Issuance of shares of stock; declaration of dividends; compensation for services; reimbursement for expenses; political activities

(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall enure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) The Institute shall not contribute or make available Institute funds or program personnel or equipment for use in advocating or opposing any ballot measure, initiative, or referendum.

(c) Identification of Institute with political activities

Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(Pub. L. 98–620, title II, §208, Nov. 8, 1984, 98 Stat. 3343.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

§10708. Administrative provisions

(a) The Institute shall prescribe procedures to ensure that financial assistance under this chapter shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this chapter has been given reasonable notice and opportunity to show cause why such actions should not be taken.

(b) Except as provided by Federal law other than this chapter, no officer or employee of the Institute, and no recipient of assistance under this chapter, may use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained in accordance with this chapter. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

(Pub. L. 98–620, title II, §209, Nov. 8, 1984, 98 Stat. 3344; Pub. L. 100–702, title VI, §606, Nov. 19, 1988, 102 Stat. 4653.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100–702 substituted "Administrative provisions" for "Special procedures" in section catchline, and amended text generally, changing structure of section from a single unlettered paragraph to one consisting of subsecs. (a) and (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

§10709. Presidential coordination

The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this chapter.

(Pub. L. 98–620, title II, §210, Nov. 8, 1984, 98 Stat. 3344.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

§10710. Records and reports

(a) Reports

The Institute is authorized to require such reports as it deems necessary from any recipient with respect to activities carried out pursuant to this chapter.

(b) Records

The Institute is authorized to prescribe the keeping of records with respect to funds provided by any grant, cooperative agreement, or contract under this chapter and shall have access to such records at all reasonable times for the purpose of ensuring compliance with such grant, cooperative agreement, or contract or the terms and conditions upon which financial assistance was provided.

(c) Submission of copies of reports to recipients; maintenance in principal office of Institute; availability for public inspection; furnishing of copies to interested parties

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to such recipient, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

(d) Funds accounted for and reported as receipts and disbursements separate and distinct from Federal funds

Non-Federal funds received by the Institute, and funds received for projects funded in part by the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(Pub. L. 98–620, title II, §211, Nov. 8, 1984, 98 Stat. 3344.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

§10711. Audits

(a) Time and place of audits; standards; availability of books, accounts, facilities, etc., to auditors; filing of report and availability for public inspection

(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the Government Accountability Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b) Additional audits; requirements; reports and recommendations to Congress and Attorney General

(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the Government Accountability Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the Government Accountability Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the Government Accountability Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 3523(c) of title 31.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c) Annual audits by Institute or recipients; reports; submission of copies to Comptroller General; inspection of books, accounts, etc.; availability of audit reports for public inspection

(1) The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

(Pub. L. 98–620, title II, §212, Nov. 8, 1984, 98 Stat. 3345; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsecs. (a)(3), (b)(1), (2). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

§10712. Report by Attorney General

Not later than October 1, 2002, the Attorney General, in consultation with the Federal Judicial Center, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the effectiveness of the Institute in carrying out the duties specified in section 10702(b) of this title. Such report shall include an assessment of the cost effectiveness of the program as a whole and, to the extent practicable, of individual grants, an assessment of whether the restrictions and limitations specified in sections 10706 and 10707 of this title have been respected, and such recommendations as the Attorney General, in consultation with the Federal Judicial Center, deems appropriate.

(Pub. L. 98–620, title II, §213, Nov. 8, 1984, 98 Stat. 3346; Pub. L. 107–179, §1, May 20, 2002, 116 Stat. 580.)

EDITORIAL NOTES

AMENDMENTS

2002—Pub. L. 107–179 substituted "Not later than October 1, 2002" for "On October 1, 1987".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

§10713. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this chapter, $7,000,000 for each of fiscal years 2005, 2006, 2007, and 2008. Amounts appropriated for each such year are to remain available until expended.

(Pub. L. 98–620, title II, §215, Nov. 8, 1984, 98 Stat. 3346; Pub. L. 100–690, title VII, §7321(a), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100–702, title VI, §607, Nov. 19, 1988, 102 Stat. 4654; Pub. L. 101–162, title V, Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102–572, title VIII, §801, Oct. 29, 1992, 106 Stat. 4515; Pub. L. 108–372, §2, Oct. 25, 2004, 118 Stat. 1754.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 98–620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

AMENDMENTS

2004—Pub. L. 108–372 amended section generally, inserting section catchline and substituting provisions authorizing appropriations for fiscal years 2005 to 2008 for provisions authorizing appropriations for fiscal years 1993 to 1996.

1992—Pub. L. 102–572 amended section generally. Prior to amendment, section authorized appropriations of $15,000,000 for each of fiscal years 1989, 1990, 1991, and 1992.

1989—Pub. L. 101–162 repealed Pub. L. 100–702, §607, and revived Pub. L. 100–690, §7321(a). See 1988 Amendment notes below.

1988—Pub. L. 100–702, §607, which amended section generally, substituting appropriations authorization of $15,000,000 for fiscal years 1989 and 1990, such amounts to remain available until expended for authorization of $15,000,000 for fiscal years 1989, 1990, 1991, and 1992, was repealed by Pub. L. 101–162, title V.

Pub. L. 100–690, §7321(a), as revived by Pub. L. 101–162, title V, amended section generally, substituting appropriations authorization of $15,000,000 for fiscal years 1989 through 1992 for authorization of $13,000,000 for fiscal year 1986 and $15,000,000 for fiscal years 1987 and 1988.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of this title.

CHAPTER 114—PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS

SUBCHAPTER I—PROTECTION AND ADVOCACY SYSTEMS

PART A—ESTABLISHMENT OF SYSTEMS

Sec.

10801. Congressional findings and statement of purpose.
10802. Definitions.
10803. Allotments.
10804. Use of allotments.
10805. System requirements.
10806. Access to records.
10807. Legal actions.

PART B—ADMINISTRATIVE PROVISIONS

10821. Applications.
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SUBCHAPTER II—RESTATEMENT OF BILL OF RIGHTS FOR MENTAL HEALTH PATIENTS

10841. Restatement of bill of rights.

SUBCHAPTER III—CONSTRUCTION

10851. Construction of subchapters I and II; "individual with mental illness" defined.

SUBCHAPTER I—PROTECTION AND ADVOCACY SYSTEMS

PART A—ESTABLISHMENT OF SYSTEMS

§10801. Congressional findings and statement of purpose

(a) The Congress finds that—

(1) individuals with mental illness are vulnerable to abuse and serious injury;

(2) family members of individuals with mental illness play a crucial role in being advocates for the rights of individuals with mental illness where the individuals are minors, the individuals are legally competent and choose to involve the family members, and the individuals are legally incompetent and the legal guardians, conservators, or other legal representatives are members of the family;

(3) individuals with mental illness are subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning; and

(4) State systems for monitoring compliance with respect to the rights of individuals with mental illness vary widely and are frequently inadequate.

(b) The purposes of this chapter are—

(1) to ensure that the rights of individuals with mental illness are protected; and

(2) to assist States to establish and operate a protection and advocacy system for individuals with mental illness which will—

(A) protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes; and

(B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

(Pub. L. 99–319, title I, §101, May 23, 1986, 100 Stat. 478; Pub. L. 102–173, §§3, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 99–319, May 23, 1986, 100 Stat. 478, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–173, §10(2), substituted "individuals with mental illness" for "mentally ill individuals" in three places.

Subsec. (a)(2) to (4). Pub. L. 102–173, §3, added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (b). Pub. L. 102–173, §10(2), substituted "individuals with mental illness" for "mentally ill individuals" in three places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–173, §1, Nov. 27, 1991, 105 Stat. 1217, provided that: "This Act [amending this section and sections 10802 to 10807, 10821, 10824, 10826, 10827, 10841, and 10851 of this title] may be cited as the 'Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–509, §1, Oct. 20, 1988, 102 Stat. 2543, provided that: "This Act [amending sections 10802, 10804 to 10806, 10821, 10822, 10825, and 10827 of this title and enacting a provision set out as a note under section 10827 of this title] may be cited as the 'Protection and Advocacy for Mentally Ill Individuals

Amendments Act of 1988'."

SHORT TITLE

Pub. L. 99–319, §1, May 23, 1986, 100 Stat. 478, as amended by Pub. L. 106–310, div. B, title XXXII, §3206(a), Oct. 17, 2000, 114 Stat. 1193, provided that: "This Act [enacting this chapter and section 247a of this title and enacting provisions set out as a note below] may be cited as the 'Protection and Advocacy for Individuals with Mental Illness Act'."

SUPERSEDURE OF BALANCED BUDGET PROVISIONS

Pub. L. 99–319, title IV, §402, May 23, 1986, 100 Stat. 490, provided that: "This Act [see Short Title note above] shall not be construed as superseding any of the balanced budget provisions set forth in section 3(7) of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 622(7)]."

§10802. Definitions

For purposes of this subchapter:

(1) The term "abuse" means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to a [1] individual with mental illness, and includes acts such as—

(A) the rape or sexual assault of a [1] individual with mental illness;

(B) the striking of a [1] individual with mental illness;

(C) the use of excessive force when placing a [1] individual with mental illness in bodily restraints; and

(D) the use of bodily or chemical restraints on a [1] individual with mental illness which is not in compliance with Federal and State laws and regulations.

(2) The term "eligible system" means the system established in a State to protect and advocate the rights of persons with developmental disabilities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.].

(3) The term "facilities" may include, but need not be limited to, hospitals, nursing homes, community facilities for individuals with mental illness, board and care homes, homeless shelters, and jails and prisons.

(4) The term "individual with mental illness" means, except as provided in section 10804(d) of this title, an individual—

(A) who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and

(B)(i)(I) who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident are unknown;

(II) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or"; [2]

(III) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense; or

(ii) who satisfies the requirements of subparagraph (A) and lives in a community setting, including their own home.

(5) The term "neglect" means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to a [1] individual with mental illness or which placed a [1] individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a [1] individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to a [1] individual with

mental illness, or the failure to provide a safe environment for a [1] individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(6) The term "Secretary" means the Secretary of Health and Human Services.

(7) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(8) The term "American Indian consortium" means a consortium established under part C of the Developmental Disabilities Assistance and Bill of Rights Act [3] (42 U.S.C. 6042 et seq.).

(Pub. L. 99–319, title I, §102, May 23, 1986, 100 Stat. 478; Pub. L. 100–509, §3, Oct. 20, 1988, 102 Stat. 2543; Pub. L. 102–173, §§4, 10(1), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106–310, div. B, title XXXII, §3206(b), Oct. 17, 2000, 114 Stat. 1194; Pub. L. 106–402, title IV, §401(b)(13)(A), Oct. 30, 2000, 114 Stat. 1739.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in par. (2), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in par. (8), is title I of Pub. L. 88–164, as added by Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2662, which was repealed by Pub. L. 106–402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§6041 et seq.) of chapter 75 of this title. Provisions similar to former part C of the Act are contained in subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Pub. L. 106–402, which is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title.

AMENDMENTS

2000—Par. (2). Pub. L. 106–402 substituted "subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000" for "part C of the Developmental Disabilities Assistance and Bill of Rights Act".

Par. (4). Pub. L. 106–310, §3206(b)(1)(A), inserted ", except as provided in section 10804(d) of this title," after "means" in introductory provisions.

Par. (4)(B). Pub. L. 106–310, §3206(b)(1)(B), designated existing provisions as cl. (i), redesignated former cls. (i) to (iii) as subcls. (I) to (III), respectively, of cl. (i), and added cl. (ii).

Par. (8). Pub. L. 106–310, §3206(b)(2), added par. (8).

1991—Par. (1). Pub. L. 102–173, §10(1), substituted "individual with mental illness" for "mentally ill individual" wherever appearing.

Pars. (3) to (7). Pub. L. 102–173 added par. (3), redesignated former pars. (3) to (6) as (4) to (7), respectively, and substituted "individual with mental illness" for "mentally ill individual" wherever appearing in pars. (4) and (5).

1988—Par. (1). Pub. L. 100–509, §3(1), inserted "or death" after "caused, injury".

Par. (3)(B). Pub. L. 100–509, §3(2), designated existing provisions as cl. (i), substituted ", even if the whereabouts of such inpatient or resident are unknown;" for period at end, and added cls. (ii) and (iii).

Par. (4). Pub. L. 100–509, §3(3), inserted "or death" after "injury" in two places and inserted before period at end ", including the failure to maintain adequate numbers of appropriately trained staff".

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] So in original. Probably should be "an".

[2] *So in original.*

[3] *See References in Text note below.*

§10803. Allotments

The Secretary shall make allotments under this subchapter to eligible systems to establish and administer systems—

(1) which meet the requirements of section 10805 of this title; and

(2) which are designed to—

(A) protect and advocate the rights of individuals with mental illness; and

(B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

(Pub. L. 99–319, title I, §103, May 23, 1986, 100 Stat. 479; Pub. L. 102–173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

EDITORIAL NOTES

AMENDMENTS

1991—Par. (2). Pub. L. 102–173 substituted "individuals with mental illness" for "mentally ill individuals" in two places.

§10804. Use of allotments

(a) Contracts

(1) An eligible system may use its allotment under this subchapter to enter into contracts with State agencies and nonprofit organizations which operate throughout the State. In order to be eligible for a contract under this paragraph—

(A) such an agency shall be independent of any agency which provides treatment or services (other than advocacy services) to individuals with mental illness; and

(B) such an agency or organization shall have the capacity to protect and advocate the rights of individuals with mental illness.

(2) In carrying out paragraph (1), an eligible system should consider entering into contracts with organizations including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which,[1] provide protection or advocacy services to individuals with mental illness.

(b) Obligation of allotments; technical assistance and training

(1) If an eligible system is a public entity, the government of the State in which the system is located may not require the system to obligate more than 5 percent of its allotment under this subchapter in any fiscal year for administrative expenses.

(2) An eligible system may not use more than 10 percent of any allotment under this subchapter for any fiscal year for the costs of providing technical assistance and training to carry out this subchapter.

(c) Representation of individuals with mental illness

An eligible system may use its allotment under this subchapter to provide representation to individuals with mental illness in Federal facilities who request representation by the eligible system. Representatives of such individuals from such system shall be accorded all the rights and authority

accorded to other representatives of residents of such facilities pursuant to State law and other Federal laws.

(d) Definition for purposes of representation of individuals with mental illness; priority

The definition of "individual with a mental illness" contained in section 10802(4)(B)(iii) [2] of this title shall apply, and thus an eligible system may use its allotment under this subchapter to provide representation to such individuals, only if the total allotment under this subchapter for any fiscal year is $30,000,000 or more, and in such case, an eligible system must give priority to representing persons with mental illness as defined in subparagraphs (A) and (B)(i) of section 10802(4) of this title.

(Pub. L. 99–319, title I, §104, May 23, 1986, 100 Stat. 479; Pub. L. 100–509, §7(a), (b)(1), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102–173, §§5, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106–310, div. B, title XXXII, §3206(c), Oct. 17, 2000, 114 Stat. 1194.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 10802(4)(B)(iii) of this title, referred to in subsec. (d), was redesignated section 10802(4)(B)(i)(III) of this title by Pub. L. 106–310, div. B, title XXXII, §3206(b)(1)(B)(i), (ii), Oct. 17, 2000, 114 Stat. 1194.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–310 added subsec. (d).

1991—Subsec. (a). Pub. L. 102–173, §10(2), substituted "individuals with mental illness" for "mentally ill individuals" in three places.

Subsec. (c). Pub. L. 102–173, §5, added subsec. (c).

1988—Subsec. (a)(2). Pub. L. 100–509, §7(a), substituted "including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which" for "which, on May 23, 1986".

Subsec. (b)(2). Pub. L. 100–509, §7(b)(1), substituted "10" for "5".

[1] So in original. The comma probably should not appear.

[2] See References in Text note below.

§10805. System requirements

(a) Authority; independent status; access to facilities and records; advisory council; annual report; grievance procedure

A system established in a State under section 10803 of this title to protect and advocate the rights of individuals with mental illness shall—

(1) have the authority to—

(A) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(B) pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State; and

(C) pursue administrative, legal, and other remedies on behalf of an individual who—

(i) was a [1] individual with mental illness; and

(ii) is a resident of the State,

but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment;

(2) be independent of any agency in the State which provides treatment or services (other than advocacy services) to individuals with mental illness;

(3) have access to facilities in the State providing care or treatment;

(4) in accordance with section 10806 of this title, have access to all records of—

(A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

(B) any individual (including an individual who has died or whose whereabouts are unknown)—

(i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access;

(ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(iii) with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities (either of which result from a complaint or other evidence) there is probable cause to believe that such individual has been subject to abuse or neglect; and

(C) any individual with a mental illness, who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy, whenever—

(i) such representative has been contacted by such system upon receipt of the name and address of such representative;

(ii) such system has offered assistance to such representative to resolve the situation; and

(iii) such representative has failed or refused to act on behalf of the individual;

(5) have an arrangement with the Secretary and the agency of the State which administers the State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the furnishing of the information required by subsection (b);

(6) establish an advisory council—

(A) which will advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness;

(B) which shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals, and at least 60 percent the membership of which shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals; and

(C) which shall be chaired by an individual who has received or is receiving mental health services or who is a family member of such an individual;

(7) on January 1, 1987, and January 1 of each succeeding year, prepare and transmit to the Secretary and the head of the State mental health agency of the State in which the system is located, and make publicly available, a report describing the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;

(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system;

(9) establish a grievance procedure for clients or prospective clients of the system to assure that individuals with mental illness have full access to the services of the system and for individuals

who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this subchapter and subchapter III; and

(10) not use allotments provided to a system in a manner inconsistent with section 14404 of this title.

(b) Annual survey report; plan of corrections

The Secretary and the agency of a State which administers its State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall provide the eligible system of the State with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] with respect to any facility rendering care or treatment to individuals with mental illness in the State in which such system is located. A report or plan shall be made available within 30 days after the completion of the report or plan.

(c) Governing authority

(1)(A) Each system established in a State, through allotments received under section 10803 of this title, to protect and advocate the rights of individuals with mental illness shall have a governing authority.

(B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

(i) members (to be selected no later than October 1, 1990) who broadly represent or are knowledgeable about the needs of the clients served by the system; and

(ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

As used in this subparagraph, the term "members who broadly represent or are knowledgeable about the needs of the clients served by the system" shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals.

(2) The governing authority established under paragraph (1) shall—

(A) be responsible for the planning, design, implementation, and functioning of the system; and

(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.

(Pub. L. 99–319, title I, §105, May 23, 1986, 100 Stat. 480; Pub. L. 100–509, §§4–6(a), 7(c), Oct. 20, 1988, 102 Stat. 2543–2545; Pub. L. 102–173, §§6, 10, Nov. 27, 1991, 105 Stat. 1218, 1219; Pub. L. 105–12, §9(m), Apr. 30, 1997, 111 Stat. 28; Pub. L. 114–255, div. B, title VI, §6022(a), Dec. 13, 2016, 130 Stat. 1216.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(5) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2016—Subsec. (a)(7). Pub. L. 114–255 substituted "is located, and make publicly available, a report" for "is located a report".

1997—Subsec. (a)(10). Pub. L. 105–12 added par. (10).

1991—Subsec. (a). Pub. L. 102–173, §10, substituted "individual with mental illness" for "mentally ill

individual" and "individuals with mental illness" for "mentally ill individuals" wherever appearing.

Subsec. (a)(4). Pub. L. 102–173, §6(a), inserted "as a result of monitoring or other activities (either of which result from a complaint or other evidence)" before "there is" in subpar. (B)(iii) and added subpar. (C).

Subsec. (a)(6). Pub. L. 102–173, §6(b), substituted "60 percent" for "one-half" in subpar. (B) and added subpar. (C).

Subsec. (a)(9). Pub. L. 102–173, §6(c), inserted before period at end "and for individuals who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this subchapter and subchapter III".

Subsec. (b). Pub. L. 102–173, §10(2), substituted "individuals with mental illness" for "mentally ill individuals".

Subsec. (c)(1). Pub. L. 102–173, §§6(d), 10(2), substituted "individuals with mental illness" for "mentally ill individuals" in subpar. (A) and inserted at end of subpar. (B) "As used in this subparagraph, the term 'members who broadly represent or are knowledgeable about the needs of the clients served by the system' shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals."

1988—Subsec. (a)(4)(B). Pub. L. 100–509, §6(a), inserted "(including an individual who has died or whose whereabouts are unknown)" after "any individual".

Subsec. (a)(6). Pub. L. 100–509, §4(1), substituted "an advisory council" for "a board".

Subsec. (a)(7). Pub. L. 100–509, §5, substituted ", including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;" for period at end.

Subsec. (a)(8), (9). Pub. L. 100–509, §7(c), added pars. (8) and (9).

Subsec. (c). Pub. L. 100–509, §4(2), added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

[1] *So in original. Probably should be "an".*

§10806. Access to records

(a) An eligible system which, pursuant to section 10805(a)(4) of this title, has access to records which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services, shall, except as provided in subsection (b), maintain the confidentiality of such records to the same extent as is required of the provider of such services.

(b)(1) Except as provided in paragraph (2), an eligible system which has access to records pursuant to section 10805(a)(4) of this title may not disclose information from such records to the individual who is the subject of the information if the mental health professional responsible for supervising the provision of mental health services to such individual has provided the system with a written determination that disclosure of such information to such individual would be detrimental to such individual's health.

(2)(A) If disclosure of information has been denied under paragraph (1) to an individual—

(i) such individual;

(ii) the legal guardian, conservator, or other legal representative of such individual; or

(iii) an eligible system, acting on behalf of an individual described in subparagraph (B),

may select another mental health professional to review such information and to determine if disclosure of such information would be detrimental to such individual's health. If such mental health

professional determines, based on professional judgment, that disclosure of such information would not be detrimental to the health of such individual, the system may disclose such information to such individual.

(B) An eligible system may select a mental health professional under subparagraph (A)(iii) on behalf of—

(i) an individual whose legal guardian is the State; or

(ii) an individual who has a legal guardian, conservator, or other legal representative other than the State if such guardian, conservator, or representative does not, within a reasonable time after such individual is denied access to information under paragraph (1), select a mental health professional under subparagraph (A) to review such information.

(C) If the laws of a State prohibit an eligible system from obtaining access to the records of individuals with mental illness in accordance with section 10805(a)(4) of this title and this section, section 10805(a)(4) of this title and this section shall not apply to such system before—

(i) the date such system is no longer subject to such a prohibition; or

(ii) the expiration of the 2-year period beginning on May 23, 1986,

whichever occurs first.

(3)(A) As used in this section, the term "records" includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

(B) An eligible system shall have access to the type of records described in subparagraph (A) in accordance with the provisions of subsection (a) and paragraphs (1) and (2) of subsection (b).

(Pub. L. 99–319, title I, §106, May 23, 1986, 100 Stat. 481; Pub. L. 100–509, §6(b), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102–173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

EDITORIAL NOTES

AMENDMENTS

1991—Subsec. (b)(2)(C). Pub. L. 102–173 substituted "individuals with mental illness" for "mentally ill individuals".

1988—Subsec. (b)(3). Pub. L. 100–509 added par. (3).

§10807. Legal actions

(a) Prior to instituting any legal action in a Federal or State court on behalf of a [1] individual with mental illness, an eligible system, or a State agency or nonprofit organization which entered into a contract with an eligible system under section 10804(a) of this title, shall exhaust in a timely manner all administrative remedies where appropriate. If, in pursuing administrative remedies, the system, agency, or organization determines that any matter with respect to such individual will not be resolved within a reasonable time, the system, agency, or organization may pursue alternative remedies, including the initiation of a legal action.

(b) Subsection (a) does not apply to any legal action instituted to prevent or eliminate imminent serious harm to a [1] individual with mental illness.

(Pub. L. 99–319, title I, §107, May 23, 1986, 100 Stat. 482; Pub. L. 102–173, §10(1), Nov. 27, 1991, 105 Stat. 1219.)

EDITORIAL NOTES

AMENDMENTS

1991—Pub. L. 102–173 substituted "individual with mental illness" for "mentally ill individual" in subsecs. (a) and (b).

[1] *So in original. Probably should be "an".*

PART B—ADMINISTRATIVE PROVISIONS

§10821. Applications

(a) Submission for allotment; contents

No allotment may be made under this subchapter to an eligible system unless an application therefor is submitted to the Secretary. Each such application shall contain—

(1) assurances that amounts paid to such system from an allotment under this subchapter will be used to supplement and not to supplant the level of non-Federal funds available in the State in which such system is established to protect and advocate the rights of individuals with mental illness;

(2) assurances that such system will have a staff which is trained or being trained to provide advocacy services to individuals with mental illness and to work with family members of clients served by the system where the individuals with mental illness are minors, legally competent and do not object, and legally incompetent and the legal guardians, conservators, or other legal representatives are family members;

(3) assurances that such system, and any State agency or nonprofit organization with which such system may enter into a contract under section 10804(a) of this title, will not, in the case of any individual who has a legal guardian, conservator, or representative other than the State, take actions which are duplicative of actions taken on behalf of such individual by such guardian, conservator, or representative unless such guardian, conservator, or representative requests the assistance of such system; and

(4) such other information as the Secretary may by regulation prescribe.

(b) Satisfaction of requirements regarding trained staff

The assurance required under subsection (a)(2) regarding trained staff may be satisfied through the provision of training by individuals who have received or are receiving mental health services and family members of such individuals.

(c) Duration of applications and assurances

Applications submitted under this section shall remain in effect for a 4-year period, and the assurances required under this section shall be for the same 4-year period.

(Pub. L. 99–319, title I, §111, May 23, 1986, 100 Stat. 482; Pub. L. 100–509, §7(d), Oct. 20, 1988, 102 Stat. 2545; Pub. L. 102–173, §§7, 10(2), Nov. 27, 1991, 105 Stat. 1218, 1219; Pub. L. 102–321, title I, §163(c)(3)(A), July 10, 1992, 106 Stat. 377.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–321 substituted "4-year" for "3-year" in two places.

1991—Subsec. (a)(1). Pub. L. 102–173, §10(2), substituted "individuals with mental illness" for "mentally ill individuals".

Subsec. (a)(2). Pub. L. 102–173, §§7(1), 10(2), substituted "individuals with mental illness" for "mentally ill individuals" and inserted before semicolon at end "and to work with family members of clients served by the system where the individuals with mental illness are minors, legally competent and do not object, and legally incompetent and the legal guardians, conservators, or other legal representatives are family members".

Subsecs. (b), (c). Pub. L. 102–173, §7(2), (3) added subsec. (b) and redesignated former subsec. (b) as (c).
1988—Pub. L. 100–509 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§10822. Allotment formula and reallotments

(a)(1)(A) Except as provided in paragraph (2) and subject to the availability of appropriations under section 10827 of this title, the Secretary shall make allotments under section 10803 of this title from amounts appropriated under section 10827 of this title for a fiscal year to eligible systems on the basis of a formula prescribed by the Secretary which is based equally—

(i) on the population of each State in which there is an eligible system; and

(ii) on the population of each such State weighted by its relative per capita income.

(B) For purposes of subparagraph (A)(ii), the term "relative per capita income" means the quotient of the per capita income of the United States and the per capita income of the State, except that if the State is Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the Virgin Islands, the quotient shall be considered to be one.

(2)(A) The minimum amount of the allotment of an eligible system shall be the product (rounded to the nearest $100) of the appropriate base amount determined under subparagraph (B) and the factor specified in subparagraph (C).

(B) For purposes of subparagraph (A), the appropriate base amount—

(i) for American Samoa, Guam, the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the Virgin Islands, is $139,300; and

(ii) for any other State, is $260,000.

(C) The factor specified in this subparagraph is the ratio of the amount appropriated under section 10827 of this title for the fiscal year for which the allotment is being made to the amount appropriated under such section for fiscal year 1995.

(D) If the total amount appropriated for a fiscal year is at least $25,000,000, the Secretary shall make an allotment in accordance with subparagraph (A) to the eligible system serving the American Indian consortium.

(b)(1) To the extent that all the amounts appropriated under section 10827 of this title for a fiscal year are not allotted to eligible systems because—

(A) one or more eligible systems have not submitted an application for an allotment for such fiscal year; or

(B) one or more eligible systems have notified the Secretary that they do not intend to use the full amount of their allotment,

the amount which is not so allotted shall be reallotted among the remaining eligible systems.

(2) The amount of an allotment to an eligible system for a fiscal year which the Secretary determines will not be required by the system during the period for which it is available shall be available for reallotment by the Secretary to other eligible systems with respect to which such a determination has not been made.

(3) The Secretary shall make reallotments under paragraphs (1) and (2) on such date or dates as the Secretary may fix (but not earlier than 30 days after the Secretary has published notice of the intention of the Secretary to make such reallotment in the Federal Register). A reallotment to an

eligible system shall be made in proportion to the original allotment of such system for such fiscal year, but with such proportionate amount for such system being reduced to the extent it exceeds the sum the Secretary estimates such system needs and will be able to use during such period. The total of such reductions shall be similarly reallotted among eligible systems whose proportionate amounts were not so reduced. Any amount so reallotted to an eligible system for a fiscal year shall be deemed to be a part of its allotment under subsection (a) for such fiscal year.

(Pub. L. 99–319, title I, §112, May 23, 1986, 100 Stat. 483; Pub. L. 100–509, §7(e), Oct. 20, 1988, 102 Stat. 2545; Pub. L. 106–310, div. B, title XXXII, §3206(d), (e), Oct. 17, 2000, 114 Stat. 1194, 1195.)

EDITORIAL NOTES

AMENDMENTS

2000—Subsec. (a)(1)(B). Pub. L. 106–310, §3206(e)(1), substituted "Marshall Islands, the Federated States of Micronesia, the Republic of Palau" for "Trust Territory of the Pacific Islands".

Subsec. (a)(2). Pub. L. 106–310, §3206(d), amended par. (2) generally. Prior to amendment, par. (2) specified minimum amounts of allotments to eligible systems of each State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands based on whether the total amount appropriated in a fiscal year was at least $13,000,000 or less than $13,000,000.

Subsec. (a)(3). Pub. L. 106–310, §3206(e)(2), struck out par. (3) which read as follows: "In any case in which the total amount appropriated under section 10827 of this title for a fiscal year exceeds the total amount appropriated under such section, as in effect on October 19, 1988, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29, the Secretary shall increase each of the allotments under clauses (i)(II) and (ii)(II) of subparagraph (A) and clauses (i) and (ii) of subparagraph (B) of paragraph (2) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

"(A) the total amount appropriated under section 10827 of this title for the fiscal year for which the increase in minimum allotment is made, minus;

"(B) the total amount appropriated under section 10827 of this title for the immediately preceding fiscal year,

bears to the total amount appropriated under section 10827 of this title for such preceding fiscal year."

1988—Subsec. (a)(2). Pub. L. 100–509, §7(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Notwithstanding paragraph (1) and subject to the availability of appropriations under section 10827 of this title—

"(A) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not be less than $125,000; and

"(B) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than $67,000."

Subsec. (a)(3). Pub. L. 100–509, §7(e)(2), added par. (3).

§10823. Payments under allotments

For each fiscal year, the Secretary shall make payments to each eligible system from its allotment under this subchapter. Any amount paid to an eligible system for a fiscal year and remaining unobligated at the end of such year shall remain available to such system for the next fiscal year for the purposes for which it was made.

(Pub. L. 99–319, title I, §113, May 23, 1986, 100 Stat. 484.)

§10824. Reports by Secretary

(a) The Secretary shall include in each report required under section 15005 of this title a separate statement which contains—

(1) a description of the activities, accomplishments, and expenditures of systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter, including—

(A) a specification of the total number of individuals with mental illness served by such systems;

(B) a description of the types of activities undertaken by such systems;

(C) a description of the types of facilities providing care or treatment with respect to which such activities are undertaken;

(D) a description of the manner in which such activities are initiated; and

(E) a description of the accomplishments resulting from such activities;

(2) a description of—

(A) systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter;

(B) activities conducted by States to protect and advocate such rights;

(C) mechanisms established by residential facilities for individuals with mental illness to protect and advocate such rights; and

(D) the coordination among such systems, activities, and mechanisms;

(3) a specification of the number of systems established with allotments under this subchapter and of whether each such system was established by a public or nonprofit private entity;

(4) recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of needs for such activities and services which have not been met by systems established under this subchapter; and

(5) using data from the existing required annual program progress reports submitted by each system funded under this subchapter, a detailed accounting for each such system of how funds are spent, disaggregated according to whether the funds were received from the Federal Government, the State government, a local government, or a private entity.

(b) In preparing each statement required by subsection (a), the Secretary shall use and include information submitted to the Secretary in the reports required under section 10805(a)(7) of this title.

(Pub. L. 99–319, title I, §114, May 23, 1986, 100 Stat. 484; Pub. L. 102–173, §10(2), Nov. 27, 1991, 105 Stat. 1219; Pub. L. 106–402, title IV, §401(b)(13)(B), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 114–255, div. B, title VI, §6022(b), Dec. 13, 2016, 130 Stat. 1216.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (a)(5). Pub. L. 114–255 added par. (5).

2000—Subsec. (a). Pub. L. 106–402 substituted "section 15005 of this title" for "section 6006(c) of this title" in introductory provisions.

1991—Subsec. (a). Pub. L. 102–173 substituted "individuals with mental illness" for "mentally ill individuals" wherever appearing.

§10825. Technical assistance

The Secretary shall use not more than 2 percent of the amounts appropriated under section 10827 of this title to provide technical assistance to eligible systems with respect to activities carried out under this subchapter, consistent with requests by such systems for such assistance.

(Pub. L. 99–319, title I, §115, May 23, 1986, 100 Stat. 484; Pub. L. 100–509, §7(b)(2), Oct. 20,

1988, 102 Stat. 2545.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–509 amended section generally. Prior to amendment, section read as follows: "The Secretary shall provide technical assistance to eligible systems with respect to activities carried out under this subchapter."

§10826. Administration

(a) In general

The Secretary shall carry out this subchapter through the Administrator of the Substance Abuse and Mental Health Services Administration.

(b) Regulations

Not later than 6 months after November 27, 1991, the Secretary shall promulgate final regulations to carry out this subchapter and subchapter III.

(Pub. L. 99–319, title I, §116, May 23, 1986, 100 Stat. 485; Pub. L. 102–173, §9, Nov. 27, 1991, 105 Stat. 1219; Pub. L. 102–321, title I, §163(c)(3)(B), July 10, 1992, 106 Stat. 377.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321 substituted "the Substance Abuse and Mental Health Services Administration" for "the Alcohol, Drug Abuse, and Mental Health Administration".

1991—Pub. L. 102–173 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, see section 801(c) of Pub. L. 102–321, set out as a note under section 236 of this title.

§10827. Authorization of appropriations

There are authorized to be appropriated for allotments under this subchapter, $19,500,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2003.

(Pub. L. 99–319, title I, §117, May 23, 1986, 100 Stat. 485; Pub. L. 100–509, §7(f), Oct. 20, 1988, 102 Stat. 2546; Pub. L. 102–173, §8, Nov. 27, 1991, 105 Stat. 1219; Pub. L. 106–310, div. B, title XXXII, §3206(f), Oct. 17, 2000, 114 Stat. 1195.)

EDITORIAL NOTES

AMENDMENTS

2000—Pub. L. 106–310 substituted "2003" for "1995".

1991—Pub. L. 102–173 amended section generally. Prior to amendment, section read as follows: "For allotments under this subchapter, there are authorized to be appropriated $14,300,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991."

1988—Pub. L. 100–509 amended section generally. Prior to amendment, section read as follows: "For allotments under this subchapter, there are authorized to be appropriated $10,000,000 for fiscal year 1986,

$10,500,000 for fiscal year 1987, and $11,025,000 for fiscal year 1988."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–509, §8, Oct. 20, 1988, 102 Stat. 2546, provided that:

"(a) IN GENERAL.—The amendments made by this Act [amending sections 10802, 10804 to 10806, 10821, 10822, and 10825 of this title], other than the amendment made by section 7(f) [amending this section], shall become effective on the date of the enactment of this Act [Oct. 20, 1988].

"(b) AUTHORIZATION OF APPROPRIATIONS.—The amendment made by section 7(f) [amending this section] shall become effective on October 1, 1988."

SUBCHAPTER II—RESTATEMENT OF BILL OF RIGHTS FOR MENTAL HEALTH PATIENTS

§10841. Restatement of bill of rights

It is the sense of the Congress that, as previously stated in title V of the Mental Health Systems Act [42 U.S.C. 9501 et seq.], each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require, and that in making such review and revision, States should take into account the recommendations of the President's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed, voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

(i) rights protection service within the program or facility;

(ii) rights protection service within the State mental health system designed to be available to such person;

(iii) system established under subchapter I to protect and advocate the rights of individuals with mental illness; and

(iv) qualified advocate;

for the purpose of receiving assistance to understand, exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to—

(i) such person;

(ii) the areas of the program or facility where such person has received treatment, resided, or had access; and

(iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of

or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

(Pub. L. 99–319, title II, §201, May 23, 1986, 100 Stat. 485; Pub. L. 102–173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Mental Health Systems Act, referred to in introductory text, is Pub. L. 96–398, Oct. 7, 1980, 94 Stat. 1564. Title V of the Mental Health Systems Act is classified generally to subchapter IV (§9501 et seq.) of chapter 102 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

AMENDMENTS

1991—Par. (1)(M)(iii). Pub. L. 102–173 substituted "individuals with mental illness" for "mentally ill individuals".

SUBCHAPTER III—CONSTRUCTION

§10851. Construction of subchapters I and II; "individual with mental illness" defined

(a) Subchapters I and II shall not be construed as establishing any new rights for individuals with mental illness.

(b) For purposes of this section, the term "individual with mental illness" has the same meaning as in section 10802(3) [1] of this title.

(Pub. L. 99–319, title III, §301, May 23, 1986, 100 Stat. 489; Pub. L. 102–173, §10, Nov. 27, 1991, 105 Stat. 1219.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 10802(3) of this title, referred to in subsec. (b), was redesignated section 10802(4) of this title by Pub. L. 102–173, §4(1), Nov. 27, 1991, 105 Stat. 1217.

AMENDMENTS

1991—Pub. L. 102–173, substituted "individuals with mental illness" for "mentally ill individuals" in subsec. (a) and "individual with mental illness" for "mentally ill individual" in subsec. (b).

[1] *See References in Text note below.*

CHAPTER 115—CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP

ASSISTANCE PROGRAM

Sec.
10901. Authority of Secretary to make grants.
10902. Application for grants.
10903. Definitions.
10904. Annual report by States; contents; manner of payments pursuant to grants.
10905. Authorization of appropriations.

§10901. Authority of Secretary to make grants

The Secretary is authorized to make a grant for any fiscal year to any State receiving a grant under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] for such fiscal year to enable such State to award scholarships to eligible individuals within the State who are candidates for the Child Development Associate credential.

(Pub. L. 99–425, title VI, §602, Sept. 30, 1986, 100 Stat. 976.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XX of the Social Security Act is classified principally to subchapter XX (§1397 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

SHORT TITLE

Pub. L. 99–425, title VI, §601, Sept. 30, 1986, 100 Stat. 976, provided that: "This title [enacting this chapter] may be cited as the 'Child Development Associate Scholarship Assistance Act of 1985'."

§10902. Application for grants

(a) Application required

A State desiring to participate in the grant program established by this chapter shall submit an application to the Secretary in such form as the Secretary may require.

(b) Contents of applications

A State's application shall contain appropriate assurances that—

(1) scholarship assistance made available with funds provided under this chapter will be awarded—

(A) only to eligible individuals;

(B) on the basis of the financial need of such individuals; and

(C) in amounts sufficient to cover the cost of application, assessment, and credentialing (including, at the option of the State, any training necessary for credentialing) for the Child Development Associate credential for such individuals;

(2) not more than 35 percent of the funds received under this chapter by a State may be used to provide scholarship assistance under paragraph (1) to cover the cost of training described in paragraph (1)(C); and

(3) not more than 10 percent of the funds received by the State under this chapter will be used

for the costs of administering the program established in such State to award such assistance.

(c) Equitable distribution

In making grants under this chapter, the Secretary shall—

(1) distribute such grants equitably among States; and

(2) ensure that the needs of rural and urban areas are appropriately addressed.

(Pub. L. 99–425, title VI, §603, Sept. 30, 1986, 100 Stat. 976; Pub. L. 101–501, title V, §501, Nov. 3, 1990, 104 Stat. 1256.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (b)(1)(C). Pub. L. 101–501, §501(a), (b)(1), inserted "(including, at the option of the State, any training necessary for credentialing)" after "credentialing" and struck out "and" at end.

Subsec. (b)(2), (3). Pub. L. 101–501, §501(b)(2), (3), added par. (2) and redesignated former par. (2) as (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

§10903. Definitions

For purposes of this chapter—

(1) the term "eligible individual" means a candidate for the Child Development Associate credential whose income does not exceed the [1] 130 percent of the lower living standard income level,[2] by more than 50 percent;

(2) the term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary of Labor and based on the most recent lower living family budget issued by the Secretary of Labor;

(3) the term "Secretary" means the Secretary of Health and Human Services; and

(4) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau.

(Pub. L. 99–425, title VI, §604, Sept. 30, 1986, 100 Stat. 976; Pub. L. 101–501, title V, §502, Nov. 3, 1990, 104 Stat. 1256.)

EDITORIAL NOTES

AMENDMENTS

1990—Par. (1). Pub. L. 101–501, §502(1), substituted "130 percent of the lower living standard income level" for "poverty line, as defined in section 9902(2) of this title".

Pars. (2) to (4). Pub. L. 101–501, §502(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

[1] So in original. The word "the" probably should not appear.

[2] So in original. The comma probably should not appear.

§10904. Annual report by States; contents; manner of payments pursuant to grants

(a) Reporting

Each State receiving grants under this chapter shall annually submit to the Secretary information on the number of eligible individuals assisted under the grant program, and their positions and salaries before and after receiving the Child Development Associate credential.

(b) Payments

Payments pursuant to grants made under this chapter may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(Pub. L. 99–425, title VI, §605, Sept. 30, 1986, 100 Stat. 977.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

§10905. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for fiscal year 1995.

(Pub. L. 99–425, title VI, §606, Sept. 30, 1986, 100 Stat. 977; Pub. L. 101–501, title V, §503, Nov. 3, 1990, 104 Stat. 1256; Pub. L. 103–252, title I, §124, May 18, 1994, 108 Stat. 650.)

EDITORIAL NOTES

AMENDMENTS

1994—Pub. L. 103–252 substituted "to carry out this chapter such sums as may be necessary for fiscal year 1995" for "$1,500,000 for fiscal year 1990, $3,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994 for carrying out this chapter".

1990—Pub. L. 101–501 substituted "are authorized" for "is authorized", inserted ", $3,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994" after "1990", and directed the substitution of "fiscal year" for "each of the fiscal years 1987, 1988, and 1989, and", which was executed by making the substitution for "each of the fiscal years 1987, 1988, 1989, and" to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99–425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

CHAPTER 116—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

Sec.

11001. Establishment of State commissions, planning districts, and local committees.
11002. Substances and facilities covered and notification.
11003. Comprehensive emergency response plans.
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11005. Emergency training and review of emergency systems.

SUBCHAPTER II—REPORTING REQUIREMENTS

11021. Material safety data sheets.
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SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

§11001. Establishment of State commissions, planning districts, and local committees

(a) Establishment of State emergency response commissions

Not later than six months after October 17, 1986, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency

response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) Establishment of emergency planning districts

Not later than nine months after October 17, 1986, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subchapter are within such emergency planning district.

(c) Establishment of local emergency planning committees

Not later than 30 days after designation of emergency planning districts or 10 months after October 17, 1986, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subchapter. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) Revisions

A State emergency response commission may revise its designations and appointments under subsections (b) and (c) as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

(Pub. L. 99–499, title III, §301, Oct. 17, 1986, 100 Stat. 1729.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Chapter effective Oct. 17, 1986, see section 4 of Pub. L. 99–499, set out as an Effective Date of 1986 Amendment note under section 9601 of this title.

SHORT TITLE

Pub. L. 99–499, title III, §300(a), Oct. 17, 1986, 100 Stat. 1728, provided that: "This title [enacting this chapter] may be cited as the 'Emergency Planning and Community Right-To-Know Act of 1986'."

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12856

Ex. Ord. No. 12856, Aug. 3, 1993, 58 F.R. 41981, which provided for Federal compliance with right-to-know laws and pollution prevention requirements, was revoked by Ex. Ord. No. 13148, §901, Apr. 21, 2000, 65 F.R. 24604, formerly set out as a note under section 4321 of this title.

§11002. Substances and facilities covered and notification

(a) Substances covered

(1) In general

A substance is subject to the requirements of this subchapter if the substance is on the list published under paragraph (2).

(2) List of extremely hazardous substances

Within 30 days after October 17, 1986, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) Thresholds

(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after October 17, 1986, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) Revisions

The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) Facilities covered

(1) Except as provided in section 11004 of this title, a facility is subject to the requirements of this subchapter if a substance on the list referred to in subsection (a) is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subchapter, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) Emergency planning notification

Not later than seven months after October 17, 1986, the owner or operator of each facility subject to the requirements of this subchapter by reason of subsection (b)(1) shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the

requirements of this subchapter. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subchapter.

(d) Notification of Administrator

The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subchapter by notifying the Administrator of—

(1) each notification received from a facility under subsection (c), and

(2) each facility designated by the Governor or State emergency response commission under subsection (b)(2).

(Pub. L. 99–499, title III, §302, Oct. 17, 1986, 100 Stat. 1730.)

§11003. Comprehensive emergency response plans

(a) Plan required

Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) Resources

Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) Plan provisions

Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 11002(a) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and

medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) Providing of information

For each facility subject to the requirements of this subchapter:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) Review by State emergency response commission

After completion of an emergency plan under subsection (a) for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) Guidance documents

The national response team, as established pursuant to the National Contingency Plan as established under section 9605 of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.

(g) Review of plans by regional response teams

The regional response teams, as established pursuant to the National Contingency Plan as established under section 9605 of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

(Pub. L. 99–499, title III, §303, Oct. 17, 1986, 100 Stat. 1731.)

§11004. Emergency notification

(a) Types of releases

(1) 11002(a) substance which requires CERCLA notice

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9603(a)] (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b).

(2) Other 11002(a) substance

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA [42 U.S.C.

9603(a)], the owner or operator of the facility shall immediately provide notice as described in subsection (b), but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA [42 U.S.C. 9601(10)],

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b).

(3) Non-11002(a) substance which requires CERCLA notice

If a release of a substance which is not on the list referred to in section 11002(a) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)], the owner or operator shall provide notice as described in subsection (b).

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)]—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b).

(4) Exempted releases

This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) Notification

(1) Recipients of notice

Notice required under subsection (a) shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 11001(c) of this title, for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) Contents

Notice required under subsection (a) shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 11002(a) of this title.

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) Followup emergency notice

As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b), and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) Transportation exemption not applicable

The exemption provided in section 11047 of this title (relating to transportation) does not apply to this section.

(e) Addressing source water used for drinking water

(1) Applicable State agency notification

A State emergency response commission shall—

(A) promptly notify the applicable State agency of any release that requires notice under subsection (a);

(B) provide to the applicable State agency the information identified in subsection (b)(2); and

(C) provide to the applicable State agency a written followup emergency notice in accordance with subsection (c).

(2) Community water system notification

(A) In general

An applicable State agency receiving notice of a release under paragraph (1) shall—

(i) promptly forward such notice to any community water system the source waters of which are affected by the release;

(ii) forward to the community water system the information provided under paragraph (1)(B); and

(iii) forward to the community water system the written followup emergency notice provided under paragraph (1)(C).

(B) Direct notification

In the case of a State that does not have an applicable State agency, the State emergency response commission shall provide the notices and information described in paragraph (1) directly to any community water system the source waters of which are affected by a release that requires notice under subsection (a).

(3) Definitions

In this subsection:

(A) Community water system

The term "community water system" has the meaning given such term in section 1401(15) of the Safe Drinking Water Act [42 U.S.C. 300f(15)].

(B) Applicable State agency

The term "applicable State agency" means the State agency that has primary responsibility to enforce the requirements of the Safe Drinking Water Act in the State.

(Pub. L. 99–499, title III, §304, Oct. 17, 1986, 100 Stat. 1733; Pub. L. 115–270, title II, §2018(a), Oct. 23, 2018, 132 Stat. 3857.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and CERCLA, referred to in subsec. (a)(1), (3), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, which is classified principally to chapter 103 (§9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Safe Drinking Water Act, referred to in subsec. (e)(3)(B), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

2018—Subsec. (b)(1). Pub. L. 115–270, §2018(a)(1), substituted "State emergency response commission" for "State emergency planning commission".

Subsec. (e). Pub. L. 115–270, §2018(a)(2), added subsec. (e).

§11005. Emergency training and review of emergency systems

(a) Emergency training

(1) Programs

Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) State and local program support

There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) Other programs

Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) Review of emergency systems

(1) Review

The Administrator shall initiate, not later than 30 days after October 17, 1986, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 11002(a) of this title for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after October 17, 1986, and issue a final report of findings and recommendations to the Congress not

later than 18 months after October 17, 1986. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) Report

The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) Recommendations

The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

(Pub. L. 99–499, title III, §305, Oct. 17, 1986, 100 Stat. 1735.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER II—REPORTING REQUIREMENTS

§11021. Material safety data sheets

(a) Basic requirement

(1) Submission of MSDS or list

The owner or operator of any facility which is required to prepare or have available a material

safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) Contents of list

(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) Treatment of mixtures

An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Availability of MSDS on request

(1) To local emergency planning committee

If an owner or operator of a facility submits a list of chemicals under subsection (a)(1), the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) To public

A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 11044 of this title. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 11044 of this title.

(d) Initial submission and updating

(1) The initial material safety data sheet or list required under this section with respect to a

hazardous chemical shall be provided before the later of—

(A) 12 months after October 17, 1986, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a), a revised sheet shall be provided to such person.

(e) "Hazardous chemical" defined

For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

(Pub. L. 99–499, title III, §311, Oct. 17, 1986, 100 Stat. 1736.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a)(1), (2)(A)(i), (B) and (d)(1)(B), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

§11022. Emergency and hazardous chemical inventory forms

(a) Basic requirement

(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this chapter referred to as an "inventory form") to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1)) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2)) to the recipients described in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Hazardous chemicals covered

A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 11021 of this title.

(d) Contents of form

(1) Tier I information

(A) Aggregate information by category

An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act.

(B) Required information

The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) Modifications

For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) Tier II information

An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e):

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 11044 of this title.

(e) Availability of tier II information

(1) Availability to State commissions, local committees, and fire departments

Upon request by a State emergency response commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d), to the person making the request. Any such request shall be with respect to a specific facility.

(2) Availability to other State and local officials

A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) Availability to public

(A) In general

Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) Automatic provision of information to public

Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 11044 of this title. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 11044 of this title to the person making the request.

(C) Discretionary provision of information to public

In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 11044 of this title to the person.

(D) Response in 45 days

A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(4) Availability to community water systems

(A) In general

An affected community water system may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local

committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the affected community water system.

(B) Definition

In this paragraph, the term "affected community water system" means a community water system (as defined in section 300f(15) of this title) that receives supplies of drinking water from a source water area, delineated under section 300j–13 of this title, in which a facility that is required to prepare and submit an inventory form under subsection (a)(1) is located.

(f) Fire department access

Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) Format of forms

The Administrator shall publish a uniform format for inventory forms within three months after October 17, 1986. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

(Pub. L. 99–499, title III, §312, Oct. 17, 1986, 100 Stat. 1738; Pub. L. 115–270, title II, §2018(b), Oct. 23, 2018, 132 Stat. 3858.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a)(1) and (d)(1)(A), (C)(i), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

2018—Subsec. (e)(1). Pub. L. 115–270, §2018(b)(1), substituted "State emergency response commission" for "State emergency planning commission".

Subsec. (e)(4). Pub. L. 115–270, §2018(b)(2), added par. (4).

§11023. Toxic chemical release forms

(a) Basic requirement

The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) Covered owners and operators of facilities

(1) In general

(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic

chemical listed under subsection (c) in excess of the quantity of that toxic chemical established under subsection (f) during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

(ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or

(II) as part of an article containing the toxic chemical.

(2) Discretionary application to additional facilities

The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) Toxic chemicals covered

The toxic chemicals subject to the requirements of this section are—

(1) the chemicals on the list in Committee Print Number 99–169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" [42 U.S.C. 11023] (including any revised version of the list as may be made pursuant to subsection (d) or (e)); and

(2) the chemicals included on such list under subsections (b)(1), (c)(1), and (d)(3) of section 8921 of title 15.

(d) Revisions by Administrator

(1) In general

The Administrator may by rule add or delete a chemical from the list described in subsection (c) at any time.

(2) Additions

A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or
(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) Deletions

A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) Effective date

Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calender [1] year shall take effect beginning with the calendar year following such next calendar year.

(e) Petitions

(1) In general

Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2). Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3).

(B) Publish an explanation of why the petition is denied.

(2) Governor petitions

A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2). In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2), or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) for adding a chemical to the list.

(f) Threshold for reporting

(1) Toxic chemical threshold amount

The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) Revisions

The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) Form

(1) Information required

Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) Use of available data

In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) Use of release form

The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 11044(a) of this title, to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) Modifications in reporting frequency

(1) In general

The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemicals or a category of facilities.
(C) A specific toxic chemical.
(D) A specific facility.

(2) Requirements

A modification may be made under paragraph (1) only if the Administrator—

(A) makes a finding that the modification is consistent with the provisions of subsection (h), based on—

(i) experience from previously submitted toxic chemical release forms, and
(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of title 5.

(3) Determinations

The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-year review

Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) Notification to Congress

The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) Judicial review

In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) Applicability

A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) Effective date

Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA management of data

The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) Report

Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) Mass balance study

(1) In general

The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after October 17, 1986.

(2) Purposes

The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this chapter.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) Information collection

(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after October 17, 1986 initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) Mass balance definition

For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

(Pub. L. 99–499, title III, §313, Oct. 17, 1986, 100 Stat. 1741; Pub. L. 116–92, div. F, title LXXIII, §7321(f), Dec. 20, 2019, 133 Stat. 2281.)

EDITORIAL NOTES

AMENDMENTS

2019—Subsec. (c). Pub. L. 116–92 substituted "are—" and "(1) the chemicals" for "are those chemicals", and added par. (2).

EXECUTIVE DOCUMENTS

EXPEDITING COMMUNITY RIGHT-TO-KNOW INITIATIVES

Memorandum of President of the United States, Aug. 8, 1995, 60 F.R. 41791, provided:

Memorandum for the Administrator of the Environmental Protection Agency and the Heads of Executive Departments and Agencies

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) provide an innovative approach to protecting public health and the environment by ensuring that communities are informed about the toxic chemicals being released into the air, land, and water by manufacturing facilities. I am committed to the effective implementation of this law, because Community Right-to-Know protections provide a basic informational tool to encourage informed community-based environmental decision making and provide a strong incentive for businesses to find their own ways of preventing pollution.

The laws provide the Environmental Protection Agency with substantial authority to add to the Toxics Release Inventory under EPCRA: (1) new chemicals; (2) new classes of industrial facilities; and (3) additional types of information concerning toxic chemical use at facilities. Community Right-to-Know should be enhanced wherever possible as appropriate. EPA currently is engaged in an on-going process to address potential facility expansion and the collection of use information. I am committed to a full and open process on the policy issues posed by EPA's exercise of these authorities.

So that consideration of these issues can be fully accomplished during this Administration, I am directing the Administrator of the Environmental Protection Agency, in consultation with the Office of Management and Budget and appropriate Federal agencies with applicable technical and functional expertise, as necessary, to take the following actions:

(a) Continuation on an expedited basis of the public notice and comment rulemaking proceedings to consider whether, as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b), to add to the list of Standard Industrial Classification ("SIC") Code designations of 20 through 39 (as in effect on July 1, 1985). For SIC Code designations, see "Standard Industrial Classification Manual" published by the Office of Management and Budget. EPA shall complete the rulemaking process on an accelerated schedule.

(b) Development and implementation of an expedited, open, and transparent process for consideration of reporting under EPCRA on information on the use of toxic chemicals at facilities, including information on mass balance, materials accounting, or other chemical use date [data], pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A). EPA shall report on the progress of this effort by October 1, 1995, with a goal of obtaining sufficient information to be able to make informed judgments concerning implementation of any appropriate program.

These actions should continue unless specifically prohibited by law. The head of each executive department or agency shall assist the Environmental Protection Agency in implementing this directive as quickly as possible.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person.

The Director of the Office of Management and Budget is authorized and directed to publish this Memorandum in the Federal Register.

WILLIAM J. CLINTON.

[1] *So in original. Probably should be "calendar".*

SUBCHAPTER III—GENERAL PROVISIONS

§11041. Relationship to other law

(a) In general

Nothing in this chapter shall—

(1) preempt any State or local law,

(2) except as provided in subsection (b), otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or

(3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) Effect on MSDS requirements

Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 11021 of this title. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(Pub. L. 99–499, title III, §321, Oct. 17, 1986, 100 Stat. 1747.)

§11042. Trade secrets

(a) Authority to withhold information

(1) General authority

(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 11003(d)(2), 11003(d)(3), 11021, 11022, or 11023 of this title to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c), if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) Requirements

(A) A person is entitled to withhold information under paragraph (1) if such person—

(i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b),

(ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b), including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from

such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

(i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and

(ii) submit such designated information separately from other information submitted under this subsection.

(3) Limitation

The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c), is not a trade secret.

(b) Trade secret factors

No person required to provide information under this chapter may claim that the information is entitled to protection as a trade secret under subsection (a) unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) Trade secret regulations

As soon as practicable after October 17, 1986, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4), such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in United Steelworkers of America, AFL–CIO–CLC v. Thorne G. Auchter.

(d) Petition for review

(1) In general

Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) Initial review

Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) Finding of sufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimaint [1] may seek judicial review of the determination.

(4) Finding of insufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) Exception for information provided to health professionals

Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 11043 of this title.

(f) Providing information to Administrator; availability to public

Any information submitted to the Administrator under subsection (a)(2) or subsection (d)(3) (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter.

(g) Information provided to State

Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) and subsection (d)(3).

(h) Information on adverse effects

(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 11001 of this title shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by

section 11023(j) of this title and is provided to any person requesting information about such toxic chemical.

(i) Information provided to Congress

Notwithstanding any limitatio [2] contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

(Pub. L. 99–499, title III, §322, Oct. 17, 1986, 100 Stat. 1747.)

[1] So in original. Probably should be "claimant".

[2] So in original. Probably should be "limitation".

§11043. Provision of information to health professionals, doctors, and nurses

(a) Diagnosis or treatment by health professional

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual,

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) Medical emergency

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists,

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this

subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) Preventive measures by local health professionals

(1) Provision of information

An owner or operator of a facility subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d).

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(2) Written statement of need

The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) Confidentiality agreement

Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) Regulations

As soon as practicable after October 17, 1986, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection [1] (a) and (c) and the confidentiality agreement under subsection (d).

(Pub. L. 99–499, title III, §323, Oct. 17, 1986, 100 Stat. 1750.)

[1] So in original. Probably should be "subsections".

§11044. Public availability of plans, data sheets, forms, and followup notices

(a) Availability to public

Each emergency response plan, material safety data sheet, list described in section 11021(a)(2) of this title, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 11042 of this title, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 11022 of this title, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 11022(d)(2) of this title to be contained in an inventory form as tier II information.

(b) Notice of public availability

Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a).

(Pub. L. 99–499, title III, §324, Oct. 17, 1986, 100 Stat. 1752.)

§11045. Enforcement

(a) Civil penalties for emergency planning

The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 11002(b)(2) of this title) to comply with section 11002(c) of this title and section 11003(d) of this title. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) Civil, administrative, and criminal penalties for emergency notification

(1) Class I administrative penalty

(A) A civil penalty of not more than $25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) Class II administrative penalty

A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of title 15. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) Judicial assessment

The Administrator may bring an action in the United States District [1] court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues.

(4) Criminal penalties

Any person who knowingly and willfully fails to provide notice in accordance with section 11004 of this title shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).

(c) Civil and administrative penalties for reporting requirements

(1) Any person (other than a governmental entity) who violates any requirement of section 11022 or 11023 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 11021 or 11043(b) of this title, and any person who fails to furnish to the Administrator information required under section 11042(a)(2) of this title shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) Civil, administrative, and criminal penalties with respect to trade secrets

(1) Civil and administrative penalty for frivolous claims

If the Administrator determines—

(A)(i) under section 11042(d)(4) of this title that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 11042(d)(3)(A) of this title, that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of $25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) Criminal penalty for disclosure of trade secret information

Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 11042 of this title shall, upon conviction, be subject to a fine of not more than $20,000 or to imprisonment not to exceed one year, or both.

(e) Special enforcement provisions for section 11043

Whenever any facility owner or operator required to provide information under section 11043 of this title to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 11043 of this title.

(f) Procedures for administrative penalties

(1) Any person against whom a civil penalty is assessed under this section may obtain review

thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 99–499, title III, §325, Oct. 17, 1986, 100 Stat. 1753.)

[1] *So in original. Probably should not be capitalized.*

§11046. Civil actions

(a) Authority to bring civil actions

(1) Citizen suits

Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 11004(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(iv) Complete and submit a toxic chemical release form under section 11023(a) of this title.

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 11022(g) of this title.

(ii) Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 11023(g) [1] of this title.

(iv) Establish a computer database in accordance with section 11023(j) of this title.

(v) Promulgate trade secret regulations under section 11042(c) of this title.

(vi) Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 11044(a) of this title.

(D) A State Governor or a State emergency response commission for failure to respond to a

request for tier II information under section 11022(e)(3) of this title within 120 days after the date of receipt of the request.

(2) State or local suits

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 11002(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Make available information requested under section 11021(c) of this title.

(iv) Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 11003(d) of this title or for failure to submit tier II information under section 11022(e)(1) of this title.

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 11042(g) of this title.

(b) Venue

(1) Any action under subsection (a) against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice

(1) No action may be commenced under subsection (a)(1)(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) Limitation

No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) Intervention

(1) By the United States

In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons

In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

(Pub. L. 99–499, title III, §326, Oct. 17, 1986, 100 Stat. 1755.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613, known as the Superfund Amendments and Reauthorization Act of 1986. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

[1] *So in original. Probably should be preceded by "section".*

§11047. Exemption

Except as provided in section 11004 of this title, this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

(Pub. L. 99–499, title III, §327, Oct. 17, 1986, 100 Stat. 1757.)

§11048. Regulations

The Administrator may prescribe such regulations as may be necessary to carry out this chapter.

(Pub. L. 99–499, title III, §328, Oct. 17, 1986, 100 Stat. 1757.)

§11049. Definitions

For purposes of this chapter—

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Environment

The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) Extremely hazardous substance

The term "extremely hazardous substance" means a substance on the list described in section 11002(a)(2) of this title.

(4) Facility

The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.

(5) Hazardous chemical

The term "hazardous chemical" has the meaning given such term by section 11021(e) of this title.

(6) Material safety data sheet

The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) Person

The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) Release

The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) Toxic chemical

The term "toxic chemical" means a substance on the list described in section 11023(c) of this title.

(Pub. L. 99–499, title III, §329, Oct. 17, 1986, 100 Stat. 1757.)

§11050. Authorization of appropriations

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this chapter.

(Pub. L. 99–499, title III, §330, Oct. 17, 1986, 100 Stat. 1758.)

CHAPTER 117—ENCOURAGING GOOD FAITH PROFESSIONAL REVIEW ACTIVITIES

Sec.

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§11101. Findings

The Congress finds the following:

(1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.

(2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.

(3) This nationwide problem can be remedied through effective professional peer review.

(4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.

(5) There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.

(Pub. L. 99–660, title IV, §402, Nov. 14, 1986, 100 Stat. 3784.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 99–660, title IV, §401, Nov. 14, 1986, 100 Stat. 3784, provided that: "This title [enacting this chapter and provisions set out as a note under section 11111 of this title] may be cited as the 'Health Care Quality Improvement Act of 1986'."

SUBCHAPTER I—PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

§11111. Professional review

(a) In general

(1) Limitation on damages for professional review actions

If a professional review action (as defined in section 11151(9) of this title) of a professional

review body meets all the standards specified in section 11112(a) of this title, except as provided in subsection (b)—

(A) the professional review body,

(B) any person acting as a member or staff to the body,

(C) any person under a contract or other formal agreement with the body, and

(D) any person who participates with or assists the body with respect to the action,

shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and the Civil Rights Acts, 42 U.S.C. 1981, et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State from bringing an action, including an action under section 15c of title 15, where such an action is otherwise authorized.

(2) Protection for those providing information to professional review bodies

Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

(b) Exception

If the Secretary has reason to believe that a health care entity has failed to report information in accordance with section 11133(a) of this title, the Secretary shall conduct an investigation. If, after providing notice of noncompliance, an opportunity to correct the noncompliance, and an opportunity for a hearing, the Secretary determines that a health care entity has failed substantially to report information in accordance with section 11133(a) of this title, the Secretary shall publish the name of the entity in the Federal Register. The protections of subsection (a)(1) shall not apply to an entity the name of which is published in the Federal Register under the previous sentence with respect to professional review actions of the entity commenced during the 3-year period beginning 30 days after the date of publication of the name.

(c) Treatment under State laws

(1) Professional review actions taken on or after October 14, 1989

Except as provided in paragraph (2), subsection (a) shall apply to State laws in a State only for professional review actions commenced on or after October 14, 1989.

(2) Exceptions

(A) State early opt-in

Subsection (a) shall apply to State laws in a State for actions commenced before October 14, 1989, if the State by legislation elects such treatment.

(B) Effective date of election

An election under State law is not effective, for purposes of,[1] for actions commenced before the effective date of the State law, which may not be earlier than the date of the enactment of that law.

(Pub. L. 99–660, title IV, §411, Nov. 14, 1986, 100 Stat. 3784; Pub. L. 100–177, title IV, §402(c), as added Pub. L. 101–239, title VI, §6103(e)(6)(A), Dec. 19, 1989, 103 Stat. 2208.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241,

which is classified principally to subchapters II to IX (§2000a et seq.) of chapter 21 of this title. Title VII of this Act relates to equal employment opportunities, and is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Civil Rights Acts, referred to in subsec. (a)(1), are classified generally to chapter 21 (§1981 et seq.) of this title.

AMENDMENTS

1989—Subsec. (c)(2)(B), (C). Pub. L. 101–239 added Pub. L. 100–177, §402(c), see 1987 Amendment note below.

1987—Subsec. (c)(2)(B), (C). Pub. L. 100–177, §402(c), as added by Pub. L. 101–239, redesignated subpar. (C) as (B), struck out "subparagraphs (A) and (B)" after "for purposes of", and struck out former subpar. (B) which read as follows: "Subsection (a) of this section shall not apply to State laws in a State for actions commenced on or after October 14, 1989, if the State by legislation elects such treatment."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–177 effective Nov. 14, 1986, see section 402(d) of Pub. L. 100–177, as renumbered and amended, set out as a note under section 11137 of this title.

EFFECTIVE DATE

Pub. L. 99–660, title IV, §416, Nov. 14, 1986, 100 Stat. 3788, provided that: "This part [part A (§§411–416) of title IV of Pub. L. 99–660, enacting this subchapter] shall apply to professional review actions commenced on or after the date of the enactment of this Act [Nov. 14, 1986]."

[1] So in original. Probably should be "for purposes of subparagraph (A),".

§11112. Standards for professional review actions

(a) In general

For purposes of the protection set forth in section 11111(a) of this title, a professional review action must be taken—

(1) in the reasonable belief that the action was in the furtherance of quality health care,

(2) after a reasonable effort to obtain the facts of the matter,

(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and

(4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 11111(a) of this title unless the presumption is rebutted by a preponderance of the evidence.

(b) Adequate notice and hearing

A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a)(3) with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

(1) Notice of proposed action

The physician has been given notice stating—

(A)(i) that a professional review action has been proposed to be taken against the physician,

(ii) reasons for the proposed action,

(B)(i) that the physician has the right to request a hearing on the proposed action,

(ii) any time limit (of not less than 30 days) within which to request such a hearing, and

(C) a summary of the rights in the hearing under paragraph (3).

(2) Notice of hearing

If a hearing is requested on a timely basis under paragraph (1)(B), the physician involved must be given notice stating—

(A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and

(B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.

(3) Conduct of hearing and notice

If a hearing is requested on a timely basis under paragraph (1)(B)—

(A) subject to subparagraph (B), the hearing shall be held (as determined by the health care entity)—

(i) before an arbitrator mutually acceptable to the physician and the health care entity,

(ii) before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved, or

(iii) before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved;

(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C) in the hearing the physician involved has the right—

(i) to representation by an attorney or other person of the physician's choice,

(ii) to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,

(iii) to call, examine, and cross-examine witnesses,

(iv) to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and

(v) to submit a written statement at the close of the hearing; and

(D) upon completion of the hearing, the physician involved has the right—

(i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

(ii) to receive a written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3).

(c) Adequate procedures in investigations or health emergencies

For purposes of section 11111(a) of this title, nothing in this section shall be construed as—

(1) requiring the procedures referred to in subsection (a)(3)—

(A) where there is no adverse professional review action taken, or

(B) in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action; or

(2) precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

(Pub. L. 99–660, title IV, §412, Nov. 14, 1986, 100 Stat. 3785.)

§11113. Payment of reasonable attorneys' fees and costs in defense of suit

In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section 11112(a) of this title and the defendant substantially prevails, the court shall, at the conclusion of the action, award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief.

(Pub. L. 99–660, title IV, §413, Nov. 14, 1986, 100 Stat. 3787.)

§11114. Guidelines of Secretary

The Secretary may establish, after notice and opportunity for comment, such voluntary guidelines as may assist the professional review bodies in meeting the standards described in section 11112(a) of this title.

(Pub. L. 99–660, title IV, §414, Nov. 14, 1986, 100 Stat. 3787.)

§11115. Construction

(a) In general

Except as specifically provided in this subchapter, nothing in this subchapter shall be construed as changing the liabilities or immunities under law or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this subchapter.

(b) Scope of clinical privileges

Nothing in this subchapter shall be construed as requiring health care entities to provide clinical privileges to any or all classes or types of physicians or other licensed health care practitioners.

(c) Treatment of nurses and other practitioners

Nothing in this subchapter shall be construed as affecting, or modifying any provision of Federal or State law, with respect to activities of professional review bodies regarding nurses, other licensed health care practitioners, or other health professionals who are not physicians.

(d) Treatment of patient malpractice claims

Nothing in this chapter shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of Federal or State law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practitioner, or health care entity, or as limiting any defenses or immunities available to any physician, health care practitioner, or health care entity.

(Pub. L. 99–660, title IV, §415, Nov. 14, 1986, 100 Stat. 3787; Pub. L. 100–177, title IV, §402(c), as added Pub. L. 101–239, title VI, §6103(e)(6)(A), Dec. 19, 1989, 103 Stat. 2208.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239 added Pub. L. 100–177, §402(c), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–177, §402(c), as added by Pub. L. 101–239, inserted before period at end "or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this subchapter".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–177 effective Nov. 14, 1986, see section 402(d) of Pub. L. 100–177, as renumbered and amended, set out as a note under section 11137 of this title.

SUBCHAPTER II—REPORTING OF INFORMATION

§11131. Requiring reports on medical malpractice payments

(a) In general

Each entity (including an insurance company) which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 11134 of this title, information respecting the payment and circumstances thereof.

(b) Information to be reported

The information to be reported under subsection (a) includes—

(1) the name of any physician or licensed health care practitioner for whose benefit the payment is made,

(2) the amount of the payment,

(3) the name (if known) of any hospital with which the physician or practitioner is affiliated or associated,

(4) a description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(5) such other information as the Secretary determines is required for appropriate interpretation of information reported under this section.

(c) Sanctions for failure to report

Any entity that fails to report information on a payment required to be reported under this section shall be subject to a civil money penalty of not more than $10,000 for each such payment involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(d) Report on treatment of small payments

The Secretary shall study and report to Congress, not later than two years after November 14, 1986, on whether information respecting small payments should continue to be required to be reported under subsection (a) and whether information respecting all claims made concerning a medical malpractice action should be required to be reported under such subsection.

(Pub. L. 99–660, title IV, §421, Nov. 14, 1986, 100 Stat. 3788.)

§11132. Reporting of sanctions taken by Boards of Medical Examiners

(a) In general

(1) Actions subject to reporting

Each Board of Medical Examiners—

(A) which revokes or suspends (or otherwise restricts) a physician's license or censures, reprimands, or places on probation a physician, for reasons relating to the physician's professional competence or professional conduct, or

(B) to which a physician's license is surrendered,

shall report, in accordance with section 11134 of this title, the information described in paragraph (2).

(2) Information to be reported

The information to be reported under paragraph (1) is—

(A) the name of the physician involved,

(B) a description of the acts or omissions or other reasons (if known) for the revocation, suspension, or surrender of license, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) Failure to report

If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (a), the Secretary shall designate another qualified entity for the reporting of information under section 11133 of this title.

(Pub. L. 99–660, title IV, §422, Nov. 14, 1986, 100 Stat. 3789.)

§11133. Reporting of certain professional review actions taken by health care entities

(a) Reporting by health care entities

(1) On physicians

Each health care entity which—

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

(B) accepts the surrender of clinical privileges of a physician—

(i) while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or

(ii) in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society,

shall report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3).

(2) Permissive reporting on other licensed health care practitioners

A health care entity may report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3) in the case of a licensed health care practitioner who is not a physician, if the entity would be required to report such information under paragraph (1) with respect to the practitioner if the practitioner were a physician.

(3) Information to be reported

The information to be reported under this subsection is—

(A) the name of the physician or practitioner involved,

(B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) Reporting by Board of Medical Examiners

Each Board of Medical Examiners shall report, in accordance with section 11134 of this title, the information reported to it under subsection (a) and known instances of a health care entity's failure to report information under subsection (a)(1).

(c) Sanctions

(1) Health care entities

A health care entity that fails substantially to meet the requirement of subsection (a)(1) shall lose the protections of section 11111(a)(1) of this title if the Secretary publishes the name of the entity under section 11111(b) of this title.

(2) Board of Medical Examiners

If, after notice of noncompliance and providing an opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b), the Secretary shall designate another qualified entity for the reporting of information under subsection (b).

(d) References to Board of Medical Examiners

Any reference in this subchapter to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 11132(a) of this title or subsection (b), a reference to such other qualified entity as the Secretary designates.

(Pub. L. 99–660, title IV, §423, Nov. 14, 1986, 100 Stat. 3789.)

§11134. Form of reporting

(a) Timing and form

The information required to be reported under sections 11131, 11132(a), and 11133 of this title shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date (not later than one year after November 14, 1986) specified by the Secretary.

(b) To whom reported

The information required to be reported under sections 11131, 11132(a), and 11133(b) of this title shall be reported to the Secretary, or, in the Secretary's discretion, to an appropriate private or public agency which has made suitable arrangements with the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of the information under this subchapter.

(c) Reporting to State licensing boards

(1) Malpractice payments

Information required to be reported under section 11131 of this title shall also be reported to the appropriate State licensing board (or boards) in the State in which the medical malpractice claim arose.

(2) Reporting to other licensing boards

Information required to be reported under section 11133(b) of this title shall also be reported to the appropriate State licensing board in the State in which the health care entity is located if it is not otherwise reported to such board under subsection (b).

(Pub. L. 99–660, title IV, §424, Nov. 14, 1986, 100 Stat. 3790.)

§11135. Duty of hospitals to obtain information

(a) In general

It is the duty of each hospital to request from the Secretary (or the agency designated under section

11134(b) of this title), on and after the date information is first required to be reported under section 11134(a) of this title)— [1]

(1) at the time a physician or licensed health care practitioner applies to be on the medical staff (courtesy or otherwise) of, or for clinical privileges at, the hospital, information reported under this subchapter concerning the physician or practitioner, and

(2) once every 2 years information reported under this subchapter concerning any physician or such practitioner who is on the medical staff (courtesy or otherwise) of, or has been granted clinical privileges at, the hospital.

A hospital may request such information at other times.

(b) Failure to obtain information

With respect to a medical malpractice action, a hospital which does not request information respecting a physician or practitioner as required under subsection (a) is presumed to have knowledge of any information reported under this subchapter to the Secretary with respect to the physician or practitioner.

(c) Reliance on information provided

Each hospital may rely upon information provided to the hospital under this chapter and shall not be held liable for such reliance in the absence of the hospital's knowledge that the information provided was false.

(Pub. L. 99–660, title IV, §425, Nov. 14, 1986, 100 Stat. 3790.)

[1] *So in original. The closing parenthesis probably should not appear.*

§11136. Disclosure and correction of information

With respect to the information reported to the Secretary (or the agency designated under section 11134(b) of this title) under this subchapter respecting a physician or other licensed health care practitioner, the Secretary shall, by regulation, provide for—

(1) disclosure of the information, upon request, to the physician or practitioner, and

(2) procedures in the case of disputed accuracy of the information.

(Pub. L. 99–660, title IV, §426, Nov. 14, 1986, 100 Stat. 3791.)

§11137. Miscellaneous provisions

(a) Providing licensing boards and other health care entities with access to information

The Secretary (or the agency designated under section 11134(b) of this title) shall, upon request, provide information reported under this subchapter with respect to a physician or other licensed health care practitioner to State licensing boards, to hospitals, and to other health care entities (including health maintenance organizations) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner or to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.

(b) Confidentiality of information

(1) In general

Information reported under this subchapter is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity, as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary), or in accordance with regulations of the Secretary promulgated pursuant to subsection (a). Nothing in this subsection shall prevent the disclosure of such

information by a party which is otherwise authorized, under applicable State law, to make such disclosure. Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form.

(2) Penalty for violations

Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than $10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(3) Use of information

Subject to paragraph (1), information provided under section 11135 of this title and subsection (a) is intended to be used solely with respect to activities in the furtherance of the quality of health care.

(4) Fees

The Secretary may establish or approve reasonable fees for the disclosure of information under this section or section 11136 of this title. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 11134(b) of this title) to cover such costs.

(c) Relief from liability for reporting

No person or entity (including the agency designated under section 11134(b) of this title) shall be held liable in any civil action with respect to any report made under this subchapter (including information provided under subsection (a) [1] without knowledge of the falsity of the information contained in the report.

(d) Interpretation of information

In interpreting information reported under this subchapter, a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

(Pub. L. 99–660, title IV, §427, Nov. 14, 1986, 100 Stat. 3791; Pub. L. 100–177, title IV, §402(a), (b), Dec. 1, 1987, 101 Stat. 1007.)

EDITORIAL NOTES

AMENDMENTS

1987—Subsec. (b)(1). Pub. L. 100–177, §402(a)(1), substituted "as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary)" for "with respect to medical malpractice actions" and inserted at end "Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form."

Subsec. (b)(4). Pub. L. 100–177, §402(b), added par. (4).

Subsec. (c). Pub. L. 100–177, §402(a)(2), inserted "(including the agency designated under section 11134(b) of this title)" after "entity" and "(including information provided under subsection (a)" after "subchapter".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–177, title IV, §402(d), formerly §402(c), Dec. 1, 1987, 101 Stat. 1007, as renumbered and amended by Pub. L. 101–239, title VI, §6103(e)(6), Dec. 19, 1989, 103 Stat. 2208, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a) and (c) [amending this section and sections 1111 and 1115 of this title] shall become effective on November 14, 1986.

"(2) FEES.—The amendment made by subsection (b) [amending this section] shall become effective on the date of enactment of this Act [Dec. 1, 1987]."

[1] *So in original. Probably should be followed by another closing parenthesis.*

SUBCHAPTER III—DEFINITIONS AND REPORTS

§11151. Definitions

In this chapter:

(1) The term "adversely affecting" includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

(2) The term "Board of Medical Examiners" includes a body comparable to such a Board (as determined by the State) with responsibility for the licensing of physicians and also includes a subdivision of such a Board or body.

(3) The term "clinical privileges" includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

(4)(A) The term "health care entity" means—

(i) a hospital that is licensed to provide health care services by the State in which it is located,

(ii) an entity (including a health maintenance organization or group medical practice) that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary), and

(iii) subject to subparagraph (B), a professional society (or committee thereof) of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary).

(B) The term "health care entity" does not include a professional society (or committee thereof) if, within the previous 5 years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

(5) The term "hospital" means an entity described in paragraphs (1) and (7) of section 1395x(e) of this title.

(6) The terms "licensed health care practitioner" and "practitioner" mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

(7) The term "medical malpractice action or claim" means a written claim or demand for payment based on a health care provider's furnishing (or failure to furnish) health care services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State or the United States seeking monetary damages.

(8) The term "physician" means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

(9) The term "professional review action" means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may

affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this chapter, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on—

(A) the physician's association, or lack of association, with a professional society or association,

(B) the physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business,

(C) the physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,

(D) a physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or

(E) any other matter that does not relate to the competence or professional conduct of a physician.

(10) The term "professional review activity" means an activity of a health care entity with respect to an individual physician—

(A) to determine whether the physician may have clinical privileges with respect to, or membership in, the entity,

(B) to determine the scope or conditions of such privileges or membership, or

(C) to change or modify such privileges or membership.

(11) The term "professional review body" means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

(12) The term "Secretary" means the Secretary of Health and Human Services.

(13) The term "State" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(14) The term "State licensing board" means, with respect to a physician or health care provider in a State, the agency of the State which is primarily responsible for the licensing of the physician or provider to furnish health care services.

(Pub. L. 99–660, title IV, §431, Nov. 14, 1986, 100 Stat. 3792.)

§11152. Reports and memoranda of understanding

(a) Annual reports to Congress

The Secretary shall report to Congress, annually during the three years after November 14, 1986, on the implementation of this chapter.

(b) Memoranda of understanding

The Secretary of Health and Human Services shall seek to enter into memoranda of understanding with the Secretary of Defense and the Administrator of Veterans' Affairs to apply the provisions of subchapter II of this chapter to hospitals and other facilities and health care providers under the jurisdiction of the Secretary or Administrator, respectively. The Secretary shall report to Congress, not later than two years after November 14, 1986, on any such memoranda and on the cooperation among such officials in establishing such memoranda.

(c) Memorandum of understanding with Drug Enforcement Administration

The Secretary of Health and Human Services shall seek to enter into a memorandum of

understanding with the Administrator of Drug Enforcement relating to providing for the reporting by the Administrator to the Secretary of information respecting physicians and other practitioners whose registration to dispense controlled substances has been suspended or revoked under section 824 of title 21. The Secretary shall report to Congress, not later than two years after November 14, 1986, on any such memorandum and on the cooperation between the Secretary and the Administrator in establishing such a memorandum.

(Pub. L. 99–660, title IV, §432, Nov. 14, 1986, 100 Stat. 3794.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

CHAPTER 118—ALZHEIMER'S DISEASE AND RELATED DEMENTIAS RESEARCH

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
11201. Findings.

SUBCHAPTER II—COUNCIL ON ALZHEIMER'S DISEASE

11211, 11212. Repealed.

SUBCHAPTER III—ADVISORY PANEL ON ALZHEIMER'S DISEASE

11221 to 11223. Omitted.

SUBCHAPTER III–A—NATIONAL ALZHEIMER'S PROJECT

11225. The National Alzheimer's Project.

SUBCHAPTER IV—RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND THEIR FAMILIES

11231, 11232. Repealed or Transferred.
11241 to 11243. Repealed or Transferred.

PART 1—RESPONSIBILITIES OF NATIONAL INSTITUTE OF MENTAL HEALTH

11251. Research program and plan.
11252. Dissemination.
11253. Authorization of appropriations.

PART 2—RESPONSIBILITIES OF AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

11261. Research program.
11262. Dissemination.
11263. Authorization of appropriations.

PART 3—RESPONSIBILITIES OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES

11271. Research program and plan.
11272. Dissemination.
11273. Authorization of appropriations.
11281 to 11283. Repealed or Transferred.

SUBCHAPTER V—EDUCATIONAL ACTIVITIES

11291. Providing information for personnel of Social Security Administration.
11292. Education of public, individuals with Alzheimer's disease and their families, and health and long-term care providers.

11293. Education programs for safety and transportation personnel.
11294. Authorization of appropriations.

EDITORIAL NOTES

CODIFICATION

Pub. L. 102–507, §2(b), Oct. 24, 1992, 106 Stat. 3281, struck out "SERVICES" before "RESEARCH" in chapter heading.

SUBCHAPTER I—GENERAL PROVISIONS

§11201. Findings

The Congress finds that—

(1) best estimates indicate that between 2,000,000 and 3,000,000 Americans presently have Alzheimer's disease or related dementias;

(2) estimates of the number of individuals afflicted with Alzheimer's disease and related dementias are unreliable because current diagnostic procedures lack accuracy and sensitivity and because there is a need for epidemiological data on incidence and prevalence of such disease and dementias;

(3) studies estimate that between one-half and two-thirds of patients in nursing homes meet the clinical and mental status criteria for dementia;

(4) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between $38,000,000,000 and $42,000,000,000 per year solely for direct costs;

(5) progress in the neurosciences and behavioral sciences has demonstrated the interdependence and mutual reinforcement of basic science, clinical research, and services research for Alzheimer's disease and related dementias;

(6) programs initiated as part of the Decade of the Brain are likely to provide significant progress in understanding the fundamental mechanisms underlying the causes of, and treatments for, Alzheimer's disease and related dementias;

(7) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias, and more progress can be expected in the near future, there is little likelihood of a breakthrough in the immediate future that would eliminate or substantially reduce—

(A) the number of individuals with the disease and dementias; or

(B) the difficulties of caring for the individuals;

(8) the responsibility for care of individuals with Alzheimer's disease and related dementias falls primarily on their families, and the care is financially and emotionally devastating;

(9) attempts to reduce the emotional and financial burden of caring for dementia patients is impeded by a lack of knowledge about such patients, how to care for such patients, the costs associated with such care, the effectiveness of various modes of care, the quality and type of care necessary at various stages of the disease, and other appropriate services that are needed to provide quality care;

(10) the results of the little research that has been undertaken concerning dementia has been inadequate or the results have not been widely disseminated;

(11) more knowledge is needed concerning—

(A) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias;

(B) the development of methods for early diagnosis, functional assessment, and psychological evaluation of individuals with Alzheimer's disease for the purpose of monitoring

the course of the disease and developing strategies for improving the quality of life for such individuals;

(C) the understanding of the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design, delivery, staffing, and mix of such services and the coordination of such services with other services, and with respect to the relationship of formal to informal support services;

(D) the understanding of optimal methods to combine formal support services provided by health care professionals with informal support services provided by family, friends, and neighbors of individuals with Alzheimer's disease, and the identification of ways family caregivers can be sustained through interventions to reduce psychological and social problems and physical problems induced by stress;

(E) existing data that are relevant to Alzheimer's disease and related dementias; and

(F) the costs incurred in caring for individuals with Alzheimer's disease and related dementias;

(12) it is imperative to provide appropriate coordination of the efforts of the Federal Government in the provision of services for individuals with Alzheimer's disease and related dementias;

(13) it is important to increase the understanding of Alzheimer's disease and related dementias by the diverse range of personnel involved in the care of individuals with such disease and dementias; and

(14) it is imperative that the Social Security Administration be provided information pertaining to Alzheimer's disease and related dementias, particularly for personnel in such Administration involved in the establishment and updating of criteria for determining whether an individual is under a disability for purposes of titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.].

(Pub. L. 99–660, title IX, §902, Nov. 14, 1986, 100 Stat. 3802; Pub. L. 102–507, §4, Oct. 24, 1992, 106 Stat. 3281.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in par. (14), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II and XVI of the Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1992—Pars. (4) to (14). Pub. L. 102–507 added pars. (4) to (8), redesignated former pars. (7) to (12) as (9) to (14), respectively, and struck out former pars. (4) to (6) which read as follows:

"(4) the care for individuals with Alzheimer's disease and related dementias falls primarily on their families, and such care is very often financially and emotionally devastating;

"(5) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between $38,000,000,000 and $42,000,000,000 per year solely for direct costs;

"(6) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias and more progress can be expected in the near future, there is little likelihood of a breakthrough in the foreseeable future which would eliminate or substantially reduce the number of individuals with such disease and dementias or the difficulties of caring for such individuals;".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2024 AMENDMENT

Pub. L. 118–93, §1, Oct. 1, 2024, 138 Stat. 1565, provided that: "This Act [amending section section 11225

of this title] may be cited as the 'Alzheimer's Accountability and Investment Act'."

Pub. L. 118–92, §1, Oct. 1, 2024, 138 Stat. 1562, provided that: "This Act [amending section section 11225 of this title] may be cited as the 'NAPA Reauthorization Act'."

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 111–375, §1, Jan. 4, 2011, 124 Stat. 4100, provided that: "This Act [enacting subchapter III–A of this chapter] may be cited as the 'National Alzheimer's Project Act'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–507, §1, Oct. 24, 1992, 106 Stat. 3281, provided that: "This Act [enacting section 11261 of this title, amending this section and sections 285e–5, 11211, 11212, 11221, 11223, 11251, 11253, 11263, 11292, and 11294 of this title, repealing section 11261 of this title, and amending provisions set out as a note under this section] may be cited as the 'Alzheimer's Disease Research, Training, and Education Amendments of 1992'."

SHORT TITLE

Pub. L. 99–660, title IX, §901, Nov. 14, 1986, 100 Stat. 3802, as amended by Pub. L. 102–507, §2(a), Oct. 24, 1992, 106 Stat. 3281, provided that: "This title [enacting this chapter] may be cited as the 'Alzheimer's Disease and Related Dementias Research Act of 1992'."

SUBCHAPTER II—COUNCIL ON ALZHEIMER'S DISEASE

§§11211, 11212. Repealed. Pub. L. 105–362, title VI, §601(a)(2)(E), Nov. 10, 1998, 112 Stat. 3286

Section 11211, Pub. L. 99–660, title IX, §911, Nov. 14, 1986, 100 Stat. 3804; Pub. L. 102–54, §13(q)(14)(A), June 13, 1991, 105 Stat. 282; Pub. L. 102–507, §5(2)[(a)], Oct. 24, 1992, 106 Stat. 3282; Pub. L. 103–171, §3(b)(3), Dec. 2, 1993, 107 Stat. 1991, related to establishment of Council on Alzheimer's Disease in the Department of Health and Human Services.

Section 11212, Pub. L. 99–660, title IX, §912, Nov. 14, 1986, 100 Stat. 3804; Pub. L. 100–607, title I, §142(c)(1)(E), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–507, §5(b), Oct. 24, 1992, 106 Stat. 3282, related to functions of Council on Alzheimer's Disease.

SUBCHAPTER III—ADVISORY PANEL ON ALZHEIMER'S DISEASE

§§11221 to 11223. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 11221 to 11223, which provided for the establishment of the Advisory Panel on Alzheimer's Disease, were omitted pursuant to section 11221(i), which provided that the Panel and all programs established under this subchapter shall terminate on Sept. 30, 1996. See section 11225 of this title.

Section 11221, Pub. L. 99–660, title IX, §921, Nov. 14, 1986, 100 Stat. 3806; Pub. L. 102–507, §6(a), Oct. 24, 1992, 106 Stat. 3283; Pub. L. 103–171, §3(b)(3), Dec. 2, 1993, 107 Stat. 1991; Pub. L. 106–129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670, established the Advisory Panel on Alzheimer's Disease within the Department of Health and Human Services.

Section 11222, Pub. L. 99–660, title IX, §922, Nov. 14, 1986, 100 Stat. 3807, related to the functions of Panel.

Section 11223, Pub. L. 99–660, title IX, §923, Nov. 14, 1986, 100 Stat. 3807; Pub. L. 102–507, §6(b), Oct.

24, 1992, 106 Stat. 3283, authorized appropriations to carry out this subchapter.

SUBCHAPTER III–A—NATIONAL ALZHEIMER'S PROJECT

§11225. The National Alzheimer's Project

(a) Definition of Alzheimer's

In this Act, the term "Alzheimer's" means Alzheimer's disease and related dementias.

(b) Establishment

There is established in the Office of the Secretary of Health and Human Services the National Alzheimer's Project (referred to in this Act as the "Project").

(c) Purpose of the Project

The Secretary of Health and Human Services, or the Secretary's designee, shall—

(1) be responsible for the creation and maintenance of an integrated national plan to overcome Alzheimer's;

(2) provide information on, and coordination of, Alzheimer's research and services across all Federal agencies;

(3) accelerate the development of treatments that would prevent, halt, or reverse the course of Alzheimer's;

(4) improve the—

(A) promotion of healthy aging and reduction and mitigation of risk factors for Alzheimer's;

(B) early diagnosis of Alzheimer's disease; and

(C) coordination of the care and treatment of citizens with Alzheimer's;

(5) ensure the inclusion of ethnic and racial populations and other underserved populations, including individuals with developmental disabilities such as Down syndrome, at higher risk for Alzheimer's or least likely to receive care, in clinical, research, and service efforts with the purpose of decreasing health disparities in Alzheimer's;

(6) provide information on, and promote the adoption of, healthy behaviors that may reduce the risk of cognitive decline and promote and protect cognitive health; and

(7) coordinate with international bodies to integrate and inform the fight against Alzheimer's globally.

(d) Duties of the Secretary

(1) In general

The Secretary of Health and Human Services, or the Secretary's designee, shall—

(A) oversee the creation and updating of the national plan described in paragraph (2); and

(B) use discretionary authority to evaluate all Federal programs around Alzheimer's, including budget requests and approvals.

(2) National plan

The Secretary of Health and Human Services, or the Secretary's designee, shall carry out an annual assessment of the Nation's progress, across public and private sectors, in preparing for the escalating burden of Alzheimer's, including both implementation steps and recommendations for priority actions based on the assessment, including consideration of public-private collaborations, as appropriate.

(e) Advisory Council

(1) In general

There is established an Advisory Council on Alzheimer's Research, Care, and Services (referred

to in this Act as the "Advisory Council").

(2) Membership

(A) Federal members

The Advisory Council shall be comprised of the following experts:

(i) A designee of the Centers for Disease Control and Prevention.

(ii) A designee of the Administration on Aging.

(iii) A designee of the Centers for Medicare & Medicaid Services.

(iv) A designee of the Indian Health Service.

(v) A designee of the Office of the Director of the National Institutes of Health.

(vi) The Surgeon General.

(vii) A designee of the National Science Foundation.

(viii) A designee of the Department of Veterans Affairs.

(ix) A designee of the Food and Drug Administration.

(x) A designee of the Agency for Healthcare Research and Quality.

(xi) A designee of the Department of Justice.

(xii) A designee of the Federal Emergency Management Agency.

(xiii) A designee of the Social Security Administration.

(xiv) 2 or more other designees, as determined by the Secretary of Health and Human Services, at least one of whom has expertise in risk factors associated with the development or the progression of Alzheimer's.

(B) Non-Federal members

In addition to the members outlined in subparagraph (A), the Advisory Council shall include 15 expert members from outside the Federal Government, which shall include—

(i) 2 Alzheimer's patient advocates;

(ii) 2 Alzheimer's caregivers;

(iii) 2 health care providers;

(iv) 2 representatives of State health departments;

(v) 3 researchers with Alzheimer's-related expertise in basic, translational, clinical, or drug development science, including at least one researcher with demonstrated experience in recruitment and retention of underrepresented groups into research or clinical trials related to dementia;

(vi) 2 voluntary health association representatives, including a national Alzheimer's disease organization that has demonstrated experience in research, care, and patient services, and a State-based advocacy organization that provides services to families and professionals, including information and referral, support groups, care consultation, education, and safety services;

(vii) 1 individual with a diagnosis of Alzheimer's disease; and

(viii) 1 representative from a historically underserved population whose lifetime risk for developing Alzheimer's is markedly higher than that of other populations.

(3) Meetings

The Advisory Council shall meet quarterly and such meetings shall be open to the public.

(4) Advice

The Advisory Council shall advise the Secretary of Health and Human Services, or the Secretary's designee.

(5) Annual report

The Advisory Council shall provide to the Secretary of Health and Human Services, or the Secretary's designee and Congress—

(A) annual evaluations of all federally funded efforts in Alzheimer's research, risk reduction, public health, clinical care, and institutional-, home-, and community-based programs and their outcomes;

(B) recommendations for priority actions to expand, eliminate, coordinate, or condense programs based on the program's performance, mission, and purpose;

(C) recommendations to—

(i) reduce the financial impact of Alzheimer's on—

(I) Medicare and other federally funded programs; and

(II) families living with Alzheimer's disease; and

(ii) improve health outcomes and reduce disparities; and

(D) annual evaluations of the implementation, including outcomes, of the recommendations, including priorities if necessary, through an updated national plan under subsection (d)(2).

(6) Termination

The Advisory Council shall terminate on December 31, 2035.

(f) Data sharing

Agencies both within the Department of Health and Human Services and outside of the Department that have data relating to Alzheimer's shall share such data with the Secretary of Health and Human Services, or the Secretary's designee, to enable the Secretary, or the Secretary's designee, to complete the report described in subsection (g).

(g) Annual report

The Secretary of Health and Human Services, or the Secretary's designee, shall submit to Congress—

(1) an annual report that includes—

(A) an evaluation; [1] of all federally funded efforts in Alzheimer's research, clinical care, and institutional-, home-, and community-based programs and their outcomes; and

(B) a summary of the Secretary's process for identifying and updating what conditions constitute Alzheimer's disease;

(2) an evaluation of all federally funded programs based on program performance, mission, and purpose related to Alzheimer's disease;

(3) recommendations for—

(A) priority actions based on the evaluation conducted by the Secretary and the Advisory Council to—

(i) reduce the financial impact of Alzheimer's on—

(I) Medicare and other federally funded programs; and

(II) families living with Alzheimer's disease; and

(ii) improve health outcomes and reduce disparities;

(B) implementation steps; and

(C) priority actions to improve the prevention, diagnosis, treatment, care, institutional-, home-, and community-based programs of Alzheimer's disease for individuals with Alzheimer's disease and their caregivers; and

(4) an annually updated national plan.

(h) Professional judgment budget

For fiscal year 2024 and each subsequent fiscal year, the Director of the National Institutes of Health shall prepare and submit, directly to the President for review and transmittal to Congress, after reasonable opportunity for comment, but without change, by the Secretary of Health and Human Services and the Advisory Council, an annual budget estimate for the initiatives of the National Institutes of Health pursuant to the reports and recommendations made under this Act, including an estimate of the number and type of personnel needs for the National Institutes of Health.

(i) Sunset

The Project shall expire on December 31, 2035.

(Pub. L. 111–375, §2, Jan. 4, 2011, 124 Stat. 4100; Pub. L. 118–92, §2, Oct. 1, 2024, 138 Stat. 1562; Pub. L. 118–93, §2, Oct. 1, 2024, 138 Stat. 1565.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), (e)(1), and (h), is Pub. L. 111–375, Jan. 4, 2011, 124 Stat. 4100, known as the National Alzheimer's Project Act, which enacted this subchapter and provisions set out as a note under section 11201 of this title. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 11201 of this title and Tables.

CODIFICATION

Section was enacted as part of the National Alzheimer's Project Act, and not as part of the Alzheimer's Disease and Related Dementias Research Act of 1992 which comprises this chapter.

AMENDMENTS

2024—Subsec. (c)(2). Pub. L. 118–92, §2(1)(A), substituted "on, and coordination of," for "and coordination of".

Subsec. (c)(4). Pub. L. 118–92, §2(1)(B), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Subsec. (c)(5). Pub. L. 118–92, §2(1)(C), inserted "and other underserved populations, including individuals with developmental disabilities such as Down syndrome," after "populations" and substituted semicolon at end for "; and".

Subsec. (c)(6), (7). Pub. L. 118–92, §2(1)(D), (E), added par. (6) and redesignated former par. (6) as (7).

Subsec. (d)(2). Pub. L. 118–92, §2(2), inserted ", across public and private sectors," after "Nation's progress" and ", including consideration of public-private collaborations, as appropriate" before period at end.

Subsec. (e)(2)(A)(xi) to (xiv). Pub. L. 118–92, §2(3)(A)(i), added cls. (xi) to (xiv).

Subsec. (e)(2)(B). Pub. L. 118–92, §2(3)(A)(ii)(I), substituted "15" for "12" in introductory provisions.

Subsec. (e)(2)(B)(v). Pub. L. 118–92, §2(3)(A)(ii)(II), substituted "3 researchers" for "2 researchers" and ", including at least one researcher with demonstrated experience in recruitment and retention of underrepresented groups into research or clinical trials related to dementia;" for "; and".

Subsec. (e)(2)(B)(vii), (viii). Pub. L. 118–92, §2(3)(A)(ii)(III), (IV), added cls. (vii) and (viii).

Subsec. (e)(5)(A). Pub. L. 118–92, §2(3)(B)(i), substituted "annual evaluations" for "an initial evaluation" and "research, risk reduction, public health, clinical" for "research, clinical".

Subsec. (e)(5)(B). Pub. L. 118–92, §2(3)(B)(ii), struck out "initial" before "recommendations".

Subsec. (e)(5)(C). Pub. L. 118–92, §2(3)(B)(iii)(I), struck out "initial" before "recommendations" in introductory provisions.

Subsec. (e)(5)(C)(ii). Pub. L. 118–92, §2(3)(B)(iii)(II), inserted "and reduce disparities" before semicolon.

Subsec. (e)(5)(D). Pub. L. 118–92, §2(3)(B)(iv), substituted "annual evaluations" for "annually thereafter, an evaluation".

Subsec. (e)(6). Pub. L. 118–92, §2(3)(C), substituted "2035" for "2025".

Subsec. (g)(1). Pub. L. 118–92, §2(4)(A), substituted "that includes—" for "that includes", designated remainder of existing provisions as subpar. (A), inserted semicolon after "an evaluation" and "and" after "their outcomes;", and added subpar. (B).

Subsec. (g)(3)(A)(ii). Pub. L. 118–92, §2(4)(B), inserted "and reduce disparities" before semicolon at end.

Subsec. (h). Pub. L. 118–93, §2(2), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 118–92, §2(5), substituted "2035" for "2025".

Subsec. (i). Pub. L. 118–93, §2(1), redesignated subsec. (h) as (i).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ANNUAL BUDGET ESTIMATE

Pub. L. 113–235, div. G, title II, §230, Dec. 16, 2014, 128 Stat. 2492, provided that: "Hereafter, for each fiscal year through fiscal year 2025, the Director of the National Institutes of Health shall prepare and submit

directly to the President for review and transmittal to Congress, after reasonable opportunity for comment, but without change, by the Secretary of Health and Human Services and the Advisory Council on Alzheimer's Research, Care, and Services, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institutes) for the initiatives of the National Institutes of Health pursuant to the National Alzheimer's Plan, as required under section 2(d)(2) of Public Law 111–375 [42 U.S.C. 11225(d)(2)]."

[1] *So in original. The semicolon probably should not appear.*

SUBCHAPTER IV—RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND THEIR FAMILIES

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–607, title I, §142(c)(1)(B), (D), (2)(C), Nov. 4, 1988, 102 Stat. 3057, redesignated former subchapter V as IV and struck out heading for subchapter IV "AWARDS FOR LEADERSHIP AND EXCELLENCE IN ALZHEIMER'S DISEASE AND RELATED DEMENTIAS", consisting of sections 11231 and 11232, and struck out heading for part 1 "RESPONSIBILITIES OF NATIONAL INSTITUTE ON AGING", consisting of sections 11241 to 11243.

§11231. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 99–660, title IX, §931, Nov. 14, 1986, 100 Stat. 3807, which provided for awards for biomedical research on Alzheimer's disease and related dementias, was redesignated section 445B of the Public Health Service Act by Pub. L. 100–607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–4 of this title.

§11232. Repealed. Pub. L. 100–607, title I, §142(c)(1)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99–660, title IX, §932, Nov. 14, 1986, 100 Stat. 3808, authorized appropriations for fiscal years 1988 through 1991 to carry out program of awards for research on Alzheimer's disease and related dementias.

§§11241, 11242. Transferred

EDITORIAL NOTES

CODIFICATION

Section 11241, Pub. L. 99–660, title IX, §941, Nov. 14, 1986, 100 Stat. 3808, which provided for Director of National Institute on Aging to conduct, or make grants for conduct of, research on services for individuals

with Alzheimer's disease and related dementias and their families, was redesignated section 445C of the Public Health Service Act by Pub. L. 100–607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–5 of this title.

Section 11242, Pub. L. 99–660, title IX, §942, Nov. 14, 1986, 100 Stat. 3809, which provided for Director to disseminate results of such research to professional entities and the public, was redesignated section 445D of the Public Health Service Act by Pub. L. 100–607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–6 of this title.

§11243. Repealed. Pub. L. 100–607, title I, §142(c)(2)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99–660, title IX, §943, Nov. 14, 1986, 100 Stat. 3809, authorized appropriations for fiscal years 1988 through 1991 to carry out programs of National Institute on Aging in research on services for individuals with Alzheimer's disease and related dementias and their families.

PART 1—RESPONSIBILITIES OF NATIONAL INSTITUTE OF MENTAL HEALTH

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–607, title I, §142(c)(2)(C), (D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 2 as 1 and struck out former part 1 heading "RESPONSIBILITIES OF NATIONAL INSTITUTE ON AGING".

§11251. Research program and plan

(a) Grants for research

The Director of the National Institute of Mental Health shall conduct, or make grants for the conduct of, research relevant to appropriate services and specialized care for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

The Director of the National Institute of Mental Health shall—

(1) ensure that the research conducted under subsection (a) includes research concerning—

(A) mental health services and treatment modalities relevant to the mental, behavioral, and psychological problems associated with Alzheimer's disease and related dementias;

(B) the most effective methods for providing comprehensive multidimensional assessments to obtain information about the current functioning of, and needs for the care of, individuals with Alzheimer's disease and related dementias;

(C) the optimal range, types, and cost-effectiveness of services and specialized care for individuals with Alzheimer's disease and related dementias and for their families, in community and residential settings (including home care, day care, and respite care), and in institutional settings, particularly with respect to—

(i) the design of the services and care;

(ii) appropriate staffing for the provision of the services and care;

(iii) the timing of the services and care during the progression of the disease or dementias; and

(iv) the appropriate mix and coordination of the services and specialized care;

(D) the efficacy of various special care units in the United States for individuals with

Alzheimer's disease, including an assessment of the costs incurred in operating such units, the evaluation of best practices for the development of appropriate standards to be used by such units, and the measurement of patient outcomes in such units;

(E) methods to combine formal support services provided by health care professionals for individuals with Alzheimer's disease and related dementias with informal support services provided for such individuals by their families, friends, and neighbors, including services such as day care services, respite care services, home care services, nursing home services, and other residential services and care, and an evaluation of the services actually used for such individuals and the sources of payment for such services;

(F) methods to sustain family members who provide care for individuals with Alzheimer's disease and related dementias through interventions to reduce psychological and social problems and physical problems induced by stress; and

(G) improved methods to deliver services for individuals with Alzheimer's disease and related dementias and their families, including services such as outreach services, comprehensive assessment and care management services, outpatient treatment services, home care services, respite care services, adult day care services, partial hospitalization services, nursing home services, and other residential services and care; and

(2) ensure that the research is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 285e–2 of this title, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(Pub. L. 99–660, title IX, §931, formerly §944, Nov. 14, 1986, 100 Stat. 3809; renumbered §931, Pub. L. 100–607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–507, §7(a)(1), (2), Oct. 24, 1992, 106 Stat. 3284.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 931 of Pub. L. 99–660, which was classified to section 11231 of this title, was redesignated section 445B of the Public Health Service Act by section 142(a) of Pub. L. 100–607, and is classified to section 285e–4 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–507, §7(a)(1)(B), inserted "and specialized care" after "services".

Subsec. (b). Pub. L. 102–507, §7(a)(2), designated par. (1) as entire subsec. and redesignated former par. (1)(A) as par. (1), former par. (1)(A)(i) to (vii) as par. (1)(A) to (G), respectively, former par. (1)(A)(iii)(I) to (IV) as par. (1)(C)(i) to (iv), respectively, and former par. (1)(B) as par. (2).

Subsec. (b)(1). Pub. L. 102–507, §7(a)(1)(C)(i), substituted "The Director of the National Institute of Mental Health shall" for "Within 6 months after November 14, 1986, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a) of this section. The plan shall" in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 102–507, §7(a)(1)(C)(ii)(I), substituted "ensure that the research conducted under subsection (a) includes" for "provide for" in introductory provisions.

Subsec. (b)(1)(A)(iii). Pub. L. 102–507, §7(a)(1)(C)(ii)(II), added cl. (iii) and struck out former cl. (iii) which read as follows: "the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design of such services, appropriate staffing for the provision of such services, the timing of such services during the progression of such disease or dementias, and the appropriate mix and coordination of such services;".

Subsec. (b)(1)(A)(iv). Pub. L. 102–507, §7(a)(1)(C)(ii)(III), inserted "the evaluation of best practices for the

development of" before "appropriate".

Subsec. (b)(1)(A)(v), (vii). Pub. L. 102–507, §7(a)(1)(C)(ii)(IV), substituted "nursing home services, and other residential services and care" for "and nursing home services".

Subsec. (b)(1)(B). Pub. L. 102–507, §7(a)(1)(C)(iii), substituted "the research" for "research carried out under the plan".

Subsec. (b)(2). Pub. L. 102–507, §7(a)(1)(A), struck out par. (2) which read as follows: "Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate."

Subsec. (c). Pub. L. 102–507, §7(a)(1)(A), struck out subsec. (c) which read as follows: "In preparing and revising the plan required by subsection (b) of this section, the Director of the National Institute of Mental Health shall consult with the Chairman of the Council and the heads of agencies within the Department."

§11252. Dissemination

The Director of the National Institute of Mental Health shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99–660, title IX, §932, formerly §945, Nov. 14, 1986, 100 Stat. 3810; renumbered §932, Pub. L. 100–607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 932 of Pub. L. 99–660 was classified to section 11232 of this title prior to repeal by section 142(c)(1)(A) of Pub. L. 100–607.

§11253. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99–660, title IX, §933, formerly §946, Nov. 14, 1986, 100 Stat. 3810; renumbered §933, Pub. L. 100–607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–507, §7(a)(3), Oct. 24, 1992, 106 Stat. 3284.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–507 amended section generally. Prior to amendment, section read as follows: "To carry out this part, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991."

PART 2—RESPONSIBILITIES OF AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

EDITORIAL NOTES

CODIFICATION

Pub. L. 106–129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670, substituted "Agency for Healthcare Research and Quality" for "Agency for Health Care Policy and Research" in part heading.

Pub. L. 102–507, §7(b)(1)(A), Oct. 24, 1992, 106 Stat. 3285, substituted "AGENCY FOR HEALTH CARE POLICY AND RESEARCH" for "NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND

HEALTH CARE TECHNOLOGY ASSESSMENT" in part heading.

Pub. L. 100–607, title I, §142(c)(2)(D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 3 as 2. Former part 2 redesignated 1.

§11261. Research program

(a) Grants for research

The Director of the Agency for Healthcare Research and Quality shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and for their families.

(b) Research subjects

The Director of the Agency for Healthcare Research and Quality shall ensure that research conducted under subsection (a) shall include research—

(1) concerning improving the organization, delivery, and financing of services for individuals with Alzheimer's disease and related dementias and for their families, including research on—

(A) the design, staffing, and operation of special care units for the individuals in institutional settings, as well as individuals in institutional settings,[1] as well as individuals in home care, day care, and respite care; and

(B) the exploration and enhancement of services such as home care, day care, and respite care, that provide alternatives to institutional care;

(2) concerning the costs incurred by individuals with Alzheimer's disease and related dementias and by their families in obtaining services, particularly services that are essential to the individuals and that are not generally required by other patients under long-term care programs;

(3) concerning the costs, cost-effectiveness, and effectiveness of various interventions to provide services for individuals with Alzheimer's disease and related dementias and for their families;

(4) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning the role of physicians in caring for persons with Alzheimer's disease and related dementias and for their families, including the role of a physician in connecting such persons with appropriate health care and supportive services, including those supported through State and area agencies on aging designated under section 3025(a)(1) and (2)(A) of this title; and

(5) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning legal and ethical issues, including issues associated with special care units, facing individuals with Alzheimer's disease and related dementias and facing their families.

(Pub. L. 99–660, title IX, §934, as added Pub. L. 102–507, §7(b)(1)(B), Oct. 24, 1992, 106 Stat. 3285; amended Pub. L. 106–129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11261, Pub. L. 99–660, title IX, §934, formerly §947, Nov. 14, 1986, 100 Stat. 3811; renumbered §934, Pub. L. 100–607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–54, §13(q)(14)(B), June 13, 1991, 105 Stat. 282, related to research relevant to appropriate services for individuals with Alzheimer's disease and related dementias, prior to repeal by Pub. L. 102–507, §7(b)(1)(B).

AMENDMENTS

1999—Subsecs. (a), (b). Pub. L. 106–129 substituted "Director of the Agency for Healthcare Research and Quality" for "Administrator of the Agency for Health Care Policy and Research".

[1] *So in original. The words "as well as individuals in institutional settings," probably should not appear.*

§11262. Dissemination

The Director of the National Center for Health Services Research and Health Care Technology Assessment shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99–660, title IX, §935, formerly §948, Nov. 14, 1986, 100 Stat. 3812; renumbered §935, Pub. L. 100–607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§11263. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99–660, title IX, §936, formerly §949, Nov. 14, 1986, 100 Stat. 3812; renumbered §936, Pub. L. 100–607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102–507, §7(b)(2), Oct. 24, 1992, 106 Stat. 3286.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–507 amended section generally. Prior to amendment, section read as follows: "To carry out this part, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991."

PART 3—RESPONSIBILITIES OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES

EDITORIAL NOTES

CODIFICATION

Pub. L. 108–173, title IX, §900(e)(5)(A), Dec. 8, 2003, 117 Stat. 2373, amended heading generally. Prior to amendment, heading read as follows: "Responsibilities of Health Care Financing Administration".

Pub. L. 100–607, title I, §142(c)(2)(D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 4 as 3. Former part 3 redesignated 2.

§11271. Research program and plan

(a) Grants for research

The Administrator of the Centers for Medicare & Medicaid Services shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

(1) Within 6 months after November 14, 1986, the Administrator of the Centers for Medicare & Medicaid Services shall prepare and transmit to the Chairman of the Council a plan for research to be conducted under (a).[1] The plan shall—

(A) provide for a determination of the types of services required by individuals with

Alzheimer's disease and related dementias and their families to allow such individuals to remain living at home or in a community-based setting;

(B) provide for a determination of the costs of providing needed services to individuals with Alzheimer's disease and related dementias and their families, including the expenditures for institutional, home, and community-based services and the source of payment for such expenditures;

(C) provide for an assessment of the adequacy of benefits provided through the Medicare and Medicaid programs and through private health insurance for needed services for individuals with Alzheimer's disease and related dementias and their families; and

(D) provide for a determination of the costs to the Medicare and Medicaid programs and to private health insurers (if available) of providing covered benefits to individuals with Alzheimer's disease and related dementias and their families.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Administrator of the Centers for Medicare & Medicaid Services shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Administrator considers appropriate.

(c) Consultation for preparation and revision of plan

In preparing and revising the plan required by subsection (b), the Administrator of the Centers for Medicare & Medicaid Services shall consult with the Chairman of the Council and the heads of agencies within the Department.

(Pub. L. 99–660, title IX, §937, formerly §949A, Nov. 14, 1986, 100 Stat. 3812; renumbered §937, Pub. L. 100–607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; amended Pub. L. 108–173, title IX, §900(e)(5)(B), Dec. 8, 2003, 117 Stat. 2373.)

EDITORIAL NOTES

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, §900(e)(5)(B)(i), substituted "Centers for Medicare & Medicaid Services" for "National Health Care Financing Administration".

Subsec. (b)(1). Pub. L. 108–173, §900(e)(5)(B)(ii), substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration" in introductory provisions.

Subsecs. (b)(2), (c). Pub. L. 108–173, §900(e)(5)(B)(iii), (iv), substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration".

[1] *So in original. Probably should be preceded by "subsection".*

§11272. Dissemination

The Administrator of the Centers for Medicare & Medicaid Services shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99–660, title IX, §938, formerly §949B, Nov. 14, 1986, 100 Stat. 3812; renumbered §938, Pub. L. 100–607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; amended Pub. L. 108–173, title IX, §900(e)(5)(C), Dec. 8, 2003, 117 Stat. 2373.)

EDITORIAL NOTES

AMENDMENTS

2003—Pub. L. 108–173 substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration".

§11273. Authorization of appropriations

To carry out this part, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.

(Pub. L. 99–660, title IX, §939, formerly §949C, Nov. 14, 1986, 100 Stat. 3813; renumbered §939, Pub. L. 100–607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§§11281, 11282. Transferred

EDITORIAL NOTES

CODIFICATION

Section 11281, Pub. L. 99–660, title IX, §951, Nov. 14, 1986, 100 Stat. 3813, which provided for establishment of Clearinghouse on Alzheimer's Disease, was renumbered section 445E of the Public Health Service Act by Pub. L. 100–607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–7 of this title.

Section 11282, Pub. L. 99–660, title IX, §952, Nov. 14, 1986, 100 Stat. 3813, which provided for dissemination project to be conducted by national organization representing individuals with Alzheimer's disease and related dementias, was renumbered section 445F of the Public Health Service Act by Pub. L. 100–607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e–8 of this title.

§11283. Repealed. Pub. L. 100–607, title I, §142(c)(1)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99–660, title IX, §953, Nov. 14, 1986, 100 Stat. 3814, authorized appropriations for fiscal years 1988 through 1991 to carry out program of dissemination of information on Alzheimer's disease.

SUBCHAPTER V—EDUCATIONAL ACTIVITIES

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–607, title I, §142(c)(1)(C), (D), Nov. 4, 1988, 102 Stat. 3057, redesignated subchapter VII as V, struck out heading for subchapter VI "DISSEMINATION", consisting of sections 11281 to 11283 of this title, and redesignated former subchapter V as IV.

§11291. Providing information for personnel of Social Security Administration

(a) The Secretary shall develop a mechanism to ensure the prompt provision of the most current information concerning Alzheimer's disease and related dementias to the Commissioner of Social Security, particularly information which will increase the understanding of personnel of the Social Security Administration concerning such disease and dementias.

(b) The Commissioner of Social Security shall ensure that information received under subsection (a) is provided to personnel of the Social Security Administration, particularly personnel involved in the process of determining, for purposes of titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], whether an individual is under a disability.

(Pub. L. 99–660, title IX, §961, Nov. 14, 1986, 100 Stat. 3814.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II and XVI of the Social Security Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§11292. Education of public, individuals with Alzheimer's disease and their families, and health and long-term care providers

(a) Training models grants

(1) Grants

The Director of the National Institute on Aging may award grants to eligible entities to assist the entities in developing and evaluating model training programs—

(A) for—

(i) health care professionals, including mental health professionals;

(ii) health care paraprofessionals;

(iii) personnel, including information and referral, case management, and in-home services personnel (including personnel receiving support under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.)), providing supportive services to the elderly and the families of the elderly;

(iv) family caregivers providing care and treatment for individuals with Alzheimer's disease and related disorders; and

(v) personnel of local organizations (including community groups, business and labor groups, and religious, educational, and charitable organizations) that have traditionally not been involved in planning and developing long-term care services; and

(B) with attention to such variables as—

(i) curricula development for training and continuing education programs;

(ii) care setting; and

(iii) intervention technique.

(2) Eligible entity

To be eligible to receive grants under this subsection, an entity shall be—

(A) an educational institution providing training and education in medicine, psychology, nursing, social work, gerontology, or health care administration;

(B) an educational institution providing preparatory training and education of personnel for nursing homes, hospitals, and home or community settings; or

(C) an Alzheimer's Disease Research Center described in section 285e–2(a) of this title.

(b) Educational grants

The Director of the National Institute on Aging is authorized to make grants to public and nonprofit private entities to assist such entities in establishing programs, for educating health care providers and the families of individuals with Alzheimer's disease or related disorders, regarding—

(1) caring for individuals with such diseases or disorders; and

(2) the availability in the community of public and private sources of assistance, including financial assistance, for caring for such individuals.

(c) Award of grants

In awarding grants under this section, the Director of the National Institute on Aging shall—

(1) award the grants on the basis of merit;

(2) award the grants in a manner that will ensure access to the programs described in subsections (a) and (b) by rural, minority, and underserved populations throughout the country;

and

(3) ensure that the grants are distributed among the principal geographic regions of the United States.

(d) Application

To be eligible to receive a grant under this section, an entity shall submit an application to the Director of the National Institute on Aging at such time, in such manner, and containing or accompanied by such information, as the Director may reasonably require, including, at a minimum, an assurance that the entity will coordinate programs provided under this section with the State agency designated under section 305(a)(1) of the Older Americans Act of 1965 [42 U.S.C. 3025(a)(1)], in the State in which the entity will provide such programs.

(e) Coordination

The Director of the National Institute on Aging shall coordinate the award of grants under this section with the heads of other appropriate agencies, including the Commissioner of the Administration on Aging.

(Pub. L. 99–660, title IX, §962, Nov. 14, 1986, 100 Stat. 3814; Pub. L. 102–507, §8(a), Oct. 24, 1992, 106 Stat. 3286.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a)(1)(A)(iii), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–507 amended section generally. Prior to amendment, section read as follows: "The Director of the National Institute on Aging, through centers supported under section 285e–2 of this title, professional associations, and continuing education programs, shall conduct education and information dissemination activities concerning the special problems of individuals with Alzheimer's disease and their families. Such activities shall be designed to enhance the understanding of such problems by individuals who provide care for individuals with Alzheimer's disease and related dementias, including physicians, nurses, psychologists, social workers, occupational therapists, nursing home administrators, nurses, and health care aides."

§11293. Education programs for safety and transportation personnel

The Director of the National Institute on Aging, through centers supported under section 285e–2 of this title, training academies, and continuing education programs, shall conduct education and information dissemination activities concerning Alzheimer's disease and related dementias for personnel involved in ensuring the public safety and providing public transportation. Such activities shall be designed to enhance the ability of such personnel to respond appropriately to individuals with Alzheimer's disease and related dementias whom such personnel may encounter in the course of their employment.

(Pub. L. 99–660, title IX, §963, Nov. 14, 1986, 100 Stat. 3815.)

§11294. Authorization of appropriations

(a) To carry out sections 11291 and 11293 of this title, there are authorized to be appropriated $1,000,000 for each of the fiscal years 1988 through 1991.

(b) There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992 through 1996, to carry out section 11292 of this title.

(Pub. L. 99–660, title IX, §964, Nov. 14, 1986, 100 Stat. 3815; Pub. L. 102–507, §8(b), Oct. 24, 1992, 106 Stat. 3287.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–507 designated existing provisions as subsec. (a), substituted "sections 11291 and 11293 of this title" for "this subchapter", and added subsec. (b).

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SUBCHAPTER I—GENERAL PROVISIONS

§11301. Findings and purpose

(a) Findings

The Congress finds that—

(1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;

(2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;

(3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;

(4) there is no single, simple solution to the problem of homelessness because of the different subpopulations of the homeless, the different causes of and reasons for homelessness, and the different needs of homeless individuals;

(5) due to the record increase in homelessness, States, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and

(6) the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.

(b) Purpose

It is the purpose of this chapter—

(1) to establish the United States Interagency Council on Homelessness;

(2) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the Nation; and

(3) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans.

(Pub. L. 100–77, title I, §102, July 22, 1987, 101 Stat. 484; Pub. L. 108–199, div. G, title II, §216(2), Jan. 23, 2004, 118 Stat. 394.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–199 substituted "the United States Interagency Council on Homelessness" for "an Interagency Council on the Homeless".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–22, div. B, §1001(a), May 20, 2009, 123 Stat. 1663, provided that: "This division [enacting sections 11318, 11360, 11360a, 11361a, 11361b, 11363, 11364, 11372, 11372a, 11374, 11381 to 11384, and 11386a to 11386e of this title, redesignating part G of subchapter IV of this chapter as part D of subchapter IV of this chapter, amending sections 11302, 11311 to 11313, 11315, 11361, 11362, 11373 to 11376, 11378, 11386, 11387, 11388, and 11408 of this title, repealing sections 11318, 11372, 11374, 11377, 11381 to 11384, and 11389 of this title and parts D to F of subchapter IV of this chapter, and enacting provisions set out as notes under this section and sections 11302 and 11311 of this title] may be cited as the 'Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009'."

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–110, title X, §1031, Jan. 8, 2002, 115 Stat. 1989, provided that: "This part [part C (§§1031–1034) of title X of Pub. L. 107–110, enacting sections 11431 to 11435 of this title and provisions set out as a note below and amending provisions set out as a note below] may be cited as the 'McKinney-Vento Homeless Education Assistance Improvements Act of 2001'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–421, §1, Oct. 25, 1994, 108 Stat. 4346, provided that: "This Act [amending section 11411 of this title and enacting and amending provisions set out as notes under section 2687 of Title 10, Armed Forces] may cited as the 'Base Closure Community Redevelopment and Homeless Assistance Act of 1994'."

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–120, §1, Oct. 27, 1993, 107 Stat. 1144, provided that: "This Act [amending sections 1490o and 12724 of this title and sections 1701z–11, 1721, and 1735f–9 of Title 12, Banks and Banking, enacting provisions set out as notes under this section and sections 1437f, 1490o, and 9816 of this title, and amending a provision set out as a note under section 1437f of this title] may be cited as the 'HUD Demonstration Act of 1993'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–550, title XIV, §1401, Oct. 28, 1992, 106 Stat. 4012, provided that: "This title [enacting sections 11381 to 11389, 11391 to 11399, 11403e–4, 11404, 11405 to 11405b, 11406 to 11406b, 11407 to 11407b, 11408, and 11408a of this title, transferring sections 11404c to 11404e of this title to sections 11403e–1 to 11403e–3 of this title, respectively, amending sections 11318, 11319, 11346, 11352, 11374, 11375, 11377, 11401, 11403a, 11403c to 11403e, 11403g, 11403h, 11404a, and 11404b of this title, repealing sections 11381 to 11388, 11391 to 11394, 11404, 11405 to 11405c, and 11406 to 11406c of this title, enacting provisions set out as notes preceding section 11361 and under sections 11361, 11381, and 11411 of this title, amending provisions set out as a note under this section, and repealing provisions set out as notes under sections 11361, 11391, and 11399 of this title] may be cited as the 'Stewart B. McKinney Homeless Housing Assistance Amendments Act of 1992'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–645, §1(a), Nov. 29, 1990, 104 Stat. 4673, provided that: "This Act [enacting sections 5118 to 5118e, 11434a, 11465, 11466, and 11481 to 11489 of this title and section 1703a of Title 29, Labor, amending sections 256, 290bb–2, 290cc–21 to 290cc–35, 11302, 11312, 11318, 11319, 11332, 11352, 11411, 11421, 11431 to 11435, 11443, 11449, 11450, 11463, and 11464 of this title, enacting provisions set out as notes under this section, sections 5118, 11332, 11411, and 11463 of this title, and section 141 of Title 13, Census, and amending provisions set out as a note under section 290aa–3 of this title] may be cited as the 'Stewart B. McKinney Homeless Assistance Amendments Act of 1990'."

Pub. L. 101–645, title VI, §601, Nov. 29, 1990, 104 Stat. 4734, provided that: "This title [enacting sections 5118 to 5118e, 11434a, 11465, 11466, and 11481 to 11489 of this title and section 1703a of Title 29, Labor, amending sections 11302, 11421, 11431 to 11435, 11443, 11449, 11450, 11463, and 11464 of this title, and enacting provisions set out as notes under sections 5118 and 11463 of this title] may be cited as the 'Stewart B. McKinney Homeless Assistance Amendments Act of 1990'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–628, §1(a), Nov. 7, 1988, 102 Stat. 3224, provided that: "This Act [enacting sections 3544, 11320, and 11402 of this title and sections 1583, 1791 to 1791j of Title 29, Labor, amending sections 254e, 256, 290bb–2, 290cc–21, 290cc–28, 290cc–29, 290cc–35, 290cc–36, 290dd, 290ee, 290ee–1, 503, 504, 602, 1437d, 1437f, 1437n, 1437o, 1437r, 1472, 1480, 1484 to 1486, 1490o, 3002, 3015, 3021, 3025 to 3027, 3031, 3035a, 3056e, 4013, 4121, 4822, 5302, 5304, 5306, 5318, 8103, 11304, 11313, 11318, 11319, 11352, 11361, 11373 to 11375, 11377, 11382 to 11385, 11387, 11388, 11392, 11394, 11401, 11411, 11421, 11432, 11433, 11435, 11447, 11449, 11462 to 11464, and 11501 of this title, sections 1454, 1701x, 1701z–11, 1709, 1710, 1715z–1a, 1715z–12, 1715z–20, 1717, 2805, and 2806 of Title 12, Banks and Banking, sections 1701 and 1719 of Title 15, Commerce and Trade, and sections 49, 49a, 49b, 49d to 49j, 49l, 49l–1, 1502, 1504, 1505, 1514, 1516, 1531, and 1602 of Title 29, enacting provisions set out as notes under this section and sections 256, 1437d, 1437f, 1472, 11303, 11374, 11381, 11383, 11384, 11392, 11401, and 11501 of this title, sections 1710 and 1715z–1a of Title 12, section 2661 of Title 15, and section 1501 of Title 29, and amending provisions set out as notes under sections 290aa–3, 1472, 1490m, and 4822 of this title, sections 1701z–6, 1709, 1715l, and 2802 of Title 12, and section 49 of Title 29] may be cited as the 'Stewart B. McKinney Homeless Assistance Amendments Act of 1988'."

SHORT TITLE

Pub. L. 100–77, title I, §101(a), July 22, 1987, 101 Stat. 482, as amended by Pub. L. 106–400, §1, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107–110, title X, §1034(a), Jan. 8, 2002, 115 Stat. 2006; Pub. L. 107–116, title VI, §634(a), Jan. 10, 2002, 115 Stat. 2228, provided that: "This Act [enacting this chapter and sections 256 and 290cc–21 to 290cc–36 of this title, amending sections 254e, 290bb–1a, 290bb–2, and 5302 of this title, sections 2012, 2014, 2020, and 2025 of Title 7, Agriculture, sections 1205 and 1207a of Title 20, Education, sections 1503 and 1551 of Title 29, Labor, and section 484 of former Title 40, Public Buildings, Property, and Works, repealing section 256a of this title, enacting provisions set out as notes under this section and section 290aa–3 of this title and sections 2012, 2014, and 2020 of Title 7, and amending provisions set out as notes under section 612c of Title 7 and section 1721 of Title 29] may be cited as the 'McKinney-Vento Homeless Assistance Act'."

[Pub. L. 107–110, title X, §1034(b), Jan. 8, 2002, 115 Stat. 2007, provided that: "The amendment made by subsection (a) [amending section 1 of Pub. L. 106–400, which amended section 101(a) of Pub. L. 100–77 set out above] shall be deemed to be effective on the date of enactment of Public Law 106–400."]

[Pub. L. 107–116, title VI, §634(b), Jan. 10, 2002, 115 Stat. 2228, provided that: "The amendment made by subsection (a) of this section [which directed the amendment of section 101(a) of Pub. L. 100–77, set out above] is deemed to have taken effect immediately after the enactment of Public Law 106–400 [which was approved Oct. 30, 2000] (114 Stat. 1675)."]

REGULATIONS

Pub. L. 111–22, div. B, title V, §1504, May 20, 2009, 123 Stat. 1702, provided that:

"(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this division [May 20, 2009], the Secretary of Housing and Urban Development shall promulgate regulations governing the operation of the programs that are created or modified by this division [see Short Title of 2009 Amendment note above].

"(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this division."

Pub. L. 100–628, title IV, §485, Nov. 7, 1988, 102 Stat. 3239, provided that: "Not later than 60 days after the date of the enactment of this Act [Nov. 7, 1988], the Secretary of Housing and Urban Development or other Federal entity involved shall by notice establish such requirements as may be necessary to carry out the amendments made by titles I through IV [see Tables for classification] and by section 501(2)(B) [amending section 11411 of this title]. The Secretary or other Federal entity involved shall issue regulations based on the notice not later than 12 months after the date of the enactment of this Act."

FINDINGS AND PURPOSES

Pub. L. 111–22, div. B, §1002, May 20, 2009, 123 Stat. 1664, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) a lack of affordable housing and limited scale of housing assistance programs are the primary

causes of homelessness; and

"(2) homelessness affects all types of communities in the United States, including rural, urban, and suburban areas.

"(b) PURPOSES.—The purposes of this division [see Short Title of 2009 Amendment note above] are—

"(1) to consolidate the separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.] (consisting of the supportive housing program and related innovative programs, the safe havens program, the section 8 [42 U.S.C. 1437f] assistance program for single-room occupancy dwellings, and the shelter plus care program) into a single program with specific eligible activities;

"(2) to codify in Federal law the continuum of care planning process as a required and integral local function necessary to generate the local strategies for ending homelessness; and

"(3) to establish a Federal goal of ensuring that individuals and families who become homeless return to permanent housing within 30 days."

REFERENCES TO STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT

Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: "Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'."

INNOVATIVE HOMELESS INITIATIVES DEMONSTRATION PROGRAM

Pub. L. 103–120, §2, Oct. 27, 1993, 107 Stat. 1144, as amended by Pub. L. 104–330, title V, §506(b), Oct. 26, 1996, 110 Stat. 4045, directed Secretary of Housing and Urban Development, through cooperative efforts in partnership with other levels of government and the private sector, including nonprofit organizations, foundations, and communities, to demonstrate methods of undertaking comprehensive strategies for assisting homeless individuals and families (including homeless individuals who have AIDS or who are infected with HIV), through a variety of activities, including the coordination of efforts and the filling of gaps in available services and resources, directed Secretary to provide comprehensive homeless demonstration grants and innovative project funding, and provided for submission of reports and authorization of appropriations, prior to repeal by Pub. L. 103–120, §2(g), Oct. 27, 1993, 107 Stat. 1148.

STRATEGY TO ELIMINATE UNFIT TRANSIENT FACILITIES

Pub. L. 101–625, title VIII, §825, Nov. 28, 1990, 104 Stat. 4356, as amended by Pub. L. 102–550, title XIV, §1412, Oct. 28, 1992, 106 Stat. 4039, directed Secretary of Housing and Urban Development, not more than 9 months after Oct. 28, 1992, to identify the States and units of general local government using unfit transient facilities as housing for homeless families with children and develop and publish in the Federal Register a strategy to eliminate such use by July 1, 1994, and in developing such strategy, to consult with the Secretary of the Department of Health and Human Services, the Administrator of the Federal Emergency Management Agency, other appropriate Federal officials, appropriate States and units of general local government, major organizations representing homeless persons and other experts.

REPORT ON EFFECT OF RENT CONTROL ON HOMELESSNESS

Pub. L. 100–628, title IV, §483, Nov. 7, 1988, 102 Stat. 3238, directed Secretary of Housing and Urban Development, within 12 months after Nov. 7, 1988, to submit to Congress a report evaluating the impact of local housing rent controls and regulations on rate of homelessness, and on the development, supply, availability, and affordability of housing, in major cities in the United States, with report to include additional specified information.

REQUIREMENT OF CERTAIN STUDY WITH RESPECT TO HOMELESSNESS

Pub. L. 100–77, title VI, §603, July 22, 1987, 101 Stat. 515, directed Secretary of Health and Human Services, not later than 18 months after July 22, 1987, to complete a study with respect to determining extent to which mental health deinstitutionalization policies of States are contributing to problem of homelessness, and submit to Congress the findings made as a result of such study, including any recommendations with respect to administrative and legislative initiatives that could reduce the number of chronically mentally ill individuals who are homeless.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 14321. ENDING CRIME AND DISORDER ON AMERICA'S STREETS

Ex. Ord. No. 14321, July 24, 2025, 90 F.R. 35817, provided:

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

SECTION 1. *Purpose and Policy*. Endemic vagrancy, disorderly behavior, sudden confrontations, and violent attacks have made our cities unsafe. The number of individuals living on the streets in the United States on a single night during the last year of the previous administration—274,224—was the highest ever recorded. The overwhelming majority of these individuals are addicted to drugs, have a mental health condition, or both. Nearly two-thirds of homeless individuals report having regularly used hard drugs like methamphetamines, cocaine, or opioids in their lifetimes. An equally large share of homeless individuals reported suffering from mental health conditions. The Federal Government and the States have spent tens of billions of dollars on failed programs that address homelessness but not its root causes, leaving other citizens vulnerable to public safety threats.

Shifting homeless individuals into long-term institutional settings for humane treatment through the appropriate use of civil commitment will restore public order. Surrendering our cities and citizens to disorder and fear is neither compassionate to the homeless nor other citizens. My Administration will take a new approach focused on protecting public safety.

SEC. 2. *Restoring Civil Commitment*. (a) The Attorney General, in consultation with the Secretary of Health and Human Services, shall take appropriate action to:

(i) seek, in appropriate cases, the reversal of Federal or State judicial precedents and the termination of consent decrees that impede the United States' policy of encouraging civil commitment of individuals with mental illness who pose risks to themselves or the public or are living on the streets and cannot care for themselves in appropriate facilities for appropriate periods of time; and

(ii) provide assistance to State and local governments, through technical guidance, grants, or other legally available means, for the identification, adoption, and implementation of maximally flexible civil commitment, institutional treatment, and "step-down" treatment standards that allow for the appropriate commitment and treatment of individuals with mental illness who pose a danger to others or are living on the streets and cannot care for themselves.

SEC. 3. *Fighting Vagrancy on America's Streets*. (a) The Attorney General, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, and the Secretary of Transportation shall take immediate steps to assess their discretionary grant programs and determine whether priority for those grants may be given to grantees in States and municipalities that actively meet the below criteria, to the maximum extent permitted by law:

(i) enforce prohibitions on open illicit drug use;

(ii) enforce prohibitions on urban camping and loitering;

(iii) enforce prohibitions on urban squatting;

(iv) enforce, and where necessary, adopt, standards that address individuals who are a danger to themselves or others and suffer from serious mental illness or substance use disorder, or who are living on the streets and cannot care for themselves, through assisted outpatient treatment or by moving them into treatment centers or other appropriate facilities via civil commitment or other available means, to the maximum extent permitted by law; or

(v) substantially implement and comply with, to the extent required, the registration and notification obligations of the Sex Offender Registry and Notification Act [probably means "Sex Offender Registration and Notification Act", title I of Pub. L. 109–248, 34 U.S.C. 20901 et seq.], particularly in the case of registered sex offenders with no fixed address, including by adequately mapping and checking the location of homeless sex offenders.

(b) The Attorney General shall:

(i) ensure that homeless individuals arrested for Federal crimes are evaluated, consistent with 18 U.S.C. 4248, to determine whether they are sexually dangerous persons and certified accordingly for civil commitment;

(ii) take all necessary steps to ensure the availability of funds under the Emergency Federal Law Enforcement Assistance program to support, as consistent with 34 U.S.C. 50101 et seq. [subtitle B of title I of Pub. L. 98–473], encampment removal efforts in areas for which public safety is at risk and State and local resources are inadequate;

(iii) assess Federal resources to determine whether they may be directed toward ensuring, to the extent permitted by law, that detainees with serious mental illness are not released into the public because of a lack of forensic bed capacity at appropriate local, State, and Federal jails or hospitals; and

(iv) enhance requirements that prisons and residential reentry centers that are under the authority of the Attorney General or receive funding from the Attorney General require in-custody housing release plans and, to the maximum extent practicable, require individuals to comply.

SEC. 4. *Redirecting Federal Resources Toward Effective Methods of Addressing Homelessness*. (a) The Secretary of Health and Human Services shall take appropriate action to:

(i) ensure that discretionary grants issued by the Substance Abuse and Mental Health Services Administration for substance use disorder prevention, treatment, and recovery fund evidence-based programs and do not fund programs that fail to achieve adequate outcomes, including so-called "harm reduction" or "safe consumption" efforts that only facilitate illegal drug use and its attendant harm;

(ii) provide technical assistance to assisted outpatient treatment programs for individuals with serious mental illness or addiction during and after the civil commitment process focused on shifting such individuals off of the streets and public programs and into private housing and support networks; and

(iii) ensure that Federal funds for Federally Qualified Health Centers and Certified Community Behavioral Health Clinics reduce rather than promote homelessness by supporting, to the maximum extent permitted by law, comprehensive services for individuals with serious mental illness and substance use disorder, including crisis intervention services.

(b) The Attorney General shall prioritize available funding to support the expansion of drug courts and mental health courts for individuals for which such diversion serves public safety.

SEC. 5. *Increasing Accountability and Safety in America's Homelessness Programs*. (a) The Secretary of Health and Human Services and the Secretary of Housing and Urban Development shall take appropriate actions to increase accountability in their provision of, and grants awarded for, homelessness assistance and transitional living programs. These actions shall include, to the extent permitted by law, ending support for "housing first" policies that deprioritize accountability and fail to promote treatment, recovery, and self-sufficiency; increasing competition among grantees through broadening the applicant pool; and holding grantees to higher standards of effectiveness in reducing homelessness and increasing public safety.

(b) The Secretary of Housing and Urban Development shall, as appropriate, take steps to require recipients of Federal housing and homelessness assistance to increase requirements that persons participating in the recipients' programs who suffer from substance use disorder or serious mental illness use substance abuse treatment or mental health services as a condition of participation.

(c) With respect to recipients of Federal housing and homelessness assistance that operate drug injection sites or "safe consumption sites," knowingly distribute drug paraphernalia, or permit the use or distribution of illicit drugs on property under their control:

(i) the Attorney General shall review whether such recipients are in violation of Federal law, including 21 U.S.C. 856 [section 416 of Pub. L. 91–513], and bring civil or criminal actions in appropriate cases; and

(ii) the Secretary of Housing and Urban Development, in coordination with the Attorney General, shall review whether such recipients are in violation of the terms of the programs pursuant to which they receive Federal housing and homelessness assistance and freeze their assistance as appropriate.

(d) The Secretary of Housing and Urban Development shall take appropriate measures and revise regulations as necessary to allow, where permissible under applicable law, federally funded programs to exclusively house women and children and to stop sex offenders who receive homelessness assistance through such programs from being housed with unrelated children.

(e) The Secretary of Housing and Urban Development, in consultation with the Attorney General and the Secretary of Health and Human Services, shall, as appropriate and to the extent permitted by law:

(i) allow or require the recipients of Federal funding for homelessness assistance to collect health-related information that the Secretary of Housing and Urban Development identifies as necessary to the effective and efficient operation of the funding program from all persons to whom such assistance is provided; and

(ii) require those funding recipients to share such data with law enforcement authorities in circumstances permitted by law and to use the collected health data to provide appropriate medical care to individuals with mental health diagnoses or to connect individuals to public health resources.

SEC. 6. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The costs for publication of this order shall be borne by the Department of Housing and Urban Development.

DONALD J. TRUMP.

§11302. General definition of homeless individual

(a) In general

For purposes of this chapter, the terms "homeless", "homeless individual", and "homeless person" means— [1]

(1) an individual or family who lacks a fixed, regular, and adequate nighttime residence;

(2) an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(3) an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);

(4) an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided;

(5) an individual or family who—

(A) will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, as evidenced by—

(i) a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;

(ii) the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or

(iii) credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause;

(B) has no subsequent residence identified; and

(C) lacks the resources or support networks needed to obtain other permanent housing; and

(6) unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who—

(A) have experienced a long term period without living independently in permanent housing,

(B) have experienced persistent instability as measured by frequent moves over such period, and

(C) can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.

(b) Domestic violence, dating violence, sexual assault, stalking, and other dangerous, traumatic, or life-threatening conditions relating to such violence

Notwithstanding any other provision of this section, the Secretary shall consider to be homeless any individual or family who—

(1) is experiencing trauma or a lack of safety related to, or fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous, traumatic, or life-threatening conditions related to the violence against the individual or a family member in the individual's or family's current housing situation, including where the health and safety of children are jeopardized;

(2) has no other safe residence; and

(3) lacks the resources to obtain other safe permanent housing.

(c) Income eligibility

(1) In general

A homeless individual shall be eligible for assistance under any program provided by this chapter, only if the individual complies with the income eligibility requirements otherwise applicable to such program.

(2) Exception

Notwithstanding paragraph (1), a homeless individual shall be eligible for assistance under title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3111 et seq.].

(d) Exclusion

For purposes of this chapter, the term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(e) Persons experiencing homelessness

Any references in this chapter to homeless individuals (including homeless persons) or homeless groups (including homeless persons) shall be considered to include, and to refer to, individuals experiencing homelessness or groups experiencing homelessness, respectively.

(Pub. L. 100–77, title I, §103, July 22, 1987, 101 Stat. 485; Pub. L. 101–625, title VIII, §822, Nov. 28, 1990, 104 Stat. 4355; Pub. L. 101–645, title VI, §602, Nov. 29, 1990, 104 Stat. 4734; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(41), (f)(32)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–427, 2681–434; Pub. L. 111–22, div. B, §1003(a), title V, §1502(b), May 20, 2009, 123 Stat. 1664, 1701; Pub. L. 113–128, title V, §512(s), July 22, 2014, 128 Stat. 1712; Pub. L. 117–103, div. W, title VI, §605(a)(1), Mar. 15, 2022, 136 Stat. 886.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (c)(1), (d), and (e), was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The Workforce Innovation and Opportunity Act, referred to in subsec. (c)(2), is Pub. L. 113–128, July 22, 2014, 128 Stat. 1425. Title I of the Act is classified generally to subchapter I (§3111 et seq.) of chapter 32 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

AMENDMENTS

2022—Subsec. (b). Pub. L. 117–103 amended subsec. (b) generally. Prior to amendment, text read as follows: "Notwithstanding any other provision of this section, the Secretary shall consider to be homeless any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual's or family's current housing situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing."

2014—Subsec. (c)(2). Pub. L. 113–128 substituted "a homeless individual shall be eligible for assistance under title I of the Workforce Innovation and Opportunity Act" for "a homeless individual shall be eligible for assistance under title I of the Workforce Investment Act of 1998".

2009—Pub. L. 111–22 added subsecs. (a), (b), and (e), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and struck out former subsec. (a) which defined "homeless" or "homeless individual or homeless person".

1998—Subsec. (b)(2). Pub. L. 105–277, §101(f) [title VIII, §405(f)(32)], struck out "the Job Training Partnership Act or" after "assistance under".

Pub. L. 105–277, §101(f) [title VIII, §405(d)(41)], substituted "the Job Training Partnership Act or title I of the Workforce Investment Act of 1998" for "the Job Training Partnership Act".

1990—Subsec. (a). Pub. L. 101–625 inserted "or homeless person" after "homeless individual" in introductory provisions.

Subsec. (b). Pub. L. 101–645 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "A homeless individual shall be eligible for assistance under any program provided by this chapter, or by the amendments made by this Act, only if the individual complies with the income eligibility requirements otherwise applicable to such program."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–103 not effective until Oct. 1 of the first fiscal year beginning after Mar. 15, 2022, see section 4(a) of div. W of Pub. L. 117–103, set out as an Effective Date note under section 6851 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–22, div. B, title V, §1503, May 20, 2009, 123 Stat. 1702, provided that: "Except as specifically provided otherwise in this division [see Short Title of 2009 Amendment note set out under section 11301 of this title], this division and the amendments made by this division shall take effect on, and shall apply beginning on—

"(1) the expiration of the 18-month period beginning on the date of the enactment of this division [May 20, 2009], or

"(2) the expiration of the 3-month period beginning upon publication by the Secretary of Housing and Urban Development of final regulations pursuant to section 1504 [the first final regulations pursuant to section 1504 (42 U.S.C. 11301 note) were published on Dec. 5, 2011, see 76 F.R. 75994],

whichever occurs first."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(41)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(32)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

REGULATIONS

Pub. L. 111–22, div. B, §1003(b), May 20, 2009, 123 Stat. 1666, provided that: "Not later than the expiration of the 6-month period beginning upon the date of the enactment of this division [May 20, 2009], the Secretary of Housing and Urban Development shall issue regulations that provide sufficient guidance to recipients of funds under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.] to allow uniform and consistent implementation of the requirements of section 103 of such Act [42 U.S.C. 11302], as amended by subsection (a) of this section. This subsection shall take effect on the date of the enactment of this division."

CLARIFICATION OF EFFECT ON OTHER LAWS

Pub. L. 111–22, div. B, §1003(c), May 20, 2009, 123 Stat. 1666, provided that: "This section [amending this section and enacting provisions set out as a note under this section] and the amendments made by this section to section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) may not be construed to affect, alter, limit, annul, or supersede any other provision of Federal law providing a definition of 'homeless', 'homeless individual', or 'homeless person' for purposes other than such Act [42 U.S.C. 11301 et seq.], except to the extent that such provision refers to such section 103 or the definition provided in such section 103."

[1] *So in original. Probably should be "mean—".*

§11303. Funding availability and limitations

(a) Calculation

The amounts authorized in this chapter shall be in addition to any amount appropriated for the programs involved before July 22, 1987.

(b) Availability until expended

Any amount appropriated under an authorization in this chapter shall remain available until expended.

(c) Limitation

Appropriations pursuant to the authorizations in this chapter shall be made in accordance with the provisions of the Congressional Budget and Impoundment Control Act of 1974, which prohibits the consideration of any bill that would cause the deficit to exceed the levels established by the Balanced Budget and Emergency Deficit Control Act of 1985, such that it shall not increase the deficit of the Federal Government for fiscal year 1987.

(Pub. L. 100–77, title I, §104, July 22, 1987, 101 Stat. 485.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The Congressional Budget and Impoundment Control Act of 1974, referred to in subsec. (c), is Pub. L. 93–344, July 12, 1974, 88 Stat. 297. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (c), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, amended section 911 of this title, sections 602, 622, 631 to 642, and 651 to 653 of Title 2, and sections 1104 to 1106, and 1109 of Title 31, Money and Finance, repealed section 661 of Title 2, enacted provisions set out as notes under section 911 of this title and section 900 of Title 2, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

BUDGET COMPLIANCE

Pub. L. 100–628, title I, §101, Nov. 7, 1988, 102 Stat. 3227, provided that:

"(a) IN GENERAL.—This Act and the amendments made by this Act [see Short Title of 1988 Amendment note set out under section 11301 of this title] may not be construed to provide for new budget authority, budget outlays, or new entitlement authority, for fiscal year 1989 or 1990 in excess of the appropriate aggregate levels established by the concurrent resolution on the budget for such fiscal year for the programs authorized by this Act and the amendments made by this Act.

"(b) DEFINITIONS.—For purposes of this section, the terms 'budget authority', 'budget outlays', 'concurrent resolution on the budget', and 'entitlement authority' have the meanings given such terms in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622)."

§11304. Evaluation by Comptroller General

The Comptroller General of the United States may evaluate the disbursement and use of the amounts made available by appropriation Acts under the authorizations in subchapters III and IV.

(Pub. L. 100–77, title I, §105, July 22, 1987, 101 Stat. 486; Pub. L. 100–628, title I, §102(a), (b)(1), Nov. 7, 1988, 102 Stat. 3227; Pub. L. 104–316, title I, §122(t), Oct. 19, 1996, 110 Stat. 3838.)

EDITORIAL NOTES

AMENDMENTS

1996—Pub. L. 104–316 substituted "may" for "shall annually" and struck out ", and submit to the Congress an annual summary of the status of each program authorized under this chapter" before period at end.

1988—Pub. L. 100–628 substituted "Annual program summary" for "Audits" in section catchline and, in text, substituted "shall annually evaluate" for "shall evaluate" and "submit to the Congress an annual summary of the status of each program authorized under this chapter" for "submit a report to the Congress setting forth the findings of such evaluation, upon the expiration of the 4-month and 12-month periods beginning on July 22, 1987".

SUBCHAPTER II—UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS

EDITORIAL NOTES

CODIFICATION

Pub. L. 108–199, div. G, title II, §216(3), Jan. 23, 2004, 118 Stat. 394, substituted "UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS" for "INTERAGENCY COUNCIL ON THE HOMELESS" in subchapter heading.

§11311. Establishment

There is established in the executive branch an independent establishment to be known as the United States Interagency Council on Homelessness whose mission shall be to coordinate the Federal response to homelessness and to create a national partnership at every level of government and with the private sector to reduce and end homelessness in the nation while maximizing the effectiveness of the Federal Government in contributing to the end of homelessness.

(Pub. L. 100–77, title II, §201, July 22, 1987, 101 Stat. 486; Pub. L. 108–199, div. G, title II, §216(4), Jan. 23, 2004, 118 Stat. 394; Pub. L. 111–22, div. B, §1004(a)(1), May 20, 2009, 123 Stat. 1666.)

EDITORIAL NOTES

AMENDMENTS

2009—Pub. L. 111–22 inserted before period at end "whose mission shall be to coordinate the Federal response to homelessness and to create a national partnership at every level of government and with the private sector to reduce and end homelessness in the nation while maximizing the effectiveness of the Federal Government in contributing to the end of homelessness".

2004—Pub. L. 108–199 substituted "United States Interagency Council on Homelessness" for "Interagency Council on the Homeless".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–22, div. B, §1004(b), May 20, 2009, 123 Stat. 1668, provided that: "The amendments made by subsection (a) [enacting section 11318 of this title, amending this section and sections 11312, 11313, and 11315 of this title, and repealing former section 11318 of this title] shall take effect on, and shall apply beginning on, the date of the enactment of this division [May 20, 2009]."

§11312. Membership

(a) Members

The Council shall be composed of the following members:

(1) The Secretary of Agriculture, or the designee of the Secretary.

(2) The Secretary of Commerce, or the designee of the Secretary.

(3) The Secretary of Defense, or the designee of the Secretary.

(4) The Secretary of Education, or the designee of the Secretary.

(5) The Secretary of Energy, or the designee of the Secretary.

(6) The Secretary of Health and Human Services, or the designee of the Secretary.

(7) The Secretary of Housing and Urban Development, or the designee of the Secretary.

(8) The Secretary of the Interior, or the designee of the Secretary.

(9) The Secretary of Labor, or the designee of the Secretary.

(10) The Secretary of Transportation, or the designee of the Secretary.

(11) The Secretary of Veterans Affairs, or the designee of the Secretary.

(12) The Chief Executive Officer of the Corporation for National and Community Service, or the designee of the Chief Executive Officer.

(13) The Administrator of the Federal Emergency Management Agency, or the designee of the Administrator.

(14) The Administrator of General Services, or the designee of the Administrator.

(15) The Postmaster General of the United States, or the designee of the Postmaster General.

(16) The Commissioner of Social Security, or the designee of the Commissioner.

(17) The Attorney General of the United States, or the designee of the Attorney General.

(18) The Director of the Office of Management and Budget, or the designee of the Director.

(19) The Director of the Office of Faith-Based and Community Initiatives, or the designee of the Director.

(20) The Director of USA FreedomCorps, or the designee of the Director.

(22) [1] The heads of such other Federal agencies as the Council considers appropriate, or their designees.

(b) Chairperson

The Council shall elect a Chairperson and a Vice Chairperson from among its members. The positions of Chairperson and Vice Chairperson shall rotate among its members on an annual basis.

(c) Meetings

The Council shall meet at the call of its Chairperson or a majority of its members, but not less often than four times each year, and the rotation of the positions of Chairperson and Vice Chairperson required under subsection (b) shall occur at the first meeting of each year.

(d) Prohibition of additional pay

Members of the Council shall receive no additional pay, allowances, or benefits by reason of their service on the Council.

(e) Administration

The Executive Director of the Council shall report to the Chairman of the Council.

(Pub. L. 100–77, title II, §202, July 22, 1987, 101 Stat. 486; Pub. L. 101–645, title I, §101, Nov. 29, 1990, 104 Stat. 4674; Pub. L. 103–82, title IV, §405(m), Sept. 21, 1993, 107 Stat. 922; Pub. L. 106–377, §1(a)(1) [title II, §231(1)], Oct. 27, 2000, 114 Stat. 1441, 1441A–31; Pub. L. 107–95, §11, Dec. 21, 2001, 115 Stat. 920; Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 111–22, div. B, §1004(a)(2), May 20, 2009, 123 Stat. 1666.)

EDITORIAL NOTES

AMENDMENTS

2009—Subsec. (a)(16) to (20), (22). Pub. L. 111–22, §1004(a)(2)(A), added pars. (16) to (20) and redesignated former par. (16) as (22).

Subsec. (c). Pub. L. 111–22, §1004(a)(2)(B), substituted "four times each year, and the rotation of the positions of Chairperson and Vice Chairperson required under subsection (b) shall occur at the first meeting of each year" for "annually".

Subsec. (e). Pub. L. 111–22, §1004(a)(2)(C), added subsec. (e).

2001—Subsec. (c). Pub. L. 107–95 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "The Council shall meet at the call of its Chairperson or a majority of its members. The first meeting of the Council shall be held not later than 30 days after July 22, 1987."

2000—Subsec. (b). Pub. L. 106–377 inserted at end "The positions of Chairperson and Vice Chairperson shall rotate among its members on an annual basis."

1993—Subsec. (a)(12). Pub. L. 103–82 added par. (12) and struck out former par. (12) which read as follows: "The Director of the ACTION Agency, or the designee of the Director."

1990—Subsec. (a)(11) to (15). Pub. L. 101–645 added par. (11), redesignated former pars. (11) to (14) as (12) to (15), respectively, and struck out former par. (15) which read as follows: "The Administrator of Veterans' Affairs, or the designee of the Administrator."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Administrator of the Federal Emergency Management Agency" and "Administrator" substituted for "Director of the Federal Emergency Management Agency" and "Director", respectively, in subsec. (a)(13) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–22 effective on, and applicable beginning on, May 20, 2009, see section 1004(b) of Pub. L. 111–22, set out as a note under section 11311 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[1] So in original. No par. (21) has been enacted.

§11313. Functions

(a) Duties

The Council shall—

(1) not later than 12 months after July 11, 2026, develop, make available for public comment, and submit to the President and to Congress a National Strategic Plan to End Homelessness, and shall submit to the President and Congress a report every year thereafter that includes—

(A) the status of completion of the plan; and

(B) any modifications that were made to the plan and the reasons for those modifications;; [1]

(2) review all Federal activities and programs to assist homeless individuals;

(3) take such actions as may be necessary to reduce duplication among programs and activities by Federal agencies to assist homeless individuals;

(4) monitor, evaluate, and recommend improvements in programs and activities to assist homeless individuals conducted by Federal agencies, State and local governments, and private voluntary organizations;

(5) provide professional and technical assistance (by not less than 5, but in no case more than 10, regional coordinators employed by the Council, each having responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions) to States, local governments, and other public and private nonprofit organizations, in order to enable such governments and organizations to—

(A) interpret regulations and assist in the application process for Federal assistance, including grants;

(B) provide assistance on the ways in which Federal programs, other than those authorized under this chapter, may best be coordinated to complement the objectives of this chapter;

(C) develop recommendations and program ideas based on regional specific issues in serving the homeless population; and

(D) establish a schedule for biennial regional workshops to be held by the Council in each of the 10 standard Federal regions to further carry out and provide the assistance described in subparagraphs (A), (B), and (C) and other appropriate assistance as necessary, of which—

(i) not less than 5 such workshops shall be held by September 30, 1989; and

(ii) at least 1 such workshop shall be held in each of the 10 Federal regions every 2 years, beginning on September 30, 1988;

(6) encourage the creation of State Interagency Councils on Homelessness and the formulation of jurisdictional 10-year plans to end homelessness at State, city, and county levels;

(7) annually obtain from Federal agencies their identification of consumer-oriented entitlement and other resources for which persons experiencing homelessness may be eligible and the agencies' identification of improvements to ensure access; develop mechanisms to ensure access by persons experiencing homelessness to all Federal, State, and local programs for which the persons are eligible, and to verify collaboration among entities within a community that receive Federal funding under programs targeted for persons experiencing homelessness, and other programs for which persons experiencing homelessness are eligible, including mainstream programs identified by the Government Accountability Office in the reports entitled "Homelessness: Coordination and Evaluation of Programs Are Essential", issued February 26, 1999, and "Homelessness: Barriers to Using Mainstream Programs", issued July 6, 2000;

(8) conduct research and evaluation related to its functions as defined in this section;

(9) develop joint Federal agency and other initiatives to fulfill the goals of the agency;

(10) collect and disseminate information relating to homeless individuals;

(11) prepare the annual reports required in subsection (c)(2);

(12) prepare and distribute to States (including State contact persons), local governments, and other public and private nonprofit organizations, a bimonthly bulletin that describes the Federal resources available to them to assist the homeless, including current information regarding application deadlines and appropriate persons to contact in each Federal agency providing the resources;

(13) develop constructive alternatives to criminalizing homelessness and laws and policies that prohibit sleeping, feeding, sitting, resting, or lying in public spaces when there are no suitable alternatives, result in the destruction of a homeless person's property without due process, or are selectively enforced against homeless persons;

(14) not later than the expiration of the 6-month period beginning upon completion of the study requested in a letter to the Acting Comptroller General from the Chair and Ranking Member of the

House Financial Services Committee and several other members regarding various definitions of homelessness in Federal statutes, convene a meeting of representatives of all Federal agencies and committees of the House of Representatives and the Senate having jurisdiction over any Federal program to assist homeless individuals or families, local and State governments, academic researchers who specialize in homelessness, nonprofit housing and service providers that receive funding under any Federal program to assist homeless individuals or families, organizations advocating on behalf of such nonprofit providers and homeless persons receiving housing or services under any such Federal program, and homeless persons receiving housing or services under any such Federal program, at which meeting such representatives shall discuss all issues relevant to whether the definitions of "homeless" under paragraphs (1) through (4) of section 11302(a) of this title, as amended by section 1003 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, should be modified by the Congress, including whether there is a compelling need for a uniform definition of homelessness under Federal law, the extent to which the differences in such definitions create barriers for individuals to accessing services and to collaboration between agencies, and the relative availability, and barriers to access by persons defined as homeless, of mainstream programs identified by the Government Accountability Office in the two reports identified in paragraph (7) of this subsection; and shall submit transcripts of such meeting, and any majority and dissenting recommendations from such meetings, to each committee of the House of Representatives and the Senate having jurisdiction over any Federal program to assist homeless individuals or families not later than the expiration of the 60-day period beginning upon conclusion of such meeting; and

(15) testify annually before Congress, if requested.

(b) Authority

In carrying out subsection (a), the Council may—

(1) arrange national, regional, State, and local conferences for the purpose of developing and coordinating effective programs and activities to assist homeless individuals and pay for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made; [2]

(2) publish a newsletter concerning Federal, State, and local programs that are effectively meeting the needs of homeless individuals.

(c) Reports

(1) Within 90 days after July 22, 1987, and annually thereafter, the head of each Federal agency that is a member of the Council shall prepare and transmit to the Congress and the Council a report that describes—

(A) each program to assist homeless individuals administered by such agency and the number of homeless individuals served by such program;

(B) impediments, including any statutory and regulatory restrictions, to the use by homeless individuals of each such program and to obtaining services or benefits under each such program; and

(C) efforts made by such agency to increase the opportunities for homeless individuals to obtain shelter, food, and supportive services.

(2) The Council shall prepare and transmit to the President and the Congress an annual report that—

(A) assesses the nature and extent of the problems relating to homelessness and the needs of homeless individuals;

(B) provides a comprehensive and detailed description of the activities and accomplishments of the Federal Government in resolving the problems and meeting the needs assessed pursuant to subparagraph (A);

(C) describes the accomplishments and activities of the Council, in working with Federal, State, and local agencies and public and private organizations in order to provide assistance to homeless individuals;

(D) assesses the level of Federal assistance necessary to adequately resolve the problems and meet the needs assessed pursuant to subparagraph (A); and

(E) specifies any recommendations of the Council for appropriate and necessary legislative and administrative actions to resolve such problems and meet such needs.

(d) Notification of other Federal agencies

If, in monitoring and evaluating programs and activities to assist homeless individuals conducted by other Federal agencies, the Council determines that any significant problem, abuse, or deficiency exists in the administration of the program or activity of any Federal agency, the Council shall submit a notice of the determination of the Council to the Inspector General of the Federal agency (or the head of the Federal agency, in the case of a Federal agency that has no Inspector General).

(e) Program timetables

Not later than 90 days after November 7, 1988, the head of each Federal agency that is a member of the Council and responsible for administering a program under this chapter shall provide to the Council a timetable regarding program funding availability and application deadlines. The Council shall furnish such information to each State (including the State contact person).

(Pub. L. 100–77, title II, §203, July 22, 1987, 101 Stat. 487; Pub. L. 100–628, title II, §§201–203, Nov. 7, 1988, 102 Stat. 3227, 3228; Pub. L. 111–22, div. B, §1004(a)(3), (4), May 20, 2009, 123 Stat. 1666, 1668; Pub. L. 119–101, title VII, §703, July 11, 2026, 140 Stat. 956.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(5)(B) and (e), was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

Section 1003 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, referred to in subsec. (a)(14), is section 1003 of Pub. L. 111–22.

AMENDMENTS

2026—Subsec. (a)(1). Pub. L. 119–101, §703(1), substituted "July 11, 2026" for "May 20, 2009" and "submit to the President and Congress a report every year thereafter that includes—" and subpars. (A) and (B) for "update such plan annually".

Subsec. (a)(9) to (15). Pub. L. 119–101, §703(2)–(6), redesignated par. (9) relating to collecting and disseminating information as par. (10), redesignated former pars. (10) to (13) as (11) to (14), respectively, and added par. (15).

2009—Subsec. (a)(1) to (4). Pub. L. 111–22, §1004(a)(3)(A), (B), added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 111–22, §1004(a)(3)(A), (C), redesignated par. (4) as (5) and substituted "not less than 5, but in no case more than 10" for "at least 2, but in no case more than 5". Former par. (5) redesignated (9).

Subsec. (a)(6) to (13). Pub. L. 111–22, §1004(a)(3)(A), (D)–(G), added pars. (6) to (8), par. (9) relating to joint Federal agency and other initiatives to fulfill the goals of the agency, and pars. (12) and (13), redesignated former par. (5) as par. (9) relating to collection and dissemination of information, and redesignated former pars. (6) and (7) as (10) and (11), respectively.

Subsec. (b)(1). Pub. L. 111–22, §1004(a)(4), substituted "national" for "Federal" and "and pay for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made;" for "; and".

1988—Subsec. (a)(4). Pub. L. 100–628, §202(1), substituted "(by at least 2, but in no case more than 5, regional coordinators employed by the Council, each having responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions)" for ", through personnel employed by the Council in each of the 10 standard Federal regions," in introductory provisions.

Subsec. (a)(4)(A) to (D). Pub. L. 100–628, §202(2), added subpars. (A) to (D) and struck out former subpars. (A) and (B) which read as follows:

"(A) effectively coordinate and maximize resources of existing programs and activities to assist homeless

individuals; and

"(B) develop new and innovative programs and activities to assist homeless individuals;".

Subsec. (a)(7). Pub. L. 100–628, §201, added par. (7).

Subsec. (e). Pub. L. 100–628, §203, added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–22 effective on, and applicable beginning on, May 20, 2009, see section 1004(b) of Pub. L. 111–22, set out as a note under section 11311 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to transmittal to Congress of annual report, see section 3003 of Pub. L. 104–66, set out as a note under section 1113 of Title 31, Money and Finance, and the 5th item on page 175 of House Document No. 103–7.

ANNUAL SUPPLEMENTAL REPORT ON VETERANS HOMELESSNESS

Pub. L. 114–201, title IV, §404, July 29, 2016, 130 Stat. 809, provided that:

"(a) IN GENERAL.—The Secretary of Housing and Urban Development and the Secretary of Veterans Affairs, in coordination with the United States Interagency Council on Homelessness, shall submit annually to the Committees of the Congress specified in subsection (b), together with the annual reports required by such Secretaries under section 203(c)(1) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11313(c)(1)), a supplemental report that includes the following information with respect to the preceding year:

"(1) The same information, for such preceding year, that was included with respect to 2010 in the report by the Secretary of Housing and Urban Development and the Secretary of Veterans Affairs entitled 'Veterans Homelessness: A Supplemental Report to the 2010 Annual Homeless Assessment Report to Congress'.

"(2) Information regarding the activities of the Department of Housing and Urban Development relating to veterans during such preceding year, as follows:

"(A) The number of veterans provided assistance under the housing choice voucher program for Veterans Affairs supported housing under section 8(o)(19) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(19)), the socioeconomic characteristics of such homeless veterans, and the number, types, and locations of entities contracted under such section to administer the vouchers.

"(B) A summary description of the special considerations made for veterans under public housing agency plans submitted pursuant to section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) and under comprehensive housing affordability strategies submitted pursuant to section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705).

"(C) A description of the activities of the Special Assistant for Veterans Affairs of the Department of Housing and Urban Development.

"(D) A description of the efforts of the Department of Housing and Urban Development and the other members of the United States Interagency Council on Homelessness to coordinate the delivery of housing and services to veterans.

"(E) The cost to the Department of Housing and Urban Development of administering the programs and activities relating to veterans.

"(F) Any other information that the Secretary of Housing and Urban Development and the Secretary of Veterans Affairs consider relevant in assessing the programs and activities of the Department of Housing and Urban Development relating to veterans.

"(b) COMMITTEES.—The Committees of the Congress specified in this subsection are as follows:

"(1) The Committee on Banking, Housing, and Urban Affairs of the Senate.

"(2) The Committee on Veterans' Affairs of the Senate.

"(3) The Committee on Appropriations of the Senate.

"(4) The Committee on Financial Services of the House of Representatives.

"(5) The Committee on Veterans' Affairs of the House of Representatives.

"(6) The Committee on Appropriations of the House of Representatives."

PERSONNEL FROM FEDERAL DEPARTMENTS AND AGENCIES

Pub. L. 102–389, title III, Oct. 6, 1992, 106 Stat. 1608, provided in part: "That the Council shall carry out its duties in the 10 standard Federal regions under section 203(a)(4) of such Act [now 42 U.S.C. 11313(a)(5)]

only through detail, on a non-reimbursable basis, of employees of the departments and agencies represented on the Council pursuant to section 202(a) of such Act [42 U.S.C. 11312(a)]."

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 102–139, title III, Oct. 28, 1991, 105 Stat. 769.

Pub. L. 101–507, title III, Nov. 5, 1990, 104 Stat. 1377.

Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 861.

Pub. L. 100–404, title I, Aug. 19, 1988, 102 Stat. 1017.

NONIMPLEMENTATION OF SUBSECTION (A)(5)

Pub. L. 100–202, §101(f) [title I], Dec. 22, 1987, 101 Stat. 1329–187, 1329–191, provided: "That the provision in section 203(a)(4) [now 203(a)(5)] of such Act [Pub. L. 100–77, 42 U.S.C. 11313(a)(5)] that relates to employment of personnel in the regions shall not be implemented."

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12848

Ex. Ord. No. 12848, May 19, 1993, 58 F.R. 29517, required Federal member agencies acting through the Interagency Council on the Homeless to develop a single coordinated Federal plan for breaking the cycle of existing homelessness and for preventing future homelessness and to submit the plan to the President no later than 9 months after May 19, 1993.

[1] So in original. Second semicolon probably should not appear.

[2] So in original. Probably should be followed by "and".

§11314. Director and staff

(a) Director

The Council shall appoint an Executive Director, who shall be compensated at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5. The Council shall appoint an Executive Director at the first meeting of the Council held under section 11312(c) of this title.

(b) Additional personnel

With the approval of the Council, the Executive Director of the Council may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Council.

(c) Details from other agencies

Upon request of the Council, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this subchapter. Upon request of the Council, the Secretary of Health and Human Services shall detail, on a reimbursable basis, any of the personnel of the Department of Health and Human Services who have served the Federal Task Force on the Homeless of the Department to assist the Council in carrying out its duties under this subchapter.

(d) Administrative support

The Secretary of Housing and Urban Development shall provide the Council with such administrative and support services as are necessary to ensure that the Council carries out its functions under this subchapter in an efficient and expeditious manner.

(e) Experts and consultants

With the approval of the Council, the Executive Director of the Council may procure temporary and intermittent services under section 3109(b) of title 5.

(Pub. L. 100–77, title II, §204, July 22, 1987, 101 Stat. 488.)

§11315. Powers

(a) Meetings

For the purpose of carrying out this subchapter, the Council may hold such meetings, and sit and act at such times and places, as the Council considers appropriate.

(b) Delegation

Any member or employee of the Council may, if authorized by the Council, take any action that the Council is authorized to take in this subchapter.

(c) Information

The Council may secure directly from any Federal agency such information as may be necessary to enable the Council to carry out this subchapter. Upon request of the Chairperson of the Council, the head of such agency shall furnish such information to the Council.

(d) Donations

The Council may accept, use, and dispose of gifts or donations of services or property, both real and personal, public and private, without fiscal year limitation, for the purpose of aiding or facilitating the work of the Council.

(e) Mails

The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(Pub. L. 100–77, title II, §205, July 22, 1987, 101 Stat. 488; Pub. L. 111–22, div. B, §1004(a)(5), May 20, 2009, 123 Stat. 1668.)

EDITORIAL NOTES

AMENDMENTS

2009—Subsec. (d). Pub. L. 111–22 substituted "property, both real and personal, public and private, without fiscal year limitation, for the purpose of aiding or facilitating the work of the Council." for "property."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–22 effective on, and applicable beginning on, May 20, 2009, see section 1004(b) of Pub. L. 111–22, set out as a note under section 11311 of this title.

§11316. Transfer of functions

(a) Transfers from HHS Task Force

The Council shall be the successor to the Federal Task Force on the Homeless of the Department of Health and Human Services. The property, records, and undistributed program funds of the Task Force shall be transferred to the Council.

(b) Termination of HHS Task Force

The Secretary of Health and Human Services shall terminate the Federal Task Force on the Homeless of the Department of Health and Human Services as soon as practicable following the first meeting of the Council.

(Pub. L. 100–77, title II, §206, July 22, 1987, 101 Stat. 489.)

§11317. Definitions

For purposes of this subchapter:

(1) The term "Council" means the United States Interagency Council on Homelessness established in section 11311 of this title.

(2) The term "Federal agency" has the meaning given the term "agency" in section 551(1) of title 5.

(Pub. L. 100–77, title II, §207, July 22, 1987, 101 Stat. 489; Pub. L. 108–199, div. G, title II, §216(4), Jan. 23, 2004, 118 Stat. 394.)

EDITORIAL NOTES

AMENDMENTS

2004—Par. (1). Pub. L. 108–199 substituted "United States Interagency Council on Homelessness" for "Interagency Council on the Homeless".

§11318. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $3,000,000 for fiscal year 2010 and such sums as may be necessary for fiscal years 2011. Any amounts appropriated to carry out this subchapter shall remain available until expended.

(Pub. L. 100–77, title II, §208, as added Pub. L. 111–22, div. B, §1004(a)(6), May 20, 2009, 123 Stat. 1668.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11318, Pub. L. 100–77, title II, §208, July 22, 1987, 101 Stat. 489; Pub. L. 100–628, title II, §204, Nov. 7, 1988, 102 Stat. 3228; Pub. L. 101–645, title I, §102, Nov. 29, 1990, 104 Stat. 4674; Pub. L. 102–550, title XIV, §1421, Oct. 28, 1992, 106 Stat. 4043, which authorized appropriations for fiscal years 1993 and 1994, was repealed by Pub. L. 111–22, div. B, §1004(a)(6), (b), May 20, 2009, 123 Stat. 1668, effective on, and applicable beginning on, May 20, 2009.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on, and applicable beginning on, May 20, 2009, see section 1004(b) of Pub L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11311 of this title.

§11319. Termination

The Council shall cease to exist, and the requirements of this subchapter shall terminate, on October 1, 2028 [1]

(Pub. L. 100–77, title II, §209, July 22, 1987, 101 Stat. 489; Pub. L. 100–628, title II, §205, Nov. 7, 1988, 102 Stat. 3228; Pub. L. 101–402, §2, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101–645, title I, §103, Nov. 29, 1990, 104 Stat. 4675; Pub. L. 102–550, title XIV, §1422, Oct. 28, 1992, 106 Stat. 4043; Pub. L. 106–377, §1(a)(1) [title II, §231(2)], Oct. 27, 2000, 114 Stat. 1441, 1441A–31; Pub. L. 109–115, div. A, title VI, Nov. 30, 2005, 119 Stat. 2490; Pub. L. 110–161, div. K, title III, Dec. 26, 2007, 121 Stat. 2443; Pub. L. 111–8, div. I, title III, Mar. 11, 2009, 123 Stat. 985; Pub. L. 112–10, div. B, title XII, §2255, Apr. 15, 2011, 125 Stat. 197; Pub. L. 112–55, div. C, title III, Nov. 18, 2011, 125 Stat. 707; Pub. L. 113–76, div. L, title III, Jan. 17, 2014, 128 Stat. 640; Pub. L. 113–235, div. K, title III, Dec. 16, 2014, 128 Stat. 2763; Pub. L. 115–31, div. K, title III, May 5, 2017, 131 Stat. 792;

Pub. L. 115–141, div. L, title III, Mar. 23, 2018, 132 Stat. 1041; Pub. L. 116–6, div. G, title III, Feb. 15, 2019, 133 Stat. 469.)

EDITORIAL NOTES

AMENDMENTS

2019—Pub. L. 116–6 amended Pub. L. 115–141. See 2018 Amendment note below.

2018—Pub. L. 115–141, as amended by Pub. L. 116–6, substituted "October 1, 2028" for "October 1, 2018".

2017—Pub. L. 115–31 substituted "October 1, 2018" for "October 1, 2017".

2014—Pub. L. 113–235 substituted "October 1, 2017" for "October 1, 2016".

Pub. L. 113–76 substituted "October 1, 2016" for "October 1, 2015".

2011—Pub. L. 112–55 substituted "October 1, 2015" for "October 1, 2013."

Pub. L. 112–10 substituted "October 1, 2013." for "October 1, 2010."

2009—Pub. L. 111–8 substituted "2010" for "2008".

2007—Pub. L. 110–161, which directed the amendment of this section by striking "2007" and inserting "2008", was executed by substituting "2008" for "2006" to reflect the probable intent of Congress.

2005—Pub. L. 109–115 substituted "2006" for "2005".

2000—Pub. L. 106–377 substituted "2005" for "1994".

1992—Pub. L. 102–550 substituted "October 1, 1994" for "October 1, 1992".

1990—Pub. L. 101–645 substituted "October 1, 1992" for "October 31, 1990".

Pub. L. 101–402 substituted "October 31, 1990" for "October 1, 1990".

1988—Pub. L. 100–628 substituted "on October 1, 1990" for "upon the expiration of the 3-year period beginning on July 22, 1987".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–402 deemed to have taken effect as if enacted Sept. 29, 1990, see section 1(a) of Pub. L. 101–494, set out as an Effective Date of Temporary Extension of Emergency Low Income Housing Preservation Act of 1987 and Correction of Any Repeal note under section 1715l of Title 12, Banks and Banking.

TEMPORARY EXTENSION OF PROVISIONS

Pub. L. 109–289, div. B, title II, §21042, as added by Pub. L. 110–5, §2, Feb. 15, 2007, 121 Stat. 53, provided that: "The provisions of title II of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11311 et seq.) shall continue in effect, notwithstanding section 209 of such Act [this section], through the earlier of: (1) the date specified in section 106 of this division [Sept. 30, 2007]; or (2) the date of the enactment into law of an authorization Act relating to the McKinney-Vento Homeless Assistance Act."

TEMPORARY EXTENSION OF COUNCIL

Pub. L. 101–494, §3, Oct. 31, 1990, 104 Stat. 1185, as amended by Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that:

"(a) EXTENSION.—If upon enactment of this Act [Oct. 31, 1990], section 209 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11319) provides for the termination of the Interagency Council on the Homeless on October 31, 1990, then notwithstanding such section, the Interagency Council on the Homeless shall cease to exist, and the requirements of title II of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11311 et seq.] shall terminate, on November 30, 1990.

"(b) LIMITATIONS.—If upon enactment of this Act [Oct. 31, 1990] such section 209 provides for termination of the Council (referred to in subsection (a)) on a date other than October 31, 1990, this section shall not apply. This section shall not apply with respect to any amendment to section 209 of the McKinney-Vento Homeless Assistance Act made after the date of the enactment of this Act."

[1] *So in original. Probably should be followed by a period.*

§11320. Encouragement of State involvement

(a) State contact persons

Each State shall designate an individual to serve as a State contact person for the purpose of receiving and disseminating information and communications received from the Council, including the bimonthly bulletin described in section 11313(a)(7) [1] of this title.

(b) State interagency councils and lead agencies

Each State is encouraged to establish a State interagency council on the homeless or designate a lead agency for the State for the purpose of assuming primary responsibility for coordinating and interacting with the Council and State and local agencies as necessary.

(Pub. L. 100–77, title II, §210, as added Pub. L. 100–628, title II, §206(a), Nov. 7, 1988, 102 Stat. 3229.)

EDITORIAL NOTES

REFERENCES IN TEXT

Par. (7) of section 11313(a) of this title, referred to in subsec. (a), was redesignated par. (11) of section 11313(a) by Pub. L. 111–22, div. B, §1004(a)(3)(A), May 20, 2009, 123 Stat. 1667.

[1] *See References in Text note below.*

SUBCHAPTER III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

PART A—ADMINISTRATIVE PROVISIONS

§11331. Emergency Food and Shelter Program National Board

(a) Establishment

There is established to carry out the provisions of this subchapter the Emergency Food and Shelter Program National Board. The Administrator of the Federal Emergency Management Agency shall constitute the National Board in accordance with subsection (b) in administering the program under this subchapter.

(b) Members

The National Board shall consist of the Director and 6 members appointed by the Director. The initial members of the National Board shall be appointed by the Director not later than 30 days after July 22, 1987. Each such member shall be appointed from among individuals nominated by 1 of the following organizations:

(1) The United Way of America.
(2) The Salvation Army.
(3) The National Council of Churches of Christ in the U.S.A.
(4) Catholic Charities U.S.A.
(5) The Council of Jewish Federations, Inc.
(6) The American Red Cross.

(c) Chairperson

The Director shall be the Chairperson of the National Board.

(d) Other activities

Except as otherwise specifically provided in this subchapter, the National Board shall establish its own procedures and policies for the conduct of its affairs.

(e) Transfers from previous national board

Upon the appointment of members to the National Board under subsection (b)—

(1) the national board constituted under the emergency food and shelter program established pursuant to section 101(g) of Public Law 99–500 or Public Law 99–591 shall cease to exist; and

(2) the personnel, property, records, and undistributed program funds of such national board shall be transferred to the National Board.

(Pub. L. 100–77, title III, §301, July 22, 1987, 101 Stat. 489; Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410.)

EDITORIAL NOTES

REFERENCES IN TEXT

The emergency food and shelter program established pursuant to section 101(g) of Public Law 99–500 or Public Law 99–591, referred to in subsec. (e)(1), means the emergency food and shelter program authorized by title II of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99–500, Oct. 18, 1986, 100 Stat. 1783–242, and Pub. L. 99–591, Oct. 30, 1986, 100 Stat. 3341–242, which is not classified to the Code.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Administrator of the Federal Emergency Management Agency" substituted for "Director of the Federal Emergency Management Agency" in subsec. (a) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§11332. Local boards

(a) Establishment

Each locality designated by the National Board shall constitute a local board for the purpose of determining how program funds allotted to the locality will be distributed. The local board shall consist, to the extent practicable, of representatives of the same organizations as the National Board, except that the mayor or other appropriate heads of government will replace the Federal members, and except that each local board administering program funds for a locality within which is located a reservation (as such term is defined in section 1452(d) of title 25,[1] or a portion thereof, shall include a board member who is a member of an Indian tribe (as such term is defined in section 5302(a)(17)

of this title.[1] The chairperson of the local board shall be elected by a majority of the members of the local board. Local boards are encouraged to expand participation of other private nonprofit organizations on the local board.

(b) Responsibilities

Each local board shall—

(1) determine which private nonprofit organizations or public organizations of the local government in the individual locality shall receive grants to act as service providers;

(2) monitor recipient service providers for program compliance;

(3) reallocate funds among service providers;

(4) ensure proper reporting; and

(5) coordinate with other Federal, State, and local government assistance programs available in the locality.

(Pub. L. 100–77, title III, §302, July 22, 1987, 101 Stat. 490; Pub. L. 101–645, title II, §202(a), Nov. 29, 1990, 104 Stat. 4675.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–645 inserted before period at end of second sentence ", and except that each local board administering program funds for a locality within which is located a reservation (as such term is defined in section 1452(d) of title 25, or a portion thereof, shall include a board member who is a member of an Indian tribe (as such term is defined in section 5302(a)(17) of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

IMPLEMENTATION OF 1990 AMENDMENT

Pub. L. 101–645, title II, §202(b), Nov. 29, 1990, 104 Stat. 4675, provided that: "Each local board under the Emergency Food and Shelter Program whose membership shall include a member of an Indian tribe by reason of the amendment made by subsection (a) [amending this section] shall comply with the requirement made by such amendment not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Nov. 29, 1990]."

[1] So in original. A closing parenthesis probably should precede the punctuation.

§11333. Role of Federal Emergency Management Agency

(a) In general

The Director shall provide the National Board with administrative support and act as Federal liaison to the National Board.

(b) Specific support activities

The Director shall—

(1) make available to the National Board, upon request, the services of the legal counsel and Inspector General of the Federal Emergency Management Agency;

(2) assign clerical personnel to the National Board on a temporary basis; and

(3) conduct audits of the National Board annually and at such other times as may be appropriate.

(Pub. L. 100–77, title III, §303, July 22, 1987, 101 Stat. 490.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§11334. Records and audit of National Board and recipients of assistance

(a) Annual independent audit of National Board

(1) The accounts of the National Board shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the National Board are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the National Board and necessary to facilitate the audits shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(2) The report of each such independent audit shall be included in the annual report required in section 11335 of this title. Such report shall set forth the scope of the audit and include such statements as are necessary to present fairly the assets and liabilities of the National Board, surplus or deficit, with an analysis of the changes during the year, supplemented in reasonable detail by a statement of the income and expenses of the National Board during the year, and a statement of the application of funds, together with the opinion of the independent auditor of such statements.

(b) Access to records of recipients of assistance

(1) Each recipient of assistance under this subchapter shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The National Board, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subchapter.

(c) Authority of Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access to any books, documents, papers, and records of the National Board and recipients for such purpose.

(Pub. L. 100–77, title III, §304, July 22, 1987, 101 Stat. 491.)

§11335. Annual report

The National Board shall transmit to the Congress an annual report covering each year in which it conducts activities with funds made available under this subchapter.

(Pub. L. 100–77, title III, §305, July 22, 1987, 101 Stat. 491.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under this section is listed in the 4th item on page 169), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

PART B—EMERGENCY FOOD AND SHELTER GRANTS

§11341. Grants by Director

Not later than 30 days following the date on which appropriations become available to carry out this part, the Director shall award a grant for the full amount that the Congress appropriates for the program under this part to the National Board for the purpose of providing emergency food and shelter to needy individuals through private nonprofit organizations and local governments in accordance with section 11343 of this title.

(Pub. L. 100–77, title III, §311, July 22, 1987, 101 Stat. 492.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§11342. Retention of interest earned

Interest accrued on the balance of any grant to the National Board shall be available to the National Board for reallocation, and total administrative costs shall be determined based on total amount of funds available, including interest and any private contributions that are made to the National Board.

(Pub. L. 100–77, title III, §312, July 22, 1987, 101 Stat. 492.)

§11343. Purposes of grants

(a) Eligible activities

Grants to the National Board may be used—

(1) to supplement and expand ongoing efforts to provide shelter, food, and supportive services for homeless individuals with sensitivity to the transition from temporary shelter to permanent homes, and attention to the special needs of homeless individuals with mental and physical disabilities and illnesses, and to facilitate access for homeless individuals to other sources of services and benefits;

(2) to strengthen efforts to create more effective and innovative local programs by providing

funding for them; and

(3) to conduct minimum rehabilitation of existing mass shelter or mass feeding facilities, but only to the extent necessary to make facilities safe, sanitary, and bring them into compliance with local building codes.

(b) Limitations on activities

(1) The National Board may only provide funding provided under this part for—

(A) programs undertaken by private nonprofit organizations and local governments; and

(B) programs that are consistent with the purposes of this subchapter.

(2) The National Board may not carry out programs directly.

(Pub. L. 100–77, title III, §313, July 22, 1987, 101 Stat. 492.)

§11344. Limitation on certain costs

Not more than 5 percent of the total amount appropriated for the emergency food and shelter program for each fiscal year may be expended for the costs of administration.

(Pub. L. 100–77, title III, §314, July 22, 1987, 101 Stat. 492.)

§11345. Disbursement of funds

Any amount made available by appropriation Acts under this subchapter shall be disbursed by the National Board before the expiration of the 3-month period beginning on the date on which such amount becomes available.

(Pub. L. 100–77, title III, §315, July 22, 1987, 101 Stat. 492.)

§11346. Program guidelines

(a) Guidelines

The National Board shall establish written guidelines for carrying out the program under this part, including—

(1) methods for identifying localities with the highest need for emergency food and shelter assistance;

(2) methods for determining the amount and distribution to such localities;

(3) eligible program costs, including maximum flexibility in meeting currently existing needs;

(4) guidelines specifying the responsibilities and reporting requirements of the National Board, its recipients, and service providers;

(5) guidelines requiring each private nonprofit organization and local government carrying out a local emergency food and shelter program with amounts provided under this part, to the maximum extent practicable, to involve homeless individuals and families, through employment, volunteer services, or otherwise, in providing emergency food and shelter and in otherwise carrying out the local program; and

(6) guidelines requiring each private nonprofit organization and local government carrying out a local emergency food and shelter program with amounts provided under this part to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of the organization or governmental agency to the extent that such entity considers and makes policies and decisions regarding the local program of the organization or locality; except that such guidelines may grant waivers to applicants unable to meet such requirement if the organization or government agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(b) Publication

Guidelines established under subsection (a) shall be published annually, and whenever modified, in the Federal Register. The National Board shall not be subject to the procedural rulemaking requirements of subchapter II of chapter 5 of title 5.

(Pub. L. 100–77, title III, §316, July 22, 1987, 101 Stat. 493; Pub. L. 102–550, title XIV, §1432, Oct. 28, 1992, 106 Stat. 4043.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (a)(5), (6). Pub. L. 102–550 added pars. (5) and (6).

PART C—GENERAL PROVISIONS

§11351. Definitions

For purposes of this subchapter:

(1) The term "Director" means the Administrator of the Federal Emergency Management Agency.

(2) The term "emergency shelter" means a facility all or a part of which is used or designed to be used to provide temporary housing.

(3) The term "local government" means a unit of general purpose local government.

(4) The term "locality" means the geographical area within the jurisdiction of a local government.

(5) The term "National Board" means the Emergency Food and Shelter Program National Board.

(6) The term "private nonprofit organization" means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Director; and

(D) that practices nondiscrimination in the provision of assistance.

(7) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 100–77, title III, §321, July 22, 1987, 101 Stat. 493; Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Administrator of the Federal Emergency Management Agency" substituted for "Director of the Federal Emergency Management Agency" in par. (1) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§11352. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $180,000,000 for fiscal year 1993 and $187,560,000 for fiscal year 1994.

(Pub. L. 100–77, title III, §322, July 22, 1987, 101 Stat. 493; Pub. L. 100–628, title III, §302, Nov. 7, 1988, 102 Stat. 3229; Pub. L. 101–645, title II, §201, Nov. 29, 1990, 104 Stat. 4675; Pub. L. 102–550, title XIV, §1431, Oct. 28, 1992, 106 Stat. 4043.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out this subchapter $150,000,000 for each of fiscal years 1991 and 1992."

1990—Pub. L. 101–645 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out this subchapter $129,000,000 for fiscal year 1989 and $134,000,000 for fiscal year 1990."

1988—Pub. L. 100–628 amended section generally, substituting "$129,000,000 for fiscal year 1989 and $134,000,000 for fiscal year 1990" for "$15,000,000 for fiscal year 1987 and $124,000,000 for fiscal year 1988".

SUBCHAPTER IV—HOUSING ASSISTANCE

EDITORIAL NOTES

CODIFICATION

Pub. L. 101–625, title VIII, §§821, 823, Nov. 28, 1990, 104 Stat. 4331, 4355, which provided for the amendment of this subchapter generally and provided for implementation, transition, and a prospective effective date for the amendment, was repealed by Pub. L. 102–550, title XIV, §1410, Oct. 28, 1992, 106 Stat. 4038, which provided that: "The Cranston-Gonzalez National Affordable Housing Act is amended by striking sections 821 and 823 (42 U.S.C. 11361 note). The amendment made by such section 821 of such Act shall not take effect."

PART A—GENERAL PROVISIONS

EDITORIAL NOTES

CODIFICATION

Pub. L. 111–22, div. B, title I, §1101(1), May 20, 2009, 123 Stat. 1669, substituted "General Provisions" for "Comprehensive Homeless Assistance Plan" in heading.

§11360. Definitions

For purposes of this subchapter:

(1) At risk of homelessness

The term "at risk of homelessness" means, with respect to an individual or family, that the individual or family—

(A) has income below 30 percent of median income for the geographic area;

(B) has insufficient resources immediately available to attain housing stability; and

(C)(i) has moved frequently because of economic reasons;

(ii) is living in the home of another because of economic hardship;

(iii) has been notified that their right to occupy their current housing or living situation will be terminated;

(iv) lives in a hotel or motel;

(v) lives in severely overcrowded housing;

(vi) is exiting an institution; or

(vii) otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.

Such term includes all families with children and youth defined as homeless under other Federal statutes.

(2) Chronically homeless

(A) In general

The term "chronically homeless" means, with respect to an individual or family, that the individual or family—

(i) is homeless and lives or resides in a place not meant for human habitation, a safe haven, or in an emergency shelter;

(ii) has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least 1 year or on at least 4 separate occasions in the last 3 years; and

(iii) has an adult head of household (or a minor head of household if no adult is present in the household) with a diagnosable substance use disorder, serious mental illness, developmental disability (as defined in section 15002 of this title), post traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic physical illness or disability, including the co-occurrence of 2 or more of those conditions.

(B) Rule of construction

A person who currently lives or resides in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital or other similar facility, and has resided there for fewer than 90 days shall be considered chronically homeless if such person met all of the requirements described in subparagraph (A) prior to entering that facility.

(3) Collaborative applicant

The term "collaborative applicant" means an entity that—

(A) carries out the duties specified in section 11360a of this title;

(B) serves as the applicant for project sponsors who jointly submit a single application for a grant under part C in accordance with a collaborative process; and

(C) if the entity is a legal entity and is awarded such grant, receives such grant directly from the Secretary.

(4) Collaborative application

The term "collaborative application" means an application for a grant under part C that—

(A) satisfies section 11382 of this title; and

(B) is submitted to the Secretary by a collaborative applicant.

(5) Consolidated Plan

The term "Consolidated Plan" means a comprehensive housing affordability strategy and community development plan required in part 91 of title 24, Code of Federal Regulations.

(6) Eligible entity

The term "eligible entity" means, with respect to a part, a public entity, a private entity, or an entity that is a combination of public and private entities, that is eligible to directly receive grant amounts under such part.

(7) Families with children and youth defined as homeless under other Federal statutes

The term "families with children and youth defined as homeless under other Federal statutes" means any children or youth that are defined as "homeless" under any Federal statute other than this part, but are not defined as homeless under section 11302 of this title, and shall also include the parent, parents, or guardian of such children or youth under part B of subchapter VI this [1] chapter (42 U.S.C. 11431 et seq.).

(8) Formula area

The term "formula area" has the meaning given the term in section 1000.302 of title 24, Code of Federal Regulations, or any successor regulation.

(9) Geographic area

The term "geographic area" means a State, metropolitan city, urban county, town, village, or other nonentitlement area, a formula area, or a combination or consortia of such, in the United States, as described in section 5306 of this title.

(10) Homeless individual with a disability

(A) In general

The term "homeless individual with a disability" means an individual who is homeless, as defined in section 11302 of this title, and has a disability that—

(i)(I) is expected to be long-continuing or of indefinite duration;

(II) substantially impedes the individual's ability to live independently;

(III) could be improved by the provision of more suitable housing conditions; and

(IV) is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post traumatic stress disorder, or brain injury;

(ii) is a developmental disability, as defined in section 15002 of this title; or

(iii) is the disease of acquired immunodeficiency syndrome or any condition arising from the etiologic agency for acquired immunodeficiency syndrome.

(B) Rule

Nothing in clause (iii) of subparagraph (A) shall be construed to limit eligibility under clause (i) or (ii) of subparagraph (A).

(11) Indian Tribe

The term "Indian Tribe" has the meaning given the term "Indian tribe" in section 4103 of title 25.

(12) Legal entity

The term "legal entity" means—

(A) an entity described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title;

(B) an instrumentality of State or local government; or

(C) a consortium of instrumentalities of State or local governments that has constituted itself as an entity.

(13) Metropolitan city; urban county; nonentitlement area

The terms "metropolitan city", "urban county", and "nonentitlement area" have the meanings given such terms in section 5302(a) of this title.

(14) New

The term "new" means, with respect to housing, that no assistance has been provided under this subchapter for the housing.

(15) Operating costs

The term "operating costs" means expenses incurred by a project sponsor operating transitional housing or permanent housing under this subchapter with respect to—

(A) the administration, maintenance, repair, and security of such housing;

(B) utilities, fuel, furnishings, and equipment for such housing; or

(C) coordination of services as needed to ensure long-term housing stability.

(16) Outpatient health services

The term "outpatient health services" means outpatient health care services, mental health services, and outpatient substance abuse services.

(17) Permanent housing

The term "permanent housing" means community-based housing without a designated length of stay, and includes both permanent supportive housing and permanent housing without supportive services.

(18) Personally identifying information

The term "personally identifying information" means individually identifying information for or about an individual, including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including—

(A) a first and last name;

(B) a home or other physical address;

(C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(D) a social security number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information, would serve to identify any individual.

(19) Private nonprofit organization

The term "private nonprofit organization" means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of assistance.

(20) Project

The term "project" means, with respect to activities carried out under part C, eligible activities described in section 11383(a) of this title, undertaken pursuant to a specific endeavor, such as serving a particular population or providing a particular resource.

(21) Project-based

The term "project-based" means, with respect to rental assistance, that the assistance is provided pursuant to a contract that—

(A) is between—

(i) the recipient or a project sponsor; and

(ii) an owner of a structure that exists as of the date the contract is entered into; and

(B) provides that rental assistance payments shall be made to the owner and that the units in the structure shall be occupied by eligible persons for not less than the term of the contract.

(22) Project sponsor

The term "project sponsor" means, with respect to proposed eligible activities, the organization directly responsible for carrying out the proposed eligible activities.

(23) Recipient

Except as used in part B, the term "recipient" means an eligible entity who—

(A) submits an application for a grant under section 11382 of this title that is approved by the Secretary;

(B) receives the grant directly from the Secretary to support approved projects described in the application; and

(C)(i) serves as a project sponsor for the projects; or

(ii) awards the funds to project sponsors to carry out the projects.

(24) Secretary

The term "Secretary" means the Secretary of Housing and Urban Development.

(25) Serious mental illness

The term "serious mental illness" means a severe and persistent mental illness or emotional impairment that seriously limits a person's ability to live independently.

(26) Solo applicant

The term "solo applicant" means an entity that is an eligible entity, directly submits an application for a grant under part C to the Secretary, and, if awarded such grant, receives such grant directly from the Secretary.

(27) Sponsor-based

The term "sponsor-based" means, with respect to rental assistance, that the assistance is provided pursuant to a contract that—

(A) is between—

(i) the recipient or a project sponsor; and

(ii) an independent entity that—

(I) is a private organization; and

(II) owns or leases dwelling units; and

(B) provides that rental assistance payments shall be made to the independent entity and that eligible persons shall occupy such assisted units.

(28) State

Except as used in part B, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(29) Supportive services

The term "supportive services" means services that address the special needs of people served by a project, including—

(A) the establishment and operation of a child care services program for families experiencing homelessness;

(B) the establishment and operation of an employment assistance program, including providing job training;

(C) the provision of outpatient health services, food, and case management;

(D) the provision of assistance in obtaining permanent housing, employment counseling, and nutritional counseling;

(E) the provision of outreach services, advocacy, life skills training, and housing search and counseling services;

(F) the provision of mental health services, trauma counseling, and victim services;

(G) the provision of assistance in obtaining other Federal, State, and local assistance available for residents of supportive housing (including mental health benefits, employment counseling, and medical assistance, but not including major medical equipment);

(H) the provision of legal services for purposes including requesting reconsiderations and appeals of veterans and public benefit claim denials and resolving outstanding warrants that interfere with an individual's ability to obtain and retain housing;

(I) the provision of—

(i) transportation services that facilitate an individual's ability to obtain and maintain employment; and

(ii) health care; and

(J) other supportive services necessary to obtain and maintain housing.

(30) Tenant-based

The term "tenant-based" means, with respect to rental assistance, assistance that—

(A) allows an eligible person to select a housing unit in which such person will live using rental assistance provided under part C, except that if necessary to assure that the provision of supportive services to a person participating in a program is feasible, a recipient or project sponsor may require that the person live—

(i) in a particular structure or unit for not more than the first year of the participation;

(ii) within a particular geographic area for the full period of the participation, or the period remaining after the period referred to in subparagraph (A); and

(B) provides that a person may receive such assistance and move to another structure, unit, or geographic area if the person has complied with all other obligations of the program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

(31) Transitional housing

The term "transitional housing" means housing the purpose of which is to facilitate the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period as the Secretary determines necessary.

(32) Unified funding agency

The term "unified funding agency" means a collaborative applicant that performs the duties described in section 11360a(g) of this title.

(33) Underserved populations

The term "underserved populations" includes populations underserved because of geographic location, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Secretary, as appropriate.

(34) Victim service provider

The term "victim service provider" means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. Such term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

(35) Victim services

The term "victim services" means services that assist domestic violence, dating violence, sexual assault, or stalking victims, including services offered by rape crisis centers and domestic violence shelters, and other organizations, with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(Pub. L. 100–77, title IV, §401, as added Pub. L. 111–22, div. B, title I, §1101(3), May 20, 2009, 123 Stat. 1669; amended Pub. L. 116–260, div. Q, title I, §102(a)(1), Dec. 27, 2020, 134 Stat. 2165.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 401 of Pub. L. 100–77 was renumbered section 403 and is classified to section 11361 of this title.

AMENDMENTS

2020—Par. (8). Pub. L. 116–260, §102(a)(1)(C), added par. (8). Former par. (8) redesignated (9).

Par. (9). Pub. L. 116–260, §102(a)(1)(B), (D), redesignated par. (8) as (9) and inserted "a formula area," after "nonentitlement area,".

Par. (10). Pub. L. 116–260, §102(a)(1)(B), redesignated par. (9) as (10). Former par. (10) redesignated (12).

Par. (11). Pub. L. 116–260, §102(a)(1)(E), added par. (11). Former par. (11) redesignated (13).

Pars. (12) to (35). Pub. L. 116–260, §102(a)(1)(A), redesignated pars. (10) to (33) as (12) to (35), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

HEARTH ACT TECHNICAL CORRECTIONS

Pub. L. 112–141, div. F, title II, §100261, July 6, 2012, 126 Stat. 978, provided that: "For purposes of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.)—

"(1) the term 'local government' includes an instrumentality of a unit of general purpose local government other than a public housing agency that is established pursuant to legislation and designated by the chief executive to act on behalf of the local government with regard to activities funded under such title IV and includes a combination of general purpose local governments, such as an association of governments, that is recognized by the Secretary of Housing and Urban Development;

"(2) the term 'State' includes any instrumentality of any of the several States designated by the Governor to act on behalf of the State and does not include the District of Columbia;

"(3) for purposes of environmental review, the Secretary of Housing and Urban Development shall continue to permit assistance and projects to be treated as assistance for special projects that are subject to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547), and subject to the regulations issued by the Secretary of Housing and Urban Development to implement such section; and

"(4) a metropolitan city and an urban county that each receive an allocation under such title IV and are located within a geographic area that is covered by a single continuum of care may jointly request the Secretary of Housing and Urban Development to permit the urban county or the metropolitan city, as agreed to by such county and city, to receive and administer their combined allocations under a single grant."

DEFINITIONS

For provisions relating to definitions of "State" and "local government" as used in this section, see section 100261 of Pub. L. 112–141, set out as a HEARTH Act Technical Corrections note above.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] *So in original. Probably should be "of this".*

§11360a. Collaborative applicants

(a) Establishment and designation

A collaborative applicant shall be established for a geographic area by the relevant parties in that geographic area to—

(1) submit an application for amounts under this part; and

(2) perform the duties specified in subsection (f) and, if applicable, subsection (g).

(b) No requirement to be a legal entity

An entity may be established to serve as a collaborative applicant under this section without being a legal entity.

(c) Remedial action

If the Secretary finds that a collaborative applicant for a geographic area does not meet the requirements of this section, or if there is no collaborative applicant for a geographic area, the Secretary may take remedial action to ensure fair distribution of grant amounts under part C to eligible entities within that area. Such measures may include designating another body as a collaborative applicant, or permitting other eligible entities to apply directly for grants.

(d) Construction

Nothing in this section shall be construed to displace conflict of interest or government fair practices laws, or their equivalent, that govern applicants for grant amounts under parts B and C.

(e) Appointment of agent

(1) In general

Subject to paragraph (2), a collaborative applicant may designate an agent to—

(A) apply for a grant under section 11382(c) of this title;

(B) receive and distribute grant funds awarded under part C; and

(C) perform other administrative duties.

(2) Retention of duties

Any collaborative applicant that designates an agent pursuant to paragraph (1) shall regardless of such designation retain all of its duties and responsibilities under this subchapter.

(f) Duties

A collaborative applicant shall—

(1) design a collaborative process for the development of an application under part C, and for evaluating the outcomes of projects for which funds are awarded under part B, in such a manner as to provide information necessary for the Secretary—

(A) to determine compliance with—

(i) the program requirements under section 11386 of this title; and

(ii) the selection criteria described under section 11386a of this title; and

(B) to establish priorities for funding projects in the geographic area involved;

(2) participate in the Consolidated Plan for the geographic area served by the collaborative applicant; and

(3) ensure operation of, and consistent participation by, project sponsors in a community-wide homeless management information system (in this subsection referred to as "HMIS") that—

(A) collects unduplicated counts of individuals and families experiencing homelessness;

(B) analyzes patterns of use of assistance provided under parts B and C for the geographic area involved;

(C) provides information to project sponsors and applicants for needs analyses and funding priorities; and

(D) is developed in accordance with standards established by the Secretary, including standards that provide for—

(i) encryption of data collected for purposes of HMIS;

(ii) documentation, including keeping an accurate accounting, proper usage, and disclosure, of HMIS data;

(iii) access to HMIS data by staff, contractors, law enforcement, and academic researchers;

(iv) rights of persons receiving services under this subchapter;

(v) criminal and civil penalties for unlawful disclosure of data; and

(vi) such other standards as may be determined necessary by the Secretary.

(g) Unified funding

(1) In general

In addition to the duties described in subsection (f), a collaborative applicant shall receive from the Secretary and distribute to other project sponsors in the applicable geographic area funds for projects to be carried out by such other project sponsors, if—

(A) the collaborative applicant—

(i) applies to undertake such collection and distribution responsibilities in an application submitted under this part; and

(ii) is selected to perform such responsibilities by the Secretary; or

(B) the Secretary designates the collaborative applicant as the unified funding agency in the geographic area, after—

(i) a finding by the Secretary that the applicant—

(I) has the capacity to perform such responsibilities; and

(II) would serve the purposes of this chapter as they apply to the geographic area; and

(ii) the Secretary provides the collaborative applicant with the technical assistance necessary to perform such responsibilities as such assistance is agreed to by the collaborative applicant.

(2) Required actions by a unified funding agency

A collaborative applicant that is either selected or designated as a unified funding agency for a geographic area under paragraph (1) shall—

(A) require each project sponsor who is funded by a grant received under part C to establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds awarded to the project sponsor under part C in order to ensure that all financial transactions carried out under part C are conducted, and records maintained, in accordance with generally accepted accounting principles; and

(B) arrange for an annual survey, audit, or evaluation of the financial records of each project carried out by a project sponsor funded by a grant received under part C.

(h) Conflict of interest

No board member of a collaborative applicant may participate in decisions of the collaborative applicant concerning the award of a grant, or provision of other financial benefits, to such member or the organization that such member represents.

(Pub. L. 100–77, title IV, §402, as added Pub. L. 111–22, div. B, title I, §1102, May 20, 2009, 123 Stat. 1674.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (g)(1)(B)(i)(II), was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 402 of Pub. L. 100–77 was renumbered section 406 and is classified to section 11362 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11361. Housing affordability strategy

Assistance may be made under this subchapter only if the grantee certifies that it is following—

(1) a consolidated plan which has been approved by the Secretary in accordance with section 12705 of this title (referred to in such section as a "comprehensive housing affordability strategy"), or

(2) a comprehensive homeless assistance plan which was approved by the Secretary during the 180-day period beginning on November 28, 1990, or during such longer period as may be prescribed by the Secretary in any case for good cause.

(Pub. L. 100–77, title IV, §403, formerly §401, July 22, 1987, 101 Stat. 494; Pub. L. 100–628, title IV, §§401–404, Nov. 7, 1988, 102 Stat. 3230, 3231; Pub. L. 101–625, title VIII, §§831, 832(e)(3), 836(a), Nov. 28, 1990, 104 Stat. 4357, 4360, 4366; renumbered §403 and amended Pub. L. 111–22, div. B, title I, §1101(2), title V, §1502(a), May 20, 2009, 123 Stat. 1669, 1701.)

EDITORIAL NOTES

AMENDMENTS

2009—Par. (1). Pub. L. 111–22, §1502(a), substituted "consolidated plan" for "current housing affordability strategy" and inserted before the comma "(referred to in such section as a 'comprehensive housing affordability strategy')".

1990—Pub. L. 101–625, §836(a), amended section generally, substituting present provisions for provisions requiring the annual submission of a comprehensive homeless assistance plan with requirements for contents of the plan, review of the plan, performance reviews under the plan, publication by notice, applications for assistance, coordination with State agencies, and consultation with other private and public groups and entities regarding the plan.

Subsec. (a). Pub. L. 101–625, §831(b)(1), inserted at end "Assistance authorized by this subchapter may be provided to any Indian tribe that is eligible to receive a grant under the emergency shelter grants program in any fiscal year, but only if the tribe submits biennially to the Secretary of Housing and Urban Development a comprehensive homeless assistance plan under this section."

Subsec. (a)(1). Pub. L. 101–625, §831(c)(2)(A), substituted "biennially" for "annually".

Subsec. (b)(2). Pub. L. 101–625, §831(c)(2)(B), substituted ", services, and programs" for "and services".

Subsec. (b)(3). Pub. L. 101–625, §831(c)(2)(C), substituted ", services, and programs" for "and services" in cl. (A), struck out "and" before "(B)", and added cls. (C) to (F).

Subsec. (b)(5). Pub. L. 101–625, §831(b)(2), inserted "Indian tribe," after "State,".

Subsec. (b)(7), (8). Pub. L. 101–625, §831(a), added pars. (7) and (8).

Subsec. (b)(9). Pub. L. 101–625, §832(e)(3), added par. (9).

Subsecs. (c)(1), (d). Pub. L. 101–625, §831(b)(3), (4), inserted "Indian tribe," after "State," wherever appearing.

Subsec. (g). Pub. L. 101–625, §831(b)(5), inserted "(or tribal agency or contact)" after "State contact person", "(or tribe)" before comma, and "(or tribal agency or contact person)" after "or contact person".

Subsec. (h). Pub. L. 101–625, §831(c)(1), added subsec. (h).

1988—Subsec. (a)(1). Pub. L. 100–628, §401(a), inserted "annually" after "submits".

Subsec. (a)(2), (3). Pub. L. 100–628, §401(b), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(3). Pub. L. 100–628, §402(1), inserted "facilities and" before "services" and struck out "and" at end.

Subsec. (b)(4). Pub. L. 100–628, §402(2), inserted "facilities and" before "services" and substituted a semicolon for period at end.

Subsec. (b)(5), (6). Pub. L. 100–628, §402(3), added pars. (5) and (6).

Subsec. (d)(3). Pub. L. 100–628, §403, inserted before period at end "or to respond to recommendations made in accordance with paragraph (2) that are received at least 60 days prior to the beginning of the fiscal year".

Subsec. (g). Pub. L. 100–628, §404, added subsec. (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–22 effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as a note under section 11302 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–625, title VIII, §836(b), Nov. 28, 1990, 104 Stat. 4366, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1991."

EVALUATION OF PROGRAMS

Pub. L. 102–550, title XIV, §1409, Oct. 28, 1992, 106 Stat. 4038, as amended by Pub. L. 105–362, title VII, §701(c), Nov. 10, 1998, 112 Stat. 3287; Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that the Secretary of Housing and Urban Development would conduct a comprehensive review and evaluation of the effectiveness of each program under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.) examining procedures of the Department in carrying out such programs, the procedures of recipients of assistance under such programs in carrying out such programs, and the effects and benefits of such programs.

HOMELESS HOUSING ACT OF 1986

Pub. L. 99–500, §101(g) [H.R. 5313, title V], Oct. 18, 1986, 100 Stat. 1783–242, and Pub. L. 99–591, §101(g) [H.R. 5313, title V], Oct. 30, 1986, 100 Stat. 3341–242; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–202, §106, Dec. 22, 1987, 101 Stat. 1329–433, provided that title V of H.R. 5315 be cited as the "Homeless Housing Act of 1986", established a transitional housing demonstration program and directed Secretary of Housing and Urban Development to submit to Congress, not later than 3 months after the end of fiscal year 1987, an interim report summarizing activities under this program during such fiscal year and, not later than 6 months after the end of fiscal year 1988, a final report summarizing such activities, established an emergency shelter grants program to make grants to States, units of local government, and private nonprofit organizations providing assistance to the homeless, and appropriated $15,000,000 for fiscal year 1987, to remain available until expended, to carry out both programs.

§11361a. Preventing involuntary family separation

(a) In general

After the expiration of the 2-year period that begins upon May 20, 2009, and except as provided in subsection (b), any project sponsor receiving funds under this subchapter to provide emergency shelter, transitional housing, or permanent housing to families with children under age 18 shall not deny admission to any family based on the age of any child under age 18.

(b) Exception

Notwithstanding the requirement under subsection (a), project sponsors of transitional housing receiving funds under this subchapter may target transitional housing resources to families with children of a specific age only if the project sponsor—

(1) operates a transitional housing program that has a primary purpose of implementing an evidence-based practice that requires that housing units be targeted to families with children in a specific age group; and

(2) provides such assurances, as the Secretary shall require, that an equivalent appropriate alternative living arrangement for the whole family or household unit has been secured.

(Pub. L. 100–77, title IV, §404, as added Pub. L. 111–22, div. B, title I, §1103, May 20, 2009, 123 Stat. 1677.)

EDITORIAL NOTES

CODIFICATION

Section 1103 of Pub. L. 111–22, which directed amendment of subtitle A of the McKinney-Vento Homeless Assistance Act by adding this section after section 403 (as so redesignated by section 1101(2) of Pub. L. 111–22), was executed by adding this section following section 403 (42 U.S.C. 11361) of subtitle A of title IV of Pub. L. 100–77 (this part), to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11361b. Technical assistance

(a) In general

The Secretary shall make available technical assistance to private nonprofit organizations and other nongovernmental entities, States, metropolitan cities, urban counties, and counties that are not urban counties, to implement effective planning processes for preventing and ending homelessness, to improve their capacity to prepare collaborative applications, to prevent the separation of families in emergency shelter or other housing programs, and to adopt and provide best practices in housing and services for persons experiencing homeless.

(b) Reservation

The Secretary shall reserve not more than 1 percent of the funds made available for any fiscal year for carrying out parts B and C, to provide technical assistance under subsection (a).

(Pub. L. 100–77, title IV, §405, as added Pub. L. 111–22, div. B, title I, §1103, May 20, 2009, 123 Stat. 1677.)

EDITORIAL NOTES

CODIFICATION

Section 1103 of Pub. L. 111–22, which directed amendment of subtitle A of the McKinney-Vento Homeless Assistance Act by adding this section after section 404, was executed by adding this section following section 404 (42 U.S.C. 11361a) of subtitle A of title IV of Pub. L. 100–77 (this part), to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11362. Discharge coordination policy

The Secretary may not provide a grant under this subchapter for any governmental entity serving as an applicant unless the applicant agrees to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons.

(Pub. L. 100–77, title IV, §406, formerly §402, as added Pub. L. 106–377, §1(a)(1) [title II, §229(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A–30; renumbered §406, Pub. L. 111–22, div. B, title I, §1101(2), May 20, 2009, 123 Stat. 1669.)

§11363. Protection of personally identifying information by victim service providers

In the course of awarding grants or implementing programs under this subchapter, the Secretary shall instruct any victim service provider that is a recipient or subgrantee not to disclose for purposes of the Homeless Management Information System any personally identifying information about any client. The Secretary may, after public notice and comment, require or ask such recipients and subgrantees to disclose for purposes of the Homeless Management Information System non-personally identifying information that has been de-identified, encrypted, or otherwise encoded. Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this subsection for victims of domestic violence, dating violence, sexual assault, or stalking.

(Pub. L. 100–77, title IV, §407, as added Pub. L. 111–22, div. B, title I, §1104, May 20, 2009, 123 Stat. 1677.)

EDITORIAL NOTES

CODIFICATION

Section 1104 of Pub. L. 111–22, which directed amendment of subtitle A of the McKinney-Vento Homeless Assistance Act by adding this section at the end, was executed by adding this section at the end of subtitle A of title IV of Pub. L. 100–77 (this part), to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set

out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11364. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $2,200,000,000 for fiscal year 2010 and such sums as may be necessary for fiscal year 2011.

(Pub. L. 100–77, title IV, §408, as added Pub. L. 111–22, div. B, title I, §1105, May 20, 2009, 123 Stat. 1678.)

EDITORIAL NOTES

CODIFICATION

Section 1105 of Pub. L. 111–22, which directed amendment of subtitle A of the McKinney-Vento Homeless Assistance Act by adding this section at the end, was executed by adding this section at the end of subtitle A of title IV of Pub. L. 100–77 (this part), to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11364a. Availability of amounts recaptured from appropriated funds

(a) Amounts recaptured from funds appropriated for this or any succeeding fiscal year under the heading "Department of Housing and Urban Development—Community Planning and Development—Homeless Assistance Grants" shall become available until expended not later than the end of the fifth fiscal year after the last fiscal year for which such funds are available and shall be available, in addition to rental assistance amounts that were recaptured and made available until expended under such heading by any prior Act, and in addition to such other funds as may be available for such purposes, for the following purposes:

(1) For grants under the Continuum of Care program under subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381 et seq.);

(2) For grants under the Emergency Solutions Grant program under subtitle B of title IV of such Act (42 U.S.C. 11371 et seq.);

(3) Not less than 10 percent of the amounts shall be used only for grants in rural areas under the Continuum of Care program, to include activities eligible under the Rural Housing Stability Assistance program under section 491 of such Act (42 U.S.C. 11408) that are not otherwise eligible under the Continuum of Care program; and

(4) Not less than 10 percent of the amounts shall be for emergency solutions grants for disaster areas as authorized by subsection (c).

(b) Prior to the use of any recaptured amounts referred to in subsection (a), including competing, awarding, or obligating such amounts, the Secretary shall submit a plan in accordance with subsection (a) that specifies the planned use of any such amounts to the Committees on Appropriations of the House of Representatives and the Senate, and receive prior written approval of such plan, except that use of amounts in the plan for the purposes specified in subsection (a)(4) may begin once such plan is submitted to such Committees.

(c)(1) The Secretary may make grants under the Emergency Solutions Grants program under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.) to States or local governments to address the needs of homeless individuals or families or individuals or

families at risk of homelessness in areas affected by a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) on or after December 20, 2019, whose needs are not otherwise served or fully met by existing Federal disaster relief programs, including the Transitional Sheltering Assistance program under such Act (42 U.S.C. 5170b).

(2) For purposes of grants under paragraph (1), the Secretary may suspend all consultation, citizen participation, and matching requirements.

(Pub. L. 116–94, div. H, title II, §231, Dec. 20, 2019, 133 Stat. 3008.)

EDITORIAL NOTES

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsecs. (a)(1), (2) and (c)(1), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Subtitle B of title IV of the Act is classified generally to part B (§11371 et seq.) of this subchapter. Subtitle C of title IV of the Act is classified generally to part C (§11381 et seq.) of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (c)(1), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of Housing and Urban Development Appropriations Act, 2020, and also as part of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2020, and the Further Consolidated Appropriations Act, 2020, and not as part of the McKinney-Vento Homeless Assistance Act which comprises this chapter.

PART B—EMERGENCY SOLUTIONS GRANTS PROGRAM

EDITORIAL NOTES

CODIFICATION

Pub. L. 111–22, div. B, title II, §1201(1), May 20, 2009, 123 Stat. 1678, substituted "Emergency Solutions Grants Program" for "Emergency Shelter Grants Program" in heading.

§11371. Definitions

For purposes of this part:

(1) The term "local government" means a unit of general purpose local government.

(2) The term "locality" means the geographical area within the jurisdiction of a local government.

(3) The term "metropolitan city" has the meaning given such term in section 5302 of this title.

(4) The term "operating costs" means expenses incurred by a recipient operating a facility assisted under this part with respect to—

(A) the administration, maintenance, repair, and security of such housing; and

(B) utilities, fuels, furnishings, and equipment for such housing.

(5) The term "private nonprofit organization" means a secular or religious organization described in section 501(c) of title 26 that is exempt from taxation under subtitle A of title 26, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.

(6) The term "recipient" means any governmental or private nonprofit entity that is approved by the Secretary as to financial responsibility.

(7) The term "Secretary" means the Secretary of Housing and Urban Development.

(8) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(9) The term "urban county" has the meaning given such term in section 5302 of this title.

(Pub. L. 100–77, title IV, §411, July 22, 1987, 101 Stat. 495; Pub. L. 101–625, title VIII, §832(f)(1), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104–330, title V, §506(a)(1), Oct. 26, 1996, 110 Stat. 4044.)

EDITORIAL NOTES

AMENDMENTS

1996—Par. (10). Pub. L. 104–330 struck out par. (10) which read as follows: "The term 'Indian tribe' has the meaning given such term in section 5302(a)(17) of this title."

1990—Par. (10). Pub. L. 101–625 added par. (10).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Pub. L. 104–330, title V, §506(c), Oct. 26, 1996, 110 Stat. 4045, as amended by Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: "The amendments under subsections (a) [amending this section and sections 11372 to 11376, 11382, 11401, 11403g, and 11408 of this title] and (b) [amending provisions formerly set out as a note under section 11301 of this title] shall apply with respect to amounts made available for assistance under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.] and section 2 of the HUD Demonstration Act of 1993 [Pub. L. 103–120, former 42 U.S.C. 11301 note], respectively, for fiscal year 1998 and fiscal years thereafter."

DEFINITIONS

For provisions relating to definitions of "State" and "local government" as used in this section, see section 100261 of Pub. L. 112–141, set out as a HEARTH Act Technical Corrections note under section 11360 of this title.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§11372. Grant assistance

The Secretary shall make grants to States and local governments (and to private nonprofit organizations providing assistance to persons experiencing homelessness or at risk of homelessness, in the case of grants made with reallocated amounts) for the purpose of carrying out activities described in section 11374 of this title.

(Pub. L. 100–77, title IV, §412, as added Pub. L. 111–22, div. B, title II, §1201(4), May 20, 2009, 123 Stat. 1678.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11372, Pub. L. 100–77, title IV, §412, July 22, 1987, 101 Stat. 496; Pub. L. 101–625, title VIII, §832(f)(2), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104–330, title V, §506(a)(2), Oct. 26, 1996, 110 Stat. 4044, which related to grant assistance, was repealed by Pub. L. 111–22, div. B, title II, §1201(4), May 20, 2009, 123 Stat. 1678.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11372a. Amount and allocation of assistance

(a) In general

Of the amount made available to carry out this part and part C for a fiscal year, the Secretary shall allocate nationally 20 percent of such amount for activities described in section 11374 of this title. The Secretary shall be required to certify that such allocation will not adversely affect the renewal of existing projects under this part and part C for those individuals or families who are homeless.

(b) Allocation

An entity that receives a grant under section 11372 of this title, and serves an area that includes 1 or more geographic areas (or portions of such areas) served by collaborative applicants that submit applications under part C, shall allocate the funds made available through the grant to carry out activities described in section 11374 of this title, in consultation with the collaborative applicants.

(Pub. L. 100–77, title IV, §413, as added Pub. L. 111–22, div. B, title II, §1201(4), May 20, 2009, 123 Stat. 1678.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 413 of Pub. L. 100–77 was renumbered section 414 and is classified to section 11373 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11373. Allocation and distribution of assistance

(a) In general

The Secretary shall allocate assistance under this part to metropolitan cities, urban counties, and States (for distribution to local governments and private nonprofit organizations in the States) in a manner that ensures that the percentage of the total amount available under this part for any fiscal year that is allocated to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 5306 of this title for such prior fiscal year that is allocated to such State, metropolitan city, or urban county.

(b) Minimum allocation requirement

If, under the allocation provisions applicable under this part, any metropolitan city or urban county would receive a grant of less than 0.05 percent of the amounts appropriated under section 11364 of this title and made available to carry out this part for any fiscal year, such amount shall instead be reallocated to the State, except that any city that is located in a State that does not have counties as local governments, that has a population greater than 40,000 but less than 50,000 as used in determining the fiscal year 1987 community development block grant program allocation, and that was allocated in excess of $1,000,000 in community development block grant funds in fiscal year 1987, shall receive directly the amount allocated to such city under subsection (a).

(c) Distributions to nonprofit organizations, public housing agencies, and local redevelopment authorities

Any local government receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, to public housing agencies (as defined under section 1437a(b)(6) of this title), or to local redevelopment authorities (as defined under State law). Any State receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.

(d) Reallocation of funds

(1) The Secretary shall, not less than once during each fiscal year, reallocate any assistance provided under this part that is unused or returned or that becomes available under subsection (b).

(2) If a city or county eligible for a grant under subsection (a) fails to obtain approval of its comprehensive plan during the 90-day period following the date funds authorized by this part first become available for allocation during any fiscal year, the amount that the city or county would have received shall be available to the State in which the city or county is located if the State has obtained approval of its comprehensive plan. Any amounts that cannot be allocated to a State under the preceding sentence shall be reallocated to other States, counties, and cities that demonstrate extraordinary need or large numbers of homeless individuals, as determined by the Secretary.

(3) If a State fails to obtain approval of its comprehensive plan during the 90-day period following the date funds authorized by this part first become available for allocation during any fiscal year, the amount that the State would have received shall be reallocated to other States and to cities and counties as applicable, that demonstrate extraordinary need or large numbers of homeless individuals, as determined by the Secretary.

(e) Allocations to territories

In addition to the other allocations required in this section, the Secretary shall (for amounts appropriated after July 22, 1987) allocate assistance under this part to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, in accordance with an allocation formula established by the Secretary.

(f) Funding cap waiver authority

(1) In general

Notwithstanding any other provision of law or regulation, a recipient may request a waiver to the expenditure limit established pursuant to section 11374(b) of this title for amounts provided for each of fiscal years 2027 through 2030.

(2) Waiver request

(A) In general

A recipient seeking a waiver described in paragraph (1) shall submit to the Secretary a waiver request that includes not more than the following:

(i) A demonstration of local needs and circumstances that necessitate a waiver.

(ii) A detailed plan for how the recipient intends to use funds.

(iii) A justification for how the proposed use of funds supports the most recent Consolidated Plan submitted by the recipient.

(iv) Any public input solicited under subparagraph (B)(ii).

(B) Notification

Each recipient shall—

(i) notify all subrecipients and local Continuums of Care that serve the recipient's geographic area of the availability of waivers under this subsection; and

(ii) prior to the submission of a waiver request under subparagraph (A), solicit public input regarding the potential need for and proposed uses of such waiver.

(C) Approval; publication

The Secretary shall—

(i) make all waiver requests submitted under subparagraph (A) publicly available on the website of the Department of Housing and Urban Development;

(ii) not later than 60 days after the date on which the Secretary receives a waiver request under subparagraph (A), approve or deny the request; and

(iii) deny any waiver request submitted under subparagraph (A) by a recipient that relocates or threaten [1] to relocate individuals or their property without providing emergency shelter, rapid rehousing, transitional housing, permanent supportive housing, or other permanent housing options.

(3) Revocation

(A) In general

A waiver approved under this subsection shall remain in effect for the duration of the period of performance of fiscal year 2027 through 2030 grants, unless the recipient notifies the Secretary in writing that the recipient wishes to revoke the waiver.

(B) Notification

If a recipient intends to revoke a waiver under subparagraph (A), the recipient shall—

(i) solicit input from subrecipients regarding the revocation before submitting the revocation; and

(ii) provide subrecipients with a summary of the input and the justification for the revocation in its submittal prior to notifying the Secretary in writing.

(C) Publication

The Secretary shall publish any revocation of a waiver under subparagraph (A) and the justification of the recipient for the waiver on the website of the Department of Housing and Urban Development.

(Pub. L. 100–77, title IV, §414, formerly §413, July 22, 1987, 101 Stat. 496; Pub. L. 100–628, title IV, §421, Nov. 7, 1988, 102 Stat. 3231; Pub. L. 101–625, title VIII, §832(f)(3)–(5), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104–330, title V, §506(a)(3), Oct. 26, 1996, 110 Stat. 4044; renumbered §414 and amended Pub. L. 111–22, div. B, title II, §1201(3), (5), May 20, 2009, 123 Stat. 1678, 1679; Pub. L. 114–94, div. G, title LXXIX, §79002, Dec. 4, 2015, 129 Stat. 1792; Pub. L. 114–201, title IV, §402, July 29, 2016, 130 Stat. 808; Pub. L. 119–101, title V, §503, July 11, 2026, 140 Stat. 928.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 414 of Pub. L. 100–77 was classified to section 11374 of this title prior to renumbering as section 415 and repeal by Pub. L. 111–22.

AMENDMENTS

2026—Subsec. (f). Pub. L. 119–101 added subsec. (f).

2016—Subsec. (c). Pub. L. 114–201, inserted ", public housing agencies, and local redevelopment authorities" after "organizations" in heading and inserted ", to public housing agencies (as defined under section 1437a(b)(6) of this title), or to local redevelopment authorities (as defined under State law)" before period at end of first sentence.

2015—Subsec. (d)(1). Pub. L. 114–94 substituted "once" for "twice".

2009—Subsec. (b). Pub. L. 111–22, §1201(5), substituted "amounts appropriated under section 11364 of this title and made available to carry out this part for any" for "amounts appropriated to carry out this part for any".

1996—Subsec. (a). Pub. L. 104–330, §506(a)(3)(A), struck out ", and to Indian tribes," after "in the States)" and ", or for Indian tribes" after "or urban county" in two places.

Subsec. (c). Pub. L. 104–330, §506(a)(3)(B), struck out "or Indian tribe" after "Any local government".

Subsec. (d)(3). Pub. L. 104–330, §506(a)(3)(C)(ii), struck out ", or other Indian tribes," after "cities and counties".

Pub. L. 104–330, §506(a)(3)(C)(i), which directed amendment of par. (3) by striking ", or Indian tribe" each place it appeared, was executed by striking "or Indian tribe" after "State" in two places to reflect the probable intent of Congress.

1990—Subsec. (a). Pub. L. 101–625, §832(f)(3), inserted ", and to Indian tribes," after "States)" and ", or for Indian tribes" after "urban county" in two places.

Subsec. (c). Pub. L. 101–625, §832(f)(4), inserted "or Indian tribe" after "local government".

Subsec. (d)(3). Pub. L. 101–625, §832(f)(5), inserted "or Indian tribe" after "State" in two places and ", or other Indian tribes, as applicable," after "counties".

1988—Subsec. (a). Pub. L. 100–628, §421(a), inserted "and private nonprofit organizations" after "local governments".

Subsec. (c). Pub. L. 100–628, §421(b), inserted at end "Any State receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–22 effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as a note under section 11302 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] So in original. Probably should be "threatens".

§11374. Eligible activities

(a) In general

Assistance provided under section 11372 of this title may be used for the following activities:

(1) The renovation, major rehabilitation, or conversion of buildings to be used as emergency

shelters.

(2) The provision of essential services related to emergency shelter or street outreach, including services concerned with employment, health, education, family support services for homeless youth, substance abuse services, victim services, or mental health services, if—

(A) such essential services have not been provided by the local government during any part of the immediately preceding 12-month period or the Secretary determines that the local government is in a severe financial deficit; or

(B) the use of assistance under this part would complement the provision of those essential services.

(3) Maintenance, operation, insurance, provision of utilities, and provision of furnishings related to emergency shelter.

(4) Provision of rental assistance to provide short-term or medium-term housing to homeless individuals or families or individuals or families at risk of homelessness. Such rental assistance may include tenant-based or project-based rental assistance.

(5) Housing relocation or stabilization services for homeless individuals or families or individuals or families at risk of homelessness, including housing search, mediation or outreach to property owners, legal services, credit repair, providing security or utility deposits, utility payments, rental assistance for a final month at a location, assistance with moving costs, or other activities that are effective at—

(A) stabilizing individuals and families in their current housing; or

(B) quickly moving such individuals and families to other permanent housing.

(b) Maximum allocation for emergency shelter activities

A grantee of assistance provided under section 11372 of this title for any fiscal year may not use an amount of such assistance for activities described in paragraphs (1) through (3) of subsection (a) that exceeds the greater of—

(1) 60 percent of the aggregate amount of such assistance provided for the grantee for such fiscal year; or

(2) the amount expended by such grantee for such activities during fiscal year [1] most recently completed before the effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009.

(Pub. L. 100–77, title IV, §415, as added Pub. L. 111–22, div. B, title II, §1202, May 20, 2009, 123 Stat. 1679.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, referred to in subsec. (b)(2), is the effective date under section 1503 of div. B of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

PRIOR PROVISIONS

A prior section 11374, Pub. L. 100–77, title IV, §415, formerly §414, July 22, 1987, 101 Stat. 497; Pub. L. 100–628, title IV, §§422, 423(a), Nov. 7, 1988, 102 Stat. 3231; Pub. L. 101–625, title VIII, §832(c), (d), (f)(6), Nov. 28, 1990, 104 Stat. 4360, 4361; Pub. L. 102–550, title XIV, §1402(e), Oct. 28, 1992, 106 Stat. 4013; Pub. L. 104–330, title V, §506(a)(4), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 106–377, §1(a)(1) [title II, §229(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–31; renumbered §415, Pub. L. 111–22, div. B, title II, §1201(3), May 20, 2009, 123 Stat. 1678, which related to assistance used for activities relating to emergency shelter for homeless individuals, was repealed by Pub. L. 111–22, div. B, title II, §1202, May 20, 2009, 123 Stat. 1679.

Another prior section 415 of Pub. L. 100–77 was renumbered section 416 and is classified to section 11375 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

REPORT BY COMPTROLLER GENERAL

Pub. L. 100–628, title IV, §423(b), Nov. 7, 1988, 102 Stat. 3232, required the Comptroller General to conduct a study and report to Congress not later than 1 year after Nov. 7, 1988, on programs to prevent homelessness implemented by grantees.

[1] *So in original. Probably should be "the fiscal year".*

§11375. Responsibilities of recipients

(a) Matching amounts

(1) Except as provided in paragraph (2), each recipient under this part shall be required to supplement the assistance provided under this part with an equal amount of funds from sources other than this part. Each recipient shall certify to the Secretary its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.

(2) Each recipient under this part that is a State shall be required to supplement the assistance provided under this part with an amount of funds from sources other than this part equal to the difference between the amount received under this part and $100,000. If the amount received by the State is $100,000 or less, the State may not be required to supplement the assistance provided under this part.

(3) In calculating the amount of supplemental funds provided by a recipient under this part, a recipient may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary.

(b) Administration of assistance

Each recipient shall act as the fiscal agent of the Secretary with respect to assistance provided to such recipient.

(c) Certifications on use of assistance

Each recipient shall certify to the Secretary that—

(1) it will—

(A) in the case of assistance involving major rehabilitation or conversion, maintain any building for which assistance is used under this part as a shelter for homeless individuals and families for not less than a 10-year period;

(B) in the case of assistance involving rehabilitation (other than major rehabilitation or conversion), maintain any building for which assistance is used under this part as a shelter for homeless individuals and families for not less than a 3-year period; or

(C) in the case of assistance involving solely activities described in paragraphs (2) and (3) of section 11374(a) [1] of this title, provide services or shelter to homeless individuals and families for the period during which such assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(2) any renovation carried out with assistance under this part shall be sufficient to ensure that the building involved is safe and sanitary;

(3) it will assist homeless individuals in obtaining—

(A) appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(B) other Federal, State, local, and private assistance available for such individuals;

(4) in the case of a recipient that is a State, it will obtain any matching amounts required under subsection (a) in a manner so that local governments, agencies, and local nonprofit organizations receiving assistance from the grant that are least capable of providing the recipient State with such matching amounts receive the benefit of the $100,000 subtrahend under subsection (a)(2);

(5) it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under this part and that the address or location of any family violence shelter project assisted under this part will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(6) activities undertaken by the recipient with assistance under this part are consistent with any housing strategy submitted by the grantee in accordance with section 12705 of this title; and

(7) to the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this part, in providing services assisted under this part, and in providing services for occupants of facilities assisted under this part.

(d) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient that is not a State to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of such recipient, to the extent that such entity considers and makes policies and decisions regarding any facility, services, or other assistance of the recipient assisted under this part. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(e) Termination of assistance

If an individual or family who receives assistance under this part from a recipient violates program requirements, the recipient may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals affected, which may include a hearing.

(f) Participation in HMIS

The Secretary shall ensure that recipients of funds under this part ensure the consistent participation by emergency shelters and homelessness prevention and rehousing programs in any applicable community-wide homeless management information system.

(Pub. L. 100–77, title IV, §416, formerly §415, July 22, 1987, 101 Stat. 497; Pub. L. 100–628, title IV, §424, Nov. 7, 1988, 102 Stat. 3232; Pub. L. 101–625, title VIII, §832(e)(1), (2), (h), Nov. 28, 1990, 104 Stat. 4360, 4362; Pub. L. 102–550, title XIV, §1402(b)–(d), Oct. 28, 1992, 106 Stat. 4012, 4013; Pub. L. 104–330, title V, §506(a)(5), Oct. 26, 1996, 110 Stat. 4044; renumbered §416 and amended Pub. L. 111–22, div. B, title II, §§1201(3), 1203, May 20, 2009, 123 Stat. 1678, 1680.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 11374 of this title, referred to in subsec. (c)(1)(C), was in the original a reference to section 414, meaning section 414 of Pub. L. 100–77, which has been translated as reading section 415 of Pub. L. 100–77 to reflect the probable intent of Congress and the renumbering of section 414 of Pub. L. 100–77 as section 415 by Pub. L. 111–22, div. B, title II, §1201(3), May 20, 2009, 123 Stat. 1678.

PRIOR PROVISIONS

A prior section 416 of Pub. L. 100–77 was renumbered section 417 and is classified to section 11376 of this

title.

AMENDMENTS

2009—Subsec. (f). Pub. L. 111–22, §1203, added subsec. (f).

1996—Subsec. (c)(4). Pub. L. 104–330 struck out "Indian tribes," after "local governments,".

1992—Subsec. (c). Pub. L. 102–550, §1402(b), in par. (1), substituted a semicolon for period at end, in par. (3), struck out "and" at end, in par. (4), inserted "it will" after "State," and struck out "and" at end, in par. (5), inserted "it will" before "develop" and substituted a semicolon for period at end, redesignated par. (4), relating to consistency of activities undertaken with assistance under this part, as (6) and substituted "; and" for period at end, and added par. (7).

Subsec. (d). Pub. L. 102–550, §1402(c), added subsec. (d).

Subsec. (e). Pub. L. 102–550, §1402(d), added subsec. (e).

1990—Subsec. (a)(1). Pub. L. 101–625, §832(e)(1)(A), substituted "Except as provided in paragraph (2), each" for "Each".

Subsec. (a)(2), (3). Pub. L. 101–625, §832(e)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c)(2), (3). Pub. L. 101–625, §832(e)(2)(A), (B), (h)(1), (2), amended subsec. (c) identically, striking "and" at end of par. (2) and substituting "; and" for period at end of par. (3).

Subsec. (c)(4). Pub. L. 101–625, §832(h)(3), added (after par. (5)) par. (4) relating to consistency of activities undertaken with assistance under this part.

Pub. L. 101–625, §832(e)(2)(C), added par. (4) relating to matching funds obtained by State recipients of assistance under this part.

Subsec. (c)(5). Pub. L. 101–625, §832(e)(2)(C), added par. (5).

1988—Subsec. (c)(1). Pub. L. 100–628 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "it will maintain any building for which assistance is used under this part as a shelter for homeless individuals for not less than a 3-year period or for not less than a 10-year period if such assistance is used for the major rehabilitation or conversion of such building;".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–22 effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as a note under section 11302 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

[1] *See References in Text note below.*

§11376. Administrative provisions

(a) Regulations

Not later than 60 days after July 22, 1987, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue requirements based on the initial notice before the expiration of the 12-month period following July 22, 1987. Prior to the issuance of such requirements in final form, the requirements established by the Secretary implementing the provisions of the emergency shelter grants program under the provisions made effective by section 101(g) of Public Law 99–500 or Public Law 99–591 shall govern the emergency shelter grants program under this part.

(b) Initial allocation of assistance

Not later than the expiration of the 60-day period following the date of enactment of a law providing appropriations to carry out this part, the Secretary shall notify each State, metropolitan city, and urban county that is to receive a direct grant of its allocation of assistance under this part. Such assistance shall be allocated and may be used notwithstanding any failure of the Secretary to issue requirements under subsection (a).

(c) Minimum standards of habitability

The Secretary shall prescribe such minimum standards of habitability as the Secretary determines to be appropriate to ensure that emergency shelters assisted under this section are environments that provide appropriate privacy, safety, and sanitary and other health-related conditions for homeless persons and families. Grantees are authorized to establish standards of habitability in addition to those prescribed by the Secretary.

(Pub. L. 100–77, title IV, §417, formerly §416, July 22, 1987, 101 Stat. 498; Pub. L. 101–625, title VIII, §832(f)(7), (g), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104–330, title V, §506(a)(6), Oct. 26, 1996, 110 Stat. 4044; renumbered §417, Pub. L. 111–22, div. B, title II, §1201(3), May 20, 2009, 123 Stat. 1678.)

EDITORIAL NOTES

REFERENCES IN TEXT

The emergency shelter grants program under the provisions made effective by section 101(g) of Public Law 99–500 or Public Law 99–591, referred to in subsec. (a), means the emergency shelter grants program authorized by title V of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99–500 and 99–591, and enacted into law by section 106 of Pub. L. 100–202, which is set out as a note under section 11361 of this title.

PRIOR PROVISIONS

A prior section 417 of Pub. L. 100–77 was classified to section 11377 of this title, prior to repeal by Pub. L. 111–22.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–330 struck out "Indian tribe," after "State,".

1990—Subsec. (b). Pub. L. 101–625, §832(f)(7), inserted "Indian tribe," after "State,".

Subsec. (c). Pub. L. 101–625, §832(g), added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

§11377. Repealed. Pub. L. 111–22, div. B, title II, §1201(2), May 20, 2009, 123 Stat. 1678

Section, Pub. L. 100–77, title IV, §417, July 22, 1987, 101 Stat. 498; Pub. L. 100–628, title IV, §425, Nov. 7, 1988, 102 Stat. 3232; Pub. L. 101–625, title VIII, §832(a), Nov. 28, 1990, 104 Stat. 4359; Pub. L. 102–550, title XIV, §1402(a), Oct. 28, 1992, 106 Stat. 4012, authorized appropriations for fiscal years 1993 and 1994.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11378. Administrative costs

A recipient may use up to 7.5 percent of any annual grant received under this part for administrative purposes. A recipient State shall share the amount available for administrative purposes pursuant to the preceding sentence with local governments funded by the State.

(Pub. L. 100–77, title IV, §418, as added Pub. L. 101–625, title VIII, §832(b)(1), Nov. 28, 1990, 104 Stat. 4359; amended Pub. L. 111–22, div. B, title II, §1204, May 20, 2009, 123 Stat. 1680.)

EDITORIAL NOTES

AMENDMENTS

2009—Pub. L. 111–22 substituted "7.5 percent" for "5 percent".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–22 effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as a note under section 11302 of this title.

PART C—CONTINUUM OF CARE PROGRAM

EDITORIAL NOTES

CODIFICATION

Pub. L. 111–22, div. B, title III, §1301(1), May 20, 2009, 123 Stat. 1680, substituted "Continuum of Care Program" for "Supportive Housing Program" in heading.

§11381. Purposes

The purposes of this part are—

(1) to promote community-wide commitment to the goal of ending homelessness;

(2) to provide funding for efforts by nonprofit providers and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to individuals, families, and communities by homelessness;

(3) to promote access to, and effective utilization of, mainstream programs described in section 11313(a)(7) of this title and programs funded with State or local resources; and

(4) to optimize self-sufficiency among individuals and families experiencing homelessness.

(Pub. L. 100–77, title IV, §421, as added Pub. L. 111–22, div. B, title III, §1301(2), May 20, 2009, 123 Stat. 1680.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11381, Pub. L. 100–77, title IV, §421, as added Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013, which related to the purpose of the supportive housing program, was repealed by Pub. L. 111–22, div. B, title III, §1301(2), May 20, 2009, 123 Stat. 1680.

Another prior section 11381, Pub. L. 100–77, title IV, §421, July 22, 1987, 101 Stat. 498, which related to establishment of a supportive housing demonstration program, was repealed by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

TRANSITIONAL PROVISION

Pub. L. 102–550, title XIV, §1403(b), Oct. 28, 1992, 106 Stat. 4021, as amended by Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: "Notwithstanding the amendment made by subsection (a) [adding part C and repealing former parts C and D of this subchapter], before the date of the effectiveness of the regulations issued under section 427 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11387] (as amended by subsection (a) of this section) the Secretary may make grants under the provisions of subtitles C and D of [title IV of] the McKinney-Vento Homeless Assistance Act [former parts C and D of this subchapter], as in effect immediately before the enactment of this Act [Oct. 28, 1992]. Any grants made before such effective date shall be subject to the provisions of such subtitles."

DEMONSTRATION PROJECTS TO REDUCE NUMBER OF HOMELESS FAMILIES IN WELFARE HOTELS

Pub. L. 100–628, title IX, §903, Nov. 7, 1988, 102 Stat. 3258, as amended by Pub. L. 104–193, title I, §110(g), Aug. 22, 1996, 110 Stat. 2171, authorized Secretary of Health and Human Services to carry out 2 or 3 demonstration projects to provide housing in transitional facilities for homeless families who are recipients of assistance under a State program funded by part A of subchapter IV of chapter 7 of this title and who reside in commercial or similar transient facilities and authorized appropriations of not more than $20,000,000 for the grants for fiscal year 1990.

DEFINITION

For provisions relating to definition of "local government" as used in this section, see section 100261 of Pub. L. 112–141, set out as a HEARTH Act Technical Corrections note under section 11360 of this title.

§11382. Continuum of care applications and grants

(a) Projects

The Secretary shall award grants, on a competitive basis, and using the selection criteria described in section 11386a of this title, to carry out eligible activities under this part for projects that meet the program requirements under section 11386 of this title, either by directly awarding funds to project sponsors or by awarding funds to unified funding agencies.

(b) Notification of funding availability

The Secretary shall release a notification of funding availability for grants awarded under this part for a fiscal year not later than 3 months after the date of the enactment of the appropriate Act making appropriations for the Department of Housing and Urban Development for such fiscal year.

(c) Applications

(1) Submission to the Secretary

To be eligible to receive a grant under subsection (a), a project sponsor or unified funding agency in a geographic area shall submit an application to the Secretary at such time and in such manner as the Secretary may require, and containing such information as the Secretary determines necessary—

(A) to determine compliance with the program requirements and selection criteria under this part; and

(B) to establish priorities for funding projects in the geographic area.

(2) Announcement of awards

(A) In general

Except as provided in subparagraph (B), the Secretary shall announce, within 5 months after the last date for the submission of applications described in this subsection for a fiscal year, the grants conditionally awarded under subsection (a) for that fiscal year.

(B) Transition

For a period of up to 2 years beginning after the effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the Secretary shall announce, within 6 months after the last date for the submission of applications described in this subsection for a fiscal year, the grants conditionally awarded under subsection (a) for that fiscal year.

(d) Obligation, distribution, and utilization of funds

(1) Requirements for obligation

(A) In general

Not later than 9 months after the announcement referred to in subsection (c)(2), each recipient or project sponsor shall meet all requirements for the obligation of those funds, including site control, matching funds, and environmental review requirements, except as provided in subparagraphs (B) and (C).

(B) Acquisition, rehabilitation, or construction

Not later than 24 months after the announcement referred to in subsection (c)(2), each recipient or project sponsor seeking the obligation of funds for acquisition of housing, rehabilitation of housing, or construction of new housing for a grant announced under subsection (c)(2) shall meet all requirements for the obligation of those funds, including site control, matching funds, and environmental review requirements.

(C) Extensions

At the discretion of the Secretary, and in compelling circumstances, the Secretary may extend the date by which a recipient or project sponsor shall meet the requirements described in subparagraphs (A) and (B) if the Secretary determines that compliance with the requirements was delayed due to factors beyond the reasonable control of the recipient or project sponsor. Such factors may include difficulties in obtaining site control for a proposed project, completing the process of obtaining secure financing for the project, obtaining approvals from State or local governments, or completing the technical submission requirements for the project.

(2) Obligation

Not later than 45 days after a recipient or project sponsor meets the requirements described in paragraph (1), the Secretary shall obligate the funds for the grant involved.

(3) Distribution

A recipient that receives funds through such a grant—

(A) shall distribute the funds to project sponsors (in advance of expenditures by the project sponsors); and

(B) shall distribute the appropriate portion of the funds to a project sponsor not later than 45 days after receiving a request for such distribution from the project sponsor.

(4) Expenditure of funds

The Secretary may establish a date by which funds made available through a grant announced under subsection (c)(2) for a homeless assistance project shall be entirely expended by the

recipient or project sponsors involved. The date established under this paragraph shall not occur before the expiration of the 24-month period beginning on the date that funds are obligated for activities described under paragraphs [1] (1) or (2) of section 11383(a) of this title. The Secretary shall recapture the funds not expended by such date. The Secretary shall reallocate the funds for another homeless assistance and prevention project that meets the requirements of this part to be carried out, if possible and appropriate, in the same geographic area as the area served through the original grant.

(e) Renewal funding for unsuccessful applicants

The Secretary may renew funding for a specific project previously funded under this part that the Secretary determines meets the purposes of this part, and was included as part of a total application that met the criteria of subsection (c), even if the application was not selected to receive grant assistance. The Secretary may renew the funding for a period of not more than 1 year, and under such conditions as the Secretary determines to be appropriate.

(f) Considerations in determining renewal funding

When providing renewal funding for leasing, operating costs, or rental assistance for permanent housing, the Secretary shall make adjustments proportional to increases in the fair market rents in the geographic area.

(g) More than 1 application for a geographic area

If more than 1 collaborative applicant applies for funds for a geographic area, the Secretary shall award funds to the collaborative applicant with the highest score based on the selection criteria set forth in section 11386a of this title.

(h) Appeals

(1) In general

The Secretary shall establish a timely appeal procedure for grant amounts awarded or denied under this part pursuant to a collaborative application or solo application for funding.

(2) Process

The Secretary shall ensure that the procedure permits appeals submitted by entities carrying out homeless housing and services projects (including emergency shelters and homelessness prevention programs), and all other applicants under this part.

(i) Solo applicants

A solo applicant may submit an application to the Secretary for a grant under subsection (a) and be awarded such grant on the same basis as such grants are awarded to other applicants based on the criteria described in section 11386a of this title, but only if the Secretary determines that the solo applicant has attempted to participate in the continuum of care process but was not permitted to participate in a reasonable manner. The Secretary may award such grants directly to such applicants in a manner determined to be appropriate by the Secretary.

(j) Flexibility to serve persons defined as homeless under other Federal laws

(1) In general

A collaborative applicant may use not more than 10 percent of funds awarded under this part (continuum of care funding) for any of the types of eligible activities specified in paragraphs (1) through (7) of section 11383(a) of this title to serve families with children and youth defined as homeless under other Federal statutes, or homeless families with children and youth defined as homeless under section 11302(a)(6) of this title, but only if the applicant demonstrates that the use of such funds is of an equal or greater priority or is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 11386a(b)(1)(B) of this title, especially with respect to children and unaccompanied youth.

(2) Limitations

The 10 percent limitation under paragraph (1) shall not apply to collaborative applicants in which the rate of homelessness, as calculated in the most recent point in time count, is less than one-tenth of 1 percent of total population.

(3) Treatment of certain populations

(A) In general

Notwithstanding section 11302(a) of this title and subject to subparagraph (B), funds awarded under this part may be used for eligible activities to serve unaccompanied youth and homeless families and children defined as homeless under section 11302(a)(6) of this title only pursuant to paragraph (1) of this subsection and such families and children shall not otherwise be considered as homeless for purposes of this part.

(B) At risk of homelessness

Subparagraph (A) may not be construed to prevent any unaccompanied youth and homeless families and children defined as homeless under section 11302(a)(6) of this title from qualifying for, and being treated for purposes of this part as, at risk of homelessness or from eligibility for any projects, activities, or services carried out using amounts provided under this part for which individuals or families that are at risk of homelessness are eligible.

(Pub. L. 100–77, title IV, §422, as added Pub. L. 111–22, div. B, title III, §1301(2), May 20, 2009, 123 Stat. 1681.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, referred to in subsec. (c)(2)(B), is the effective date under section 1503 of title V of div. B of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

PRIOR PROVISIONS

A prior section 11382, Pub. L. 100–77, title IV, §422, as added Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4014; amended Pub. L. 104–330, title V, §506(a)(7), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 106–402, title IV, §401(b)(14), Oct. 30, 2000, 114 Stat. 1740, which defined terms for purposes of this part, was repealed by Pub. L. 111–22, div. B, title III, §1301(2), May 20, 2009, 123 Stat. 1680.

Another prior section 11382, Pub. L. 100–77, title IV, §422, July 22, 1987, 101 Stat. 499; Pub. L. 100–242, title V, §570(i)(1), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 100–628, title IV, §§441(a), 442(a), (b)(1), 443, 444, Nov. 7, 1988, 102 Stat. 3232, 3233; Pub. L. 101–625, title VIII, §833(b), (k)(1), Nov. 28, 1990, 104 Stat. 4362, 4364, which defined terms for purposes of the supportive housing demonstration program, was repealed by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

HOMELESS ASSISTANCE GRANTS

Pub. L. 116–260, div. Q, title I, §104, Dec. 27, 2020, 134 Stat. 2170, provided that:

"(a) RENEWAL OF CONTINUUM OF CARE PROJECTS.—In allocating and awarding amounts provided for the Continuum of Care program under subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381 et seq.), the Secretary of Housing and Urban Development shall renew for one 12-month period, without additional competition, all projects with existing grants expiring during calendar year 2021, including youth homelessness demonstration projects and shelter plus care projects expiring during calendar year 2021, notwithstanding any inconsistent provisions in subtitle C of title IV of the McKinney-Vento Homeless Assistance Act or any other Act.

"(b) PLANNING AND UNIFIED FUNDING AGENCY AWARDS.—Continuum of Care planning and

Unified Funding Agency awards expiring in calendar year 2021 may also be renewed and the Continuum of Care may designate a new collaborative applicant to receive the award in accordance with the existing process established by the Secretary of Housing and Urban Development.

"(c) NOTICE.—The Secretary of Housing and Urban Development shall publish a notice that identifies and lists all projects and awards eligible for such noncompetitive renewal, prescribes the format and process by which the projects and awards from the list will be renewed, makes adjustments to the renewal amount based on changes to the fair market rent, and establishes a maximum amount for the renewal of planning and Unified Funding Agency awards notwithstanding the requirement that such maximum amount be established in a notice of funding availability."

DEFINITION

For provisions relating to definition of "local government" as used in this section, see section 100261 of Pub. L. 112–141, set out as a HEARTH Act Technical Corrections note under section 11360 of this title.

[1] *So in original. Probably should be "paragraph".*

§11383. Eligible activities

(a) In general

Grants awarded under section 11382 of this title to qualified applicants shall be used to carry out projects that serve homeless individuals or families that consist of one or more of the following eligible activities:

(1) Construction of new housing units to provide transitional or permanent housing.

(2) Acquisition or rehabilitation of a structure to provide transitional or permanent housing, other than emergency shelter, or to provide supportive services.

(3) Leasing of property, or portions of property, not owned by the recipient or project sponsor involved, for use in providing transitional or permanent housing, or providing supportive services.

(4) Provision of rental assistance to provide transitional or permanent housing to eligible persons. The rental assistance may include tenant-based, project-based, or sponsor-based rental assistance. Project-based rental assistance, sponsor-based rental assistance, and operating cost assistance contracts carried out by project sponsors receiving grants under this section may, at the discretion of the applicant and the project sponsor, have an initial term of 15 years, with assistance for the first 5 years paid with funds authorized for appropriation under this chapter, and assistance for the remainder of the term treated as a renewal of an expiring contract as provided in section 11386c of this title. Project-based rental assistance may include rental assistance to preserve existing permanent supportive housing for homeless individuals and families.

(5) Payment of operating costs for housing units assisted under this part or for the preservation of housing that will serve homeless individuals and families and for which another form of assistance is expiring or otherwise no longer available.

(6) Supportive services for individuals and families who are currently homeless, who have been homeless in the prior six months but are currently residing in permanent housing, or who were previously homeless and are currently residing in permanent supportive housing.

(7) Provision of rehousing services, including housing search, mediation or outreach to property owners, credit repair, providing security or utility deposits, rental assistance for a final month at a location, assistance with moving costs, or other activities that—

(A) are effective at moving homeless individuals and families immediately into housing; or

(B) may benefit individuals and families who in the prior 6 months have been homeless, but are currently residing in permanent housing.

(8) In the case of a collaborative applicant that is a legal entity, performance of the duties described under section 11360a(f)(3) of this title.

(9) Operation of, participation in, and ensuring consistent participation by project sponsors in, a community-wide homeless management information system.

(10) In the case of a collaborative applicant that is a legal entity, payment of administrative costs related to meeting the requirements described in paragraphs (1) and (2) of section 11360a(f) of this title, for which the collaborative applicant may use not more than 3 percent of the total funds made available in the geographic area under this part for such costs.

(11) In the case of a collaborative applicant that is a unified funding agency under section 11360a(g) of this title, payment of administrative costs related to meeting the requirements of that section, for which the unified funding agency may use not more than 3 percent of the total funds made available in the geographic area under this part for such costs, in addition to funds used under paragraph (10).

(12) Payment of administrative costs to project sponsors, for which each project sponsor may use not more than 10 percent of the total funds made available to that project sponsor through this part for such costs.

(13) [1] Facilitating and coordinating activities to ensure compliance with subsection (e) of section 12491 of title 34 and monitoring compliance with the confidentiality protections of subsection (c)(4) of such section.

(13) [1] Projects in rural areas that consist of one or more of the following activities:

(A) Payment of short-term emergency lodging, including in motels or shelters, directly or through vouchers.

(B) Repairs to units—

(i) in which homeless individuals and families will be housed; or

(ii) which are currently not fit for human habitation.

(C) Staff training, professional development, skill development, and staff retention activities.

(b) Minimum grant terms

The Secretary may impose minimum grant terms of up to 5 years for new projects providing permanent housing.

(c) Use restrictions

(1) Acquisition, rehabilitation, and new construction

A project that consists of activities described in paragraph (1) or (2) of subsection (a) shall be operated for the purpose specified in the application submitted for the project under section 11382 of this title for not less than 15 years.

(2) Other activities

A project that consists of activities described in any of paragraphs (3) through (12) of subsection (a) shall be operated for the purpose specified in the application submitted for the project under section 11382 of this title for the duration of the grant period involved.

(3) Conversion

If the recipient or project sponsor carrying out a project that provides transitional or permanent housing submits a request to the Secretary to carry out instead a project for the direct benefit of low-income persons, and the Secretary determines that the initial project is no longer needed to provide transitional or permanent housing, the Secretary may approve the project described in the request and authorize the recipient or project sponsor to carry out that project.

(d) Repayment of assistance and prevention of undue benefits

(1) Repayment

If a recipient or project sponsor receives assistance under section 11382 of this title to carry out a project that consists of activities described in paragraph (1) or (2) of subsection (a) and the project ceases to provide transitional or permanent housing—

(A) earlier than 10 years after operation of the project begins, the Secretary shall require the recipient or project sponsor to repay 100 percent of the assistance; or

(B) not earlier than 10 years, but earlier than 15 years, after operation of the project begins,

the Secretary shall require the recipient or project sponsor to repay 20 percent of the assistance for each of the years in the 15-year period for which the project fails to provide that housing.

(2) Prevention of undue benefits

Except as provided in paragraph (3), if any property is used for a project that receives assistance under subsection (a) and consists of activities described in paragraph (1) or (2) of subsection (a), and the sale or other disposition of the property occurs before the expiration of the 15-year period beginning on the date that operation of the project begins, the recipient or project sponsor who received the assistance shall comply with such terms and conditions as the Secretary may prescribe to prevent the recipient or project sponsor from unduly benefitting from such sale or disposition.

(3) Exception

A recipient or project sponsor shall not be required to make the repayments, and comply with the terms and conditions, required under paragraph (1) or (2) if—

(A) the sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(B) all of the proceeds of the sale or disposition are used to provide transitional or permanent housing meeting the requirements of this part;

(C) project-based rental assistance or operating cost assistance from any Federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of title 26; or

(D) there are no individuals and families in the geographic area who are homeless, in which case the project may serve individuals and families at risk of homelessness.

(e) Staff training

The Secretary may allow reasonable costs associated with staff training to be included as part of the activities described in subsection (a).

(f) Eligibility for permanent housing

Any project that receives assistance under subsection (a) and that provides project-based or sponsor-based permanent housing for homeless individuals or families with a disability, including projects that meet the requirements of subsection (a) and subsection (d)(2)(A) of section 11386b of this title may also serve individuals who had previously met the requirements for such project prior to moving into a different permanent housing project.

(g) Administration of rental assistance

Provision of permanent housing rental assistance shall be administered by a State, unit of general local government, private nonprofit organization, or public housing agency.

(Pub. L. 100–77, title IV, §423, as added Pub. L. 111–22, div. B, title III, §1302, May 20, 2009, 123 Stat. 1684; amended Pub. L. 114–94, div. G, title LXXIX, §79001, Dec. 4, 2015, 129 Stat. 1792; Pub. L. 117–103, div. W, title VI, §605(a)(2), Mar. 15, 2022, 136 Stat. 886; Pub. L. 117–263, div. E, title LVII, §5707, Dec. 23, 2022, 136 Stat. 3419.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4), was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 11383, Pub. L. 100–77, title IV, §423, as added Pub. L. 102–550, title XIV, §1403(a), Oct.

28, 1992, 106 Stat. 4015; amended Pub. L. 106–377, §1(a)(1) [title II, §226], Oct. 27, 2000, 114 Stat. 1441, 1441A–30; Pub. L. 109–162, title VI, §605(1), Jan. 5, 2006, 119 Stat. 3041; Pub. L. 109–271, §5(b), Aug. 12, 2006, 120 Stat. 759, which related to eligible activities, was repealed by Pub. L. 111–22, div. B, title III, §1302, May 20, 2009, 123 Stat. 1684.

Another prior section 11383, Pub. L. 100–77, title IV, §423, July 22, 1987, 101 Stat. 501; Pub. L. 100–628, title IV, §§441(b), (c), 445(a), 446–448(a), 449, Nov. 7, 1988, 102 Stat. 3233, 3234; Pub. L. 101–625, title VIII, §833(c)–(e), (g), Nov. 28, 1990, 104 Stat. 4362, 4363, which outlined types of assistance provided under the supportive housing demonstration program, was repealed by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

AMENDMENTS

2022—Subsec. (a)(13). Pub. L. 117–263 added par. (13) relating to the eligibility of certain projects in rural areas.

Pub. L. 117–103 added par. (13) relating to facilitating and coordinating activities to ensure compliance with section 12491(e) of title 34.

2015—Subsec. (g). Pub. L. 114–94 inserted "private nonprofit organization," after "unit of general local government,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–103 not effective until Oct. 1 of the first fiscal year beginning after Mar. 15, 2022, see section 4(a) of div. W of Pub. L. 117–103, set out as an Effective Date note under section 6851 of Title 15, Commerce and Trade.

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

DEFINITION

For provisions relating to definition of "local government" as used in this section, see section 100261 of Pub. L. 112–141, set out as a HEARTH Act Technical Corrections note under section 11360 of this title.

[1] *So in original. Two pars. (13) have been enacted.*

§11384. Incentives for high-performing communities

(a) Designation as a high-performing community

(1) In general

The Secretary shall designate, on an annual basis, which collaborative applicants represent high-performing communities.

(2) Consideration

In determining whether to designate a collaborative applicant as a high-performing community under paragraph (1), the Secretary shall establish criteria to ensure that the requirements described under paragraphs (1)(B) and (2)(B) of subsection (d) are measured by comparing homeless individuals and families under similar circumstances, in order to encourage projects in the geographic area to serve homeless individuals and families with more severe barriers to housing stability.

(3) 2-year phase in

In each of the first 2 years after the effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the Secretary shall designate not more than 10 collaborative applicants as high-performing communities.

(4) Excess of qualified applicants

If, during the 2-year period described under paragraph (2), more than 10 collaborative applicants could qualify to be designated as high-performing communities, the Secretary shall designate the 10 that have, in the discretion of the Secretary, the best performance based on the criteria described under subsection (d).

(5) Time limit on designation

The designation of any collaborative applicant as a high-performing community under this subsection shall be effective only for the year in which such designation is made. The Secretary, on an annual basis, may renew any such designation.

(b) Application

(1) In general

A collaborative applicant seeking designation as a high-performing community under subsection (a) shall submit an application to the Secretary at such time, and in such manner as the Secretary may require.

(2) Content of application

In any application submitted under paragraph (1), a collaborative applicant shall include in such application—

(A) a report showing how any money received under this part in the preceding year was expended; and

(B) information that such applicant can meet the requirements described under subsection (d).

(3) Publication of application

The Secretary shall—

(A) publish any report or information submitted in an application under this section in the geographic area represented by the collaborative applicant; and

(B) seek comments from the public as to whether the collaborative applicant seeking designation as a high-performing community meets the requirements described under subsection (d).

(c) Use of funds

Funds awarded under section 11382(a) of this title to a project sponsor who is located in a high-performing community may be used—

(1) for any of the eligible activities described in section 11383 of this title; or

(2) for any of the eligible activities described in paragraphs (4) and (5) of section 11374(a) of this title.

(d) Definition of high-performing community

For purposes of this section, the term "high-performing community" means a geographic area that demonstrates through reliable data that all five of the following requirements are met for that geographic area:

(1) Term of homelessness

The mean length of episodes of homelessness for that geographic area—

(A) is less than 20 days; or

(B) for individuals and families in similar circumstances in the preceding year was at least 10 percent less than in the year before.

(2) Families leaving homelessness

Of individuals and families—

(A) who leave homelessness, fewer than 5 percent of such individuals and families become homeless again at any time within the next 2 years; or

(B) in similar circumstances who leave homelessness, the percentage of such individuals and families who become homeless again within the next 2 years has decreased by at least 20

percent from the preceding year.

(3) Community action

The communities that compose the geographic area have—

(A) actively encouraged homeless individuals and families to participate in homeless assistance services available in that geographic area; and

(B) included each homeless individual or family who sought homeless assistance services in the data system used by that community for determining compliance with this subsection.

(4) Effectiveness of previous activities

If recipients in the geographic area have used funding awarded under section 11382(a) of this title for eligible activities described under section 11374(a) of this title in previous years based on the authority granted under subsection (c), that such activities were effective at reducing the number of individuals and families who became homeless in that community.

(5) Flexibility to serve persons defined as homeless under other Federal laws

With respect to collaborative applicants exercising the authority under section 11382(j) of this title to serve homeless families with children and youth defined as homeless under other Federal statutes, effectiveness in achieving the goals and outcomes identified in subsection [1] 11386a(b)(1)(F) of this title according to such standards as the Secretary shall promulgate.

(e) Cooperation among entities

A collaborative applicant designated as a high-performing community under this section shall cooperate with the Secretary in distributing information about successful efforts within the geographic area represented by the collaborative applicant to reduce homelessness.

(Pub. L. 100–77, title IV, §424, as added Pub. L. 111–22, div. B, title III, §1303, May 20, 2009, 123 Stat. 1687.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, referred to in subsec. (a)(3), is the effective date under section 1503 of title V of div. B of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

PRIOR PROVISIONS

A prior section 11384, Pub. L. 100–77, title IV, §424, as added Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4016, which related to supportive housing, was repealed by Pub. L. 111–22, div. B, title III, §1303, May 20, 2009, 123 Stat. 1687.

Another prior section 11384, Pub. L. 100–77, title IV, §424, July 22, 1987, 101 Stat. 501; Pub. L. 100–628, title IV, §§442(b)(2), 448(b), 450(a)(1), (b), 451, Nov. 7, 1988, 102 Stat. 3233–3235; Pub. L. 101–625, title VIII, §833(f), (h)–(j), (k)(2), Nov. 28, 1990, 104 Stat. 4363–4365, which provided for applications, selection criteria, and other program requirements for assistance under the supportive housing demonstration program, was repealed by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

[1] *So in original. Probably should be "section".*

§11385. Supportive services

(a) In general

To the extent practicable, each project shall provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants.

(b) Requirements

Supportive services provided in connection with a project shall address the special needs of individuals (such as homeless persons with disabilities and homeless families with children) intended to be served by a project.

(c) Services

Supportive services may include such activities as (A) establishing and operating a child care services program for homeless families, (B) establishing and operating an employment assistance program, (C) providing outpatient health services, food, and case management, (D) providing assistance in obtaining permanent housing, employment counseling, and nutritional counseling, (E) providing security arrangements necessary for the protection of residents of supportive housing and for homeless persons using the housing or project, (F) providing assistance in obtaining other Federal, State, and local assistance available for such residents (including mental health benefits, employment counseling, and medical assistance, but not including major medical equipment), and (G) providing other appropriate services.

(d) Provision of services

Services provided pursuant to this section may be provided directly by the recipient or by contract with other public or private service providers. Such services may be provided to homeless individuals who do not reside in supportive housing.

(e) Coordination with Secretary of Health and Human Services

(1) Approval

Promptly upon receipt of any application for assistance under this part that includes the provision of outpatient health services, the Secretary of Housing and Urban Development shall consult with the Secretary of Health and Human Services with respect to the proposed outpatient health services. If, within 45 days of such consultation, the Secretary of Health and Human Services determines that the proposal for delivery of the outpatient health services does not meet guidelines for determining the appropriateness of such proposed services, the Secretary of Housing and Urban Development may require resubmission of the application, and the Secretary of Housing and Urban Development may not approve such portion of the application unless and until such portion has been resubmitted in a form that the Secretary of Health and Human Services determines meets such guidelines.

(2) Guidelines

The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall jointly establish guidelines for determining the appropriateness of proposed outpatient health services under this section. Such guidelines shall include any provisions necessary to enable the Secretary of Housing and Urban Development to meet the time limits under this part for the final selection of applications for assistance.

(Pub. L. 100–77, title IV, §425, as added Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4017.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11385, Pub. L. 100–77, title IV, §425, July 22, 1987, 101 Stat. 503; Pub. L. 100–628, title IV, §452, Nov. 7, 1988, 102 Stat. 3235; Pub. L. 101–625, title VIII, §833(k)(3), Nov. 28, 1990, 104 Stat. 4365, required recipients of assistance under supportive housing demonstration program to obtain an equal

amount of funding from non-Federal sources, prior to repeal by Pub. L. 102–550, §1403(a).

§11386. Program requirements

(a) Site control

The Secretary shall require that each application include reasonable assurances that the applicant will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance, unless the application proposes providing supportive housing assistance under section 11383(a)(3) of this title or housing that will eventually be owned or controlled by the families and individuals served. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If any recipient or project sponsor fails to obtain ownership or control of the site within 12 months after notification of an award for grant assistance, the grant shall be recaptured and reallocated under this part.

(b) Required agreements

The Secretary may not provide assistance for a proposed project under this part unless the collaborative applicant involved agrees—

(1) to ensure the operation of the project in accordance with the provisions of this part;

(2) to monitor and report to the Secretary the progress of the project;

(3) to ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) to require certification from all project sponsors that—

(A) they will maintain the confidentiality of records pertaining to any individual or family provided family violence prevention or treatment services through the project;

(B) that [1] the address or location of any family violence shelter project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(C) they will establish policies and practices that are consistent with, and do not restrict the exercise of rights provided by, part B of subchapter VI [42 U.S.C. 11431 et seq.], and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(D) in the case of programs that provide housing or services to families, they will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.], and programs authorized under part B of subchapter VI of this chapter (42 U.S.C. 11431 et seq.); and

(E) they will provide data and reports as required by the Secretary pursuant to the Act; [2]

(5) if a collaborative applicant is a unified funding agency under section 11360a(g) of this title and receives funds under this part to carry out the payment of administrative costs described in section 11383(a)(11) of this title, to establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, such funds in order to ensure that all financial transactions carried out with such funds are conducted, and records maintained, in accordance with generally accepted accounting principles;

(6) to monitor and report to the Secretary the provision of matching funds as required by section 11386d of this title;

(7) to take the educational needs of children into account when families are placed in emergency or transitional shelter and will, to the maximum extent practicable, place families with

children as close as possible to their school of origin so as not to disrupt such children's education; and

(8) to comply with such other terms and conditions as the Secretary may establish to carry out this part in an effective and efficient manner.

(c) Occupancy charge

Each homeless individual or family residing in a project providing supportive housing may be required to pay an occupancy charge in an amount determined by the recipient or project sponsor providing the project, which may not exceed the amount determined under section 1437a(a) of this title. Occupancy charges paid may be reserved, in whole or in part, to assist residents in moving to permanent housing.

(d) Flood protection standards

Flood protection standards applicable to housing acquired, rehabilitated, constructed, or assisted under this part shall be no more restrictive than the standards applicable under Executive Order No. 11988 (May 24, 1977) to the other programs under this subchapter.

(e) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient or project sponsor to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of the recipient or project sponsor, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. The Secretary may grant waivers to applicants unable to meet the requirement under the preceding sentence if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(f) Limitation on use of funds

No assistance received under this part (or any State or local government funds used to supplement such assistance) may be used to replace other State or local funds previously used, or designated for use, to assist homeless persons.

(g) Termination of assistance

If an individual or family who receives assistance under this part (not including residents of an emergency shelter) from a recipient violates program requirements, the recipient may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals receiving such assistance to due process of law, which may include a hearing.

(Pub. L. 100–77, title IV, §426, as added Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4018; amended Pub. L. 111–22, div. B, title III, §1304, May 20, 2009, 123 Stat. 1688.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(4)(D), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Act, referred to in subsec. (b)(4)(E), probably means "this Act", Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

Executive Order No. 11988, referred to in subsec. (d), is set out as a note under section 4321 of this title.

PRIOR PROVISIONS

A prior section 11386, Pub. L. 100–77, title IV, §426, July 22, 1987, 101 Stat. 503, related to establishment of guidelines for purposes of a supportive housing demonstration program, prior to repeal by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

AMENDMENTS

2009—Subsecs. (a), (b). Pub. L. 111–22, §1304(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to applications and selection criteria, respectively.

Subsec. (c). Pub. L. 111–22, §1304(1)–(3), redesignated subsec. (d) as (c), substituted "recipient or project sponsor" for "recipient" in first sentence, and struck out former subsec. (c) which related to required agreements.

Subsec. (d). Pub. L. 111–22, §1304(5), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 111–22, §1304(4)–(6), redesignated subsec. (g) as (e), substituted "recipient or project sponsor" for "recipient" in two places in first sentence, and struck out former subsec. (e). Text of subsec. (e) read as follows: "Each recipient shall be required to supplement the amount of assistance provided under paragraphs (1) and (2) of section 11383(a) of this title with an equal amount of funds from sources other than this part."

Subsec. (f). Pub. L. 111–22, §1304(5), redesignated subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsec. (g). Pub. L. 111–22, §1304(8), redesignated subsec. (j) as (g). Former subsec. (g) redesignated (e).

Subsec. (h). Pub. L. 111–22, §1304(5), redesignated subsec. (h) as (f).

Subsec. (i). Pub. L. 111–22, §1304(7), struck out subsec. (i). Text read as follows: "No recipient may use more than 5 percent of a grant received under this part for administrative purposes."

Subsec. (j). Pub. L. 111–22, §1304(8), redesignated subsec. (j) as (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–22 effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as a note under section 11302 of this title.

DEFINITION

For provisions relating to definition of "local government" as used in this section, see section 100261 of Pub. L. 112–141, set out as a HEARTH Act Technical Corrections note under section 11360 of this title.

[1] So in original. The word "that" probably should not appear.

[2] See References in Text note below.

§11386a. Selection criteria

(a) In general

The Secretary shall award funds to recipients through a national competition between geographic areas based on criteria established by the Secretary.

(b) Required criteria

(1) In general

The criteria established under subsection (a) shall include—

(A) the previous performance of the recipient regarding homelessness, including performance related to funds provided under section 11372 of this title (except that recipients applying from geographic areas where no funds have been awarded under this part, or under parts C, D, E, or F of subchapter IV of this chapter, as in effect prior to May 20, 2009, shall receive full credit for performance under this subparagraph), measured by criteria that shall be announced by the Secretary, that shall take into account barriers faced by individual homeless people, and that shall include—

(i) the length of time individuals and families remain homeless;

(ii) the extent to which individuals and families who leave homelessness experience additional spells of homelessness;

(iii) the thoroughness of grantees in the geographic area in reaching homeless individuals

and families;

(iv) overall reduction in the number of homeless individuals and families;

(v) jobs and income growth for homeless individuals and families;

(vi) success at reducing the number of individuals and families who become homeless;

(vii) other accomplishments by the recipient related to reducing homelessness; and

(viii) for collaborative applicants that have exercised the authority under section 11382(j) of this title to serve families with children and youth defined as homeless under other Federal statutes, success in achieving the goals and outcomes identified in subsection (b)(1)(F);

(B) the plan of the recipient, which shall describe—

(i) how the number of individuals and families who become homeless will be reduced in the community;

(ii) how the length of time that individuals and families remain homeless will be reduced;

(iii) how the recipient will collaborate with local education authorities to assist in the identification of individuals and families who become or remain homeless and are informed of their eligibility for services under part B of subchapter VI of this chapter (42 U.S.C. 11431 et seq.);

(iv) the extent to which the recipient will—

(I) address the needs of all relevant subpopulations;

(II) incorporate comprehensive strategies for reducing homelessness, including the interventions referred to in section 11386b(d) of this title;

(III) set quantifiable performance measures;

(IV) set timelines for completion of specific tasks;

(V) identify specific funding sources for planned activities; and

(VI) identify an individual or body responsible for overseeing implementation of specific strategies; and

(v) whether the recipient proposes to exercise authority to use funds under section 11382(j) of this title, and if so, how the recipient will achieve the goals and outcomes identified in subsection (b)(1)(F);

(C) the methodology of the recipient used to determine the priority for funding local projects under section 11382(c)(1) of this title, including the extent to which the priority-setting process—

(i) uses periodically collected information and analysis to determine the extent to which each project has resulted in rapid return to permanent housing for those served by the project, taking into account the severity of barriers faced by the people the project serves;

(ii) considers the full range of opinions from individuals or entities with knowledge of homelessness in the geographic area or an interest in preventing or ending homelessness in the geographic area;

(iii) is based on objective criteria that have been publicly announced by the recipient; and

(iv) is open to proposals from entities that have not previously received funds under this part;

(D) the extent to which the amount of assistance to be provided under this part to the recipient will be supplemented with resources from other public and private sources, including mainstream programs identified by the Government Accountability Office in the two reports described in section 11313(a)(7) of this title;

(E) demonstrated coordination by the recipient with the other Federal, State, local, private, and other entities serving individuals and families experiencing homelessness and at risk of homelessness in the planning and operation of projects;

(F) for collaborative applicants exercising the authority under section 11382(j) of this title to serve homeless families with children and youth defined as homeless under other Federal

statutes, program goals and outcomes, which shall include—

(i) preventing homelessness among the subset of such families with children and youth who are at highest risk of becoming homeless, as such term is defined for purposes of this subchapter; or

(ii) achieving independent living in permanent housing among such families with children and youth, especially those who have a history of doubled-up and other temporary housing situations or are living in a temporary housing situation due to lack of available and appropriate emergency shelter, through the provision of eligible assistance that directly contributes to achieving such results including assistance to address chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, or multiple barriers to employment; and

(G) such other factors as the Secretary determines to be appropriate to carry out this part in an effective and efficient manner.

(2) Additional criteria

In addition to the criteria required under paragraph (1), the criteria established under paragraph (1) shall also include the need within the geographic area for homeless services, determined as follows and under the following conditions:

(A) Notice

The Secretary shall inform each collaborative applicant, at a time concurrent with the release of the notice of funding availability for the grants, of the pro rata estimated grant amount under this part for the geographic area represented by the collaborative applicant.

(B) Amount

(i) Formula

Such estimated grant amounts shall be determined by a formula, which shall be developed by the Secretary, by regulation, not later than the expiration of the 2-year period beginning upon May 20, 2009, that is based upon factors that are appropriate to allocate funds to meet the goals and objectives of this part.

(ii) Combinations or consortia

For a collaborative applicant that represents a combination or consortium of cities or counties, the estimated need amount shall be the sum of the estimated need amounts for the cities or counties represented by the collaborative applicant.

(iii) Authority of Secretary

Subject to the availability of appropriations, the Secretary shall increase the estimated need amount for a geographic area if necessary to provide 1 year of renewal funding for all expiring contracts entered into under this part for the geographic area.

(3) Homelessness counts

The Secretary shall not require that communities conduct an actual count of homeless people other than those described in paragraphs (1) through (4) of section 11302(a) of this title.

(c) Adjustments

The Secretary may adjust the formula described in subsection (b)(2) as necessary—

(1) to ensure that each collaborative applicant has sufficient funding to renew all qualified projects for at least one year; and

(2) to ensure that collaborative applicants are not discouraged from replacing renewal projects with new projects that the collaborative applicant determines will better be able to meet the purposes of this chapter.

(Pub. L. 100–77, title IV, §427, as added Pub. L. 111–22, div. B, title III, §1305(3), May 20, 2009, 123 Stat. 1690.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2), was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 427 of Pub. L. 100–77 was renumbered section 433 and is classified to section 11387 of this title.

Another prior section 427 of Pub. L. 100–77, July 22, 1987, 101 Stat. 504; Pub. L. 100–628, title IV, §453, Nov. 7, 1988, 102 Stat. 3236, which provided for reports to Congress summarizing the activities carried out under the supportive housing demonstration program, was classified to section 11387 of this title prior to repeal by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11386b. Allocation of amounts and incentives for specific eligible activities

(a) Minimum allocation for permanent housing for homeless individuals and families with disabilities

(1) In general

From the amounts made available to carry out this part for a fiscal year, a portion equal to not less than 30 percent of the sums made available to carry out part B and this part, shall be used for permanent housing for homeless individuals with disabilities and homeless families that include such an individual who is an adult or a minor head of household if no adult is present in the household.

(2) Calculation

In calculating the portion of the amount described in paragraph (1) that is used for activities that are described in paragraph (1), the Secretary shall not count funds made available to renew contracts for existing projects under section 11386c of this title.

(3) Adjustment

The 30 percent figure in paragraph (1) shall be reduced proportionately based on need under section 11386a(b)(2) of this title in geographic areas for which subsection (e) applies in regard to subsection (d)(2)(A).

(4) Suspension

The requirement established in paragraph (1) shall be suspended for any year in which funding available for grants under this part after making the allocation established in paragraph (1) would not be sufficient to renew for 1 year all existing grants that would otherwise be fully funded under this part.

(5) Termination

The requirement established in paragraph (1) shall terminate upon a finding by the Secretary that since the beginning of 2001 at least 150,000 new units of permanent housing for homeless individuals and families with disabilities have been funded under this part.

(b) Set-aside for permanent housing for homeless families with children

From the amounts made available to carry out this part for a fiscal year, a portion equal to not less than 10 percent of the sums made available to carry out part B and this part for that fiscal year shall be used to provide or secure permanent housing for homeless families with children.

(c) Treatment of amounts for permanent or transitional housing

Nothing in this chapter may be construed to establish a limit on the amount of funding that an applicant may request under this part for acquisition, construction, or rehabilitation activities for the development of permanent housing or transitional housing.

(d) Incentives for proven strategies

(1) In general

The Secretary shall provide bonuses or other incentives to geographic areas for using funding under this part for activities that have been proven to be effective at reducing homelessness generally, reducing homelessness for a specific subpopulation, or achieving homeless prevention and independent living goals as set forth in section 11386a(b)(1)(F) of this title.

(2) Rule of construction

For purposes of this subsection, activities that have been proven to be effective at reducing homelessness generally or reducing homelessness for a specific subpopulation includes—

(A) permanent supportive housing for chronically homeless individuals and families;

(B) for homeless families, rapid rehousing services, short-term flexible subsidies to overcome barriers to rehousing, support services concentrating on improving incomes to pay rent, coupled with performance measures emphasizing rapid and permanent rehousing and with leveraging funding from mainstream family service systems such as Temporary Assistance for Needy Families and Child Welfare services; and

(C) any other activity determined by the Secretary, based on research and after notice and comment to the public, to have been proven effective at reducing homelessness generally, reducing homelessness for a specific subpopulation, or achieving homeless prevention and independent living goals as set forth in section 11386a(b)(1)(F) of this title.

(3) Balance of incentives for proven strategies

To the extent practicable, in providing bonuses or incentives for proven strategies, the Secretary shall seek to maintain a balance among strategies targeting homeless individuals, families, and other subpopulations. The Secretary shall not implement bonuses or incentives that specifically discourage collaborative applicants from exercising their flexibility to serve families with children and youth defined as homeless under other Federal statutes.

(e) Incentives for successful implementation of proven strategies

If any geographic area demonstrates that it has fully implemented any of the activities described in subsection (d) for all homeless individuals and families or for all members of subpopulations for whom such activities are targeted, that geographic area shall receive the bonus or incentive provided under subsection (d), but may use such bonus or incentive for any eligible activity under either section 11383 of this title or paragraphs (4) and (5) of section 11374(a) of this title for homeless people generally or for the relevant subpopulation.

(Pub. L. 100–77, title IV, §428, as added Pub. L. 111–22, div. B, title III, §1305(3), May 20, 2009, 123 Stat. 1693.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 428 of Pub. L. 100–77 was renumbered section 434 and is classified to section 11388 of this title.

Another prior section 428 of Pub. L. 100–77, July 22, 1987, 101 Stat. 504; Pub. L. 100–628, title IV, §§454, 455, Nov. 7, 1988, 102 Stat. 3236; Pub. L. 101–625, title VIII, §833(a), Nov. 28, 1990, 104 Stat. 4362, which authorized appropriations for the supportive housing demonstration program, was classified to section 11388 of this title prior to repeal by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11386c. Renewal funding and terms of assistance for permanent housing

(a) In general

Renewal of expiring contracts for leasing, rental assistance, or operating costs for permanent housing contracts may be funded either—

(1) under the appropriations account for this subchapter; or

(2) the section 8 [42 U.S.C. 1437f] project-based rental assistance account.

(b) Renewals

The sums made available under subsection (a) shall be available for the renewal of contracts in the case of tenant-based assistance, successive 1-year terms, and in the case of project-based assistance, successive terms of up to 15 years at the discretion of the applicant or project sponsor and subject to the availability of annual appropriations, for rental assistance and housing operation costs associated with permanent housing projects funded under this part, or under part C or F (as in effect on the day before the effective date of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009). The Secretary shall determine whether to renew a contract for such a permanent housing project on the basis of certification by the collaborative applicant for the geographic area that—

(1) there is a demonstrated need for the project; and

(2) the project complies with program requirements and appropriate standards of housing quality and habitability, as determined by the Secretary.

(c) Construction

Nothing in this section shall be construed as prohibiting the Secretary from renewing contracts under this part in accordance with criteria set forth in a provision of this part other than this section.

(Pub. L. 100–77, title IV, §429, as added Pub. L. 111–22, div. B, title III, §1305(3), May 20, 2009, 123 Stat. 1695.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, referred to in subsec. (b), probably means the general effective date under section 1503 of Pub. L. 111–22, which is set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

PRIOR PROVISIONS

A prior section 429 of Pub. L. 100–77 was classified to section 11389 of this title prior to repeal by Pub. L. 111–22, div. B, title III, §1305(1), May 20, 2009, 123 Stat. 1690.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11386d. Matching funding

(a) In general

A collaborative applicant in a geographic area in which funds are awarded under this part shall specify contributions from any source other than a grant awarded under this part, including renewal funding of projects assisted under parts C, D, and F of this subchapter as in effect before the effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, that shall be made available in the geographic area in an amount equal to not less than 25 percent of the funds provided to recipients in the geographic area, except that grants for leasing shall not be subject to any match requirement.

(b) Limitations on in-kind match

The cash value of services provided to the residents or clients of a project sponsor by an entity other than the project sponsor may count toward the contributions in subsection (a) only when documented by a memorandum of understanding between the project sponsor and the other entity that such services will be provided.

(c) Countable activities

The contributions required under subsection (a) may consist of—

(1) funding for any eligible activity described under section 11383 of this title; and

(2) subject to subsection (b), in-kind provision of services of any eligible activity described under section 11383 of this title.

(Pub. L. 100–77, title IV, §430, as added Pub. L. 111–22, div. B, title III, §1305(3), May 20, 2009, 123 Stat. 1695.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, referred to in subsec. (a), is section 1503 of Pub. L. 111–22, which is set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11386e. Appeal procedure

(a) In general

With respect to funding under this part, if certification of consistency with the consolidated plan pursuant to section 11361 of this title is withheld from an applicant who has submitted an application for that certification, such applicant may appeal such decision to the Secretary.

(b) Procedure

The Secretary shall establish a procedure to process the appeals described in subsection (a).

(c) Determination

Not later than 45 days after the date of receipt of an appeal described in subsection (a), the Secretary shall determine if certification was unreasonably withheld. If such certification was unreasonably withheld, the Secretary shall review such application and determine if such applicant shall receive funding under this part.

(Pub. L. 100–77, title IV, §431, as added Pub. L. 111–22, div. B, title III, §1305(3), May 20, 2009, 123 Stat. 1696.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 431 of Pub. L. 100–77 was classified to section 11391 of this title prior to repeal by Pub. L. 111–22, div. B, title V, §1501, May 20, 2009, 123 Stat. 1701.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

§11386f. Geographic areas

(a) Requirement to define

For purposes of this part, the term "geographic area" shall have such meaning as the Secretary shall by notice provide.

(b) Issuance of notice

Not later than the expiration of the 90-day period beginning on July 29, 2016, the Secretary shall issue a notice setting forth the definition required by subsection (a).

(Pub. L. 100–77, title IV, §432, as added Pub. L. 114–201, title IV, §401(a)(2), July 29, 2016, 130 Stat. 807.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 432 of Pub. L. 100–77 was renumbered section 433 and is classified to section 11387 of this title.

Another prior section 432 of Pub. L. 100–77, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4022, which defined terms for purposes of this part, was classified to section 11392 of this title, prior to repeal by Pub. L. 111–22, div. B, title V, §1501, May 20, 2009, 123 Stat. 1701.

Another prior section 432 of Pub. L. 100–77, July 22, 1987, 101 Stat. 505; Pub. L. 100–628, title IV, §§461–463(a), Nov. 7, 1988, 102 Stat. 3236, 3237; Pub. L. 101–625, title VIII, §834(b)–(d), Nov. 28, 1990, 104 Stat. 4365, 4366, which provided for supplemental assistance for facilities to assist the homeless, was classified to section 11392 of this title, prior to repeal by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

§11387. Regulations

Not later than the expiration of the 90-day period beginning on October 28, 1992, the Secretary

shall issue interim regulations to carry out this part, which shall take effect upon issuance. The Secretary shall issue final regulations to carry out this part after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance.

(Pub. L. 100–77, title IV, §433, formerly §427, as added Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4021; renumbered §432, Pub. L. 111–22, div. B, title III, §1305(2), May 20, 2009, 123 Stat. 1690; renumbered §433, Pub. L. 114–201, title IV, §401(a)(1), July 29, 2016, 130 Stat. 807.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11387, Pub. L. 100–77, title IV, §427, July 22, 1987, 101 Stat. 504; Pub. L. 100–628, title IV, §453, Nov. 7, 1988, 102 Stat. 3236, provided for reports to Congress summarizing the activities carried out under the supportive housing demonstration program, prior to repeal by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

A prior section 433 of Pub. L. 100–77 was renumbered section 434 and is classified to section 11388 of this title.

Another prior section 433 of Pub. L. 100–77 was classified to section 11393 of this title, prior to repeal by Pub. L. 111–22, div. B, title V, §1501, May 20, 2009, 123 Stat. 1701.

Another prior section 433 of Pub. L. 100–77 related to establishment of regulations for program to provide supplemental assistance for facilities to assist the homeless and was classified to section 11393 of this title, prior to repeal by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

§11388. Reports to Congress

The Secretary shall submit a report to the Congress annually, summarizing the activities carried out under this part and setting forth the findings, conclusions, and recommendations of the Secretary as a result of the activities. The report shall be submitted not later than 4 months after the end of each fiscal year (except that, in the case of fiscal year 1993, the report shall be submitted not later than 6 months after the end of the fiscal year).

(Pub. L. 100–77, title IV, §434, formerly §428, as added Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4021; renumbered §433, Pub. L. 111–22, div. B, title III, §1305(2), May 20, 2009, 123 Stat. 1690; renumbered §434, Pub. L. 114–201, title IV, §401(a)(1), July 29, 2016, 130 Stat. 807.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11388, Pub. L. 100–77, title IV, §428, July 22, 1987, 101 Stat. 504; Pub. L. 100–628, title IV, §§454, 455, Nov. 7, 1988, 102 Stat. 3236; Pub. L. 101–625, title VIII, §833(a), Nov. 28, 1990, 104 Stat. 4362, authorized appropriations for the supportive housing demonstration program, prior to repeal by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

A prior section 434 of Pub. L. 100–77 was classified to section 11394 of this title, prior to repeal by Pub. L. 111–22, div. B, title V, §1501, May 20, 2009, 123 Stat. 1701.

Another prior section 434 of Pub. L. 100–77 authorized appropriations for supplemental assistance for facilities to assist the homeless and was classified to section 11394 of this title, prior to repeal by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

§11389. Indian tribes and tribally designated housing entities

Notwithstanding any other provision of this subchapter, for purposes of this part, an Indian Tribe or tribally designated housing entity (as defined in section 4103 of title 25) may—

(1) be a collaborative applicant or eligible entity; or

(2) receive grant amounts from another entity that receives a grant directly from the Secretary, and use the amounts in accordance with this part.

(Pub. L. 100–77, title IV, §435, as added Pub. L. 116–260, div. Q, title I, §102(a)(2), Dec. 27, 2020, 134 Stat. 2166.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11389, Pub. L. 100–77, title IV, §429, as added Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4021, authorized appropriations for fiscal years 1993 and 1994, prior to repeal by Pub. L. 111–22, div. B, title III, §1305(1), May 20, 2009, 123 Stat. 1690, effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

Prior sections 11391 to 11407b, consisting of former parts D to F of this subchapter which related to safe havens for homeless individuals demonstration program, miscellaneous provisions, and shelter plus care program, respectively, were repealed by Pub. L. 111–22, div. B, title V, §1501, May 20, 2009, 123 Stat. 1701, effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title.

Section 11391, Pub. L. 100–77, title IV, §431, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4022, established safe havens for homeless individuals demonstration program.

Another prior section 11391, Pub. L. 100–77, title IV, §431, July 22, 1987, 101 Stat. 504; Pub. L. 100–242, title V, §570(i)(2), Feb. 5, 1988, 101 Stat. 1950, which provided definitions for a program of supplemental assistance for facilities to assist the homeless, was repealed by Pub. L. 102–550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

Section 11392, Pub. L. 100–77, title IV, §432, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4022, provided definitions for part D.

Another prior section 11392, Pub. L. 100–77, title IV, §432, July 22, 1987, 101 Stat. 505; Pub. L. 100–628, title IV, §§461–463(a), Nov. 7, 1988, 102 Stat. 3236, 3237; Pub. L. 101–625, title VIII, §834(b)–(d), Nov. 28, 1990, 104 Stat. 4365, 4366, which provided for supplemental assistance for facilities to assist the homeless, was repealed by Pub. L. 102–550, §1403(a).

Section 11393, Pub. L. 100–77, title IV, §433, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4024, related to program assistance.

Another prior section 11393, Pub. L. 100–77, title IV, §433, July 22, 1987, 101 Stat. 507, which related to establishment of regulations for program to provide supplemental assistance for facilities to assist the homeless, was repealed by Pub. L. 102–550, §1403(a).

Section 11394, Pub. L. 100–77, title IV, §434, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4025, related to program requirements.

Another prior section 11394, Pub. L. 100–77, title IV, §434, July 22, 1987, 101 Stat. 508; Pub. L. 100–628, title IV, §464, Nov. 7, 1988, 102 Stat. 3237; Pub. L. 101–625, title VIII, §834(a), Nov. 28, 1990, 104 Stat. 4365, which authorized appropriations for supplemental assistance for facilities to assist the homeless, was repealed by Pub. L. 102–550, §1403(a).

Section 11395, Pub. L. 100–77, title IV, §435, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4027, related to occupancy charge.

Section 11396, Pub. L. 100–77, title IV, §436, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4027, related to termination of assistance.

Section 11397, Pub. L. 100–77, title IV, §437, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4027, related to evaluation of the program and report to Congress.

Section 11398, Pub. L. 100–77, title IV, §438, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4027, related to regulations.

Section 11399, Pub. L. 100–77, title IV, §439, as added Pub. L. 102–550, title XIV, §1404, Oct. 28, 1992,

106 Stat. 4028, authorized appropriations for fiscal years 1993 and 1994.

Section 11401, Pub. L. 100–77, title IV, §441, July 22, 1987, 101 Stat. 508; Pub. L. 100–628, title IV, §481(a)–(d)(1), Nov. 7, 1988, 102 Stat. 3237, 3238; Pub. L. 101–625, title VIII, §835, Nov. 28, 1990, 104 Stat. 4366; Pub. L. 102–550, title XIV, §1405(a)–(d), Oct. 28, 1992, 106 Stat. 4028, 4029; Pub. L. 104–330, title V, §506(a)(8), Oct. 26, 1996, 110 Stat. 4044, related to section 1437f assistance for single room occupancy dwellings.

Section 11402, Pub. L. 100–77, title IV, §443, as added Pub. L. 100–628, title IV, §482(a), Nov. 7, 1988, 102 Stat. 3238; amended Pub. L. 106–377, §1(a)(1) [title II, §208], Oct. 27, 2000, 114 Stat. 1441, 1441A–25, related to environmental review.

Section 11403, Pub. L. 100–77, title IV, §451, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4367, related to the purpose of the Shelter Plus Care Program.

Section 11403a, Pub. L. 100–77, title IV, §452, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4367; amended Pub. L. 102–550, title XIV, §1406(g)(2), Oct. 28, 1992, 106 Stat. 4034, related to rental housing assistance.

Section 11403b, Pub. L. 100–77, title IV, §453, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4367, related to supportive services requirements.

Section 11403c, Pub. L. 100–77, title IV, §454, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4367; amended Pub. L. 102–550, title XIV, §1406(g)(3), Oct. 28, 1992, 106 Stat. 4034, related to applications for rental housing assistance.

Section 11403d, Pub. L. 100–77, title IV, §455, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4369; amended Pub. L. 102–550, title XIV, §1406(b), Oct. 28, 1992, 106 Stat. 4030, related to selection criteria for a national competition for assistance.

Section 11403e, Pub. L. 100–77, title IV, §456, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4369; amended Pub. L. 102–550, title XIV, §1406(c), Oct. 28, 1992, 106 Stat. 4030, related to agreements required for assistance to be approved.

Section 11403e–1, Pub. L. 100–77, title IV, §457, formerly §464, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered §457 and amended Pub. L. 102–550, title XIV, §1406(e)(4), Oct. 28, 1992, 106 Stat. 4031, related to housing standards and rent reasonableness. Section was formerly classified to section 11404c of this title.

Section 11403e–2, Pub. L. 100–77, title IV, §458, formerly §465, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4372; renumbered §458, Pub. L. 102–550, title XIV, §1406(e)(5), Oct. 28, 1992, 106 Stat. 4031, related to tenant rent. Section was formerly classified to section 11404d of this title.

Section 11403e–3, Pub. L. 100–77, title IV, §459, formerly §466, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4372; renumbered §459, Pub. L. 102–550, title XIV, §1406(e)(5), Oct. 28, 1992, 106 Stat. 4031, related to administrative fees. Section was formerly classified to section 11404e of this title.

Section 11403e–4, Pub. L. 100–77, title IV, §460, as added Pub. L. 102–550, title XIV, §1406(e)(6), Oct. 28, 1992, 106 Stat. 4031, related to occupancy of dwelling units receiving assistance.

Section 11403f, Pub. L. 100–77, title IV, §461, formerly §457, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4369; renumbered §461, Pub. L. 102–550, title XIV, §1406(e)(1), Oct. 28, 1992, 106 Stat. 4031, related to termination of assistance.

Another prior section 461 of Pub. L. 100–77 was classified to section 11404 of this title, prior to repeal by Pub. L. 102–550, title XIV, §1406(d)(3), Oct. 28, 1992, 106 Stat. 4030.

Section 11403f–1, Pub. L. 100–77, title IV, §462, as added Pub. L. 110–289, div. B, title VIII, §2835(c)(1)(C), July 30, 2008, 122 Stat. 2874, related to term of contract with owner or lessor.

Another prior section 462 of Pub. L. 100–77 was renumbered section 463 and was classified to section 11403g of this title prior to repeal by Pub. L. 111–22.

Another prior section 462 of Pub. L. 100–77 was renumbered section 472 and was classified to section 11404a of this title prior to repeal by Pub. L. 111–22.

Section 11403g, Pub. L. 100–77, title IV, §463, formerly §458, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4369; renumbered §462 and amended Pub. L. 102–550, title XIV, §1406(e)(2), Oct. 28, 1992, 106 Stat. 4031; Pub. L. 104–330, title V, §506(a)(9), Oct. 26, 1996, 110 Stat. 4045; renumbered §463, Pub. L. 110–289, div. B, title VIII, §2835(c)(1)(A), July 30, 2008, 122 Stat. 2874, provided definitions for part F.

Another prior section 463 of Pub. L. 100–77 was renumbered section 464 and was classified to section 11403h of this title prior to repeal by Pub. L. 111–22.

Another prior section 463 of Pub. L. 100–77 was renumbered section 473 and was classified to section 11404b of this title prior to repeal by Pub. L. 111–22.

Section 11403h, Pub. L. 100–77, title IV, §464, formerly §459, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4370; renumbered §463 and amended Pub. L. 102–550, title XIV, §1406(a), (e)(3), Oct. 28, 1992, 106 Stat. 4029, 4031; renumbered §464, Pub. L. 110–289, div. B, title VIII, §2835(c)(1)(A), July 30, 2008, 122 Stat. 2874, authorized appropriations.

Another prior section 464 of Pub. L. 100–77 was renumbered section 457 and was classified to section 11403e–1 of this title prior to repeal by Pub. L. 111–22.

Section 11404, Pub. L. 100–77, title IV, §471, as added Pub. L. 102–550, title XIV, §1406(d)(3), Oct. 28, 1992, 106 Stat. 4030; amended Pub. L. 110–289, div. B, title VIII, §2835(c)(1)(B), July 30, 2008, 122 Stat. 2874, authorized Secretary to use amounts made available under former section 11403h of this title to provide tenant-based rental housing assistance.

Another prior section 11404, Pub. L. 100–77, title IV, §461, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4371, which authorized use of appropriations for provision of rental housing assistance to homeless in accordance with shelter plus care program, was repealed by Pub. L. 102–550, title XIV, §1406(d)(3), Oct. 28, 1992, 106 Stat. 4030.

Another prior section 471 of Pub. L. 100–77 was classified to section 11405 of this title prior to repeal by Pub. L. 102–550, title XIV, §1406(d)(2), Oct. 28, 1992, 106 Stat. 4030.

Section 11404a, Pub. L. 100–77, title IV, §472, formerly §462, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered §472 and amended Pub. L. 102–550, title XIV, §1406(d)(4), Oct. 28, 1992, 106 Stat. 4031, related to the selection of a dwelling unit by an eligible person.

Another prior section 472 of Pub. L. 100–77 was classified to section 11405a of this title prior to repeal by Pub. L. 102–550, §1406(d)(2).

Section 11404b, Pub. L. 100–77, title IV, §473, formerly §463, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered §473 and amended Pub. L. 102–550, title XIV, §1406(d)(5), Oct. 28, 1992, 106 Stat. 4031, related to the amount of assistance.

Another prior section 473 of Pub. L. 100–77 was classified to section 11405b of this title prior to repeal by Pub. L. 102–550, §1406(d)(2).

Section 11405, Pub. L. 100–77, title IV, §476, as added Pub. L. 102–550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4032; amended Pub. L. 110–289, div. B, title VIII, §2835(c)(1)(B), July 30, 2008, 122 Stat. 2874, authorized Secretary to use amounts made available under former section 11403h of this title to provide project-based rental housing assistance.

Another prior section 11405, Pub. L. 100–77, title IV, §471, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4372, which authorized use of appropriations in connection with moderate rehabilitation of single room occupancy housing, was repealed by Pub. L. 102–550, §1406(d)(2).

Section 11405a, Pub. L. 100–77, title IV, §477, as added Pub. L. 102–550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4032, related to provision of housing assistance pursuant to a contract between the recipient and an owner of an existing structure.

Another prior section 11405a, Pub. L. 100–77, title IV, §472, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4372, which related to fire and safety improvements in connection with contracts for housing assistance payments, was repealed by Pub. L. 102–550, §1406(d)(2).

Section 11405b, Pub. L. 100–77, title IV, §478, as added Pub. L. 102–550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4032; amended Pub. L. 110–289, div. B, title VIII, §2835(c)(2), July 30, 2008, 122 Stat. 2874, related to term of contract and amount of assistance.

Another prior section 11405b, Pub. L. 100–77, title IV, §473, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4372, which listed provisions to be contained in contracts entered into by Secretary with public housing agencies under shelter plus care program, was repealed by Pub. L. 102–550, §1406(d)(2).

Section 11405c, Pub. L. 100–77, title IV, §474, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4373, which related to term of occupancy agreements and issuance of vacancy payments under shelter plus care program, was repealed by Pub. L. 102–550, §1406(d)(2).

Section 11406, Pub. L. 100–77, title IV, §481, as added Pub. L. 102–550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4032; amended Pub. L. 110–289, div. B, title VIII, §2835(c)(1)(B), July 30, 2008, 122 Stat. 2874, authorized Secretary to use amounts made available under former section 11403h of this title to provide sponsor-based rental assistance.

Another prior section 11406, Pub. L. 100–77, title IV, §481, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4373, which authorized use of appropriations in connection with provision of rental housing assistance under section 1701q of Title 12, Banks and Banking, was repealed by Pub. L. 102–550, §1406(d)(2).

Section 11406a, Pub. L. 100–77, title IV, §482, as added Pub. L. 102–550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4032, related to provision of assistance pursuant to a contract between the recipient and a

private nonprofit sponsor that owns or leases dwelling units.

Another prior section 11406a, Pub. L. 100–77, title IV, §482, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4373, which related to amount of rental housing assistance to be provided under shelter plus care program in connection with section 1701q of Title 12, Banks and Banking, was repealed by Pub. L. 102–550, §1406(d)(2).

Section 11406b, Pub. L. 100–77, title IV, §483, as added Pub. L. 102–550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4033, related to term of contract and amount of assistance.

Another prior section 11406b, Pub. L. 100–77, title IV, §483, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4373, which required that certain housing standards be maintained and reasonable rent be charged prior to provision of rental housing assistance under shelter plus care program, was repealed by Pub. L. 102–550, §1406(d)(2).

Section 11406c, Pub. L. 100–77, title IV, §484, as added Pub. L. 101–625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4373, which related to payment of administrative fees to nonprofit entities for costs of administering rental housing assistance under shelter plus care program, was repealed by Pub. L. 102–550, §1406(d)(2).

Section 11407, Pub. L. 100–77, title IV, §486, as added Pub. L. 102–550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4033; amended Pub. L. 110–289, div. B, title VIII, §2835(c)(1)(B), July 30, 2008, 122 Stat. 2874, authorized Secretary to use amounts made available under former section 11403h of this title in connection with the moderate rehabilitation of single room occupancy housing.

Section 11407a, Pub. L. 100–77, title IV, §487, as added Pub. L. 102–550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4033, related to fire and safety improvements.

Section 11407b, Pub. L. 100–77, title IV, §488, as added Pub. L. 102–550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4033; amended Pub. L. 110–289, div. B, title VIII, §2835(c)(1)(B), July 30, 2008, 122 Stat. 2874, related to requirements for annual contribution contracts.

PART D—RURAL HOUSING STABILITY ASSISTANCE PROGRAM

EDITORIAL NOTES

CODIFICATION

Pub. L. 111–22, div. B, title IV, §1401(1), title V, §1502(c), May 20, 2009, 123 Stat. 1696, 1701, redesignated part G as D and substituted "Rural Housing Stability Assistance Program" for "Rural Homeless Housing Assistance" in heading.

PRIOR PROVISIONS

A prior part D, consisting of sections 11391 to 11399, which related to safe havens for homeless individuals demonstration program, was repealed by Pub. L. 111–22, div. B, title V, §1501, May 20, 2009, 123 Stat. 1701, effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title. See notes set out under former section 11389 of this title.

Prior parts E and F, consisting of sections 11401 to 11407b, which related to miscellaneous provisions and shelter plus care program, respectively, were repealed by Pub. L. 111–22, div. B, title V, §1501, May 20, 2009, 123 Stat. 1701, effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as an Effective Date of 2009 Amendment note under section 11302 of this title. See notes set out under former section 11389 of this title.

§11408. Rural housing stability grant program

(a) Establishment

The Secretary of Housing and Urban Development shall establish and carry out a rural housing stability grant program. In carrying out the program, the Secretary may award grants to eligible organizations in lieu of grants under part C in order to pay for the Federal share of the cost of—

(1) rehousing or improving the housing situations of individuals and families who are homeless or in the worst housing situations in the geographic area;

(2) stabilizing the housing of individuals and families who are in imminent danger of losing housing; and

(3) improving the ability of the lowest-income residents of the community to afford stable housing.

(b) Use of funds

(1) In general

An eligible organization may use a grant awarded under subsection (a) to provide, in rural areas—

(A) rent, mortgage, or utility assistance after 2 months of nonpayment in order to prevent eviction, foreclosure, or loss of utility service;

(B) security deposits, rent for the first month of residence at a new location, and relocation assistance;

(C) short-term emergency lodging in motels or shelters, either directly or through vouchers;

(D) construction of new housing units to provide transitional or permanent housing to homeless individuals and families and individuals and families at risk of homelessness;

(E) acquisition or rehabilitation of a structure to provide supportive services or to provide transitional or permanent housing, other than emergency shelter, to homeless individuals and families and individuals and families at risk of homelessness;

(F) leasing of property, or portions of property, not owned by the recipient or project sponsor involved, for use in providing transitional or permanent housing to homeless individuals and families and individuals and families at risk of homelessness, or providing supportive services to such homeless and at-risk individuals and families;

(G) provision of rental assistance to provide transitional or permanent housing to homeless individuals and families and individuals and families at risk of homelessness, such rental assistance may include tenant-based or project-based rental assistance;

(H) payment of operating costs for housing units assisted under this subchapter;

(I) rehabilitation and repairs such as insulation, window repair, door repair, roof repair, and repairs that are necessary to make premises habitable;

(J) development of comprehensive and coordinated support services that use and supplement, as needed, community networks of services, including—

(i) outreach services to reach eligible recipients;
(ii) case management;
(iii) housing counseling;
(iv) budgeting;
(v) job training and placement;
(vi) primary health care;
(vii) mental health services;
(viii) substance abuse treatment;
(ix) child care;
(x) transportation;
(xi) emergency food and clothing;
(xii) family violence services;
(xiii) education services;
(xiv) moving services;
(xv) entitlement assistance; and
(xvi) referrals to veterans services and legal services; and

(K) costs associated with making use of Federal inventory property programs to house homeless families, including the program established under subchapter V of this chapter and the Single Family Property Disposition Program established pursuant to section 1710(g) of title 12.

(2) Capacity building activities

Not more than 20 percent of the funds transferred under subsection (l)(1) for a fiscal year may be used by eligible organizations for capacity building activities, including payment of operating costs and staff retention.

(c) Award of grants

(1) Communities with populations of less than 10,000

(A) Set aside

In awarding grants under subsection (a) for a fiscal year, the Secretary shall make available not less than 50 percent of the funds transferred under subsection (l)(1) for the fiscal year for grants to eligible organizations serving communities that have populations of less than 10,000.

(B) Priority within set aside

In awarding grants in accordance with subparagraph (A), the Secretary shall give priority to eligible organizations serving communities with populations of less than 5,000.

(2) Communities without significant Federal assistance

In awarding grants under subsection (a), including grants awarded in accordance with paragraph (1), the Secretary shall give priority to eligible organizations serving communities not currently receiving significant Federal assistance under this chapter.

(3) State limit

In awarding grants under subsection (a) for a fiscal year, the Secretary shall not award to eligible organizations within a State an aggregate sum of more than 10 percent of the funds transferred under subsection (l)(1), for the fiscal year.

(d) Application

In order to be eligible to receive a grant under subsection (a), an organization shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The application shall include, at a minimum—

(1) a description of the target population and geographic area to be served;

(2) a description of the types of assistance to be provided;

(3) an assurance that the assistance to be provided is closely related to the identified needs of the target population;

(4) a description of the existing assistance available to the target population, including Federal, State, and local programs, and a description of the manner in which the organization will coordinate with and expand existing assistance or provide assistance not available in the immediate area;

(5) an agreement by the organization that the organization will collect data on the projects conducted by the organization, including assistance provided, number and characteristics of persons served, and causes of homelessness for persons served;

(6) a description of how individuals and families who are homeless or who have the lowest incomes in the community will be involved by the organization through employment, volunteer services, and otherwise, in providing, operating, and rehabilitating housing assisted under this section and in providing services assisted under this section and services for occupants of housing assisted under this section;

(7) a description of consultations that took place within the community to ascertain the most important uses for funding under this section, including the involvement of potential beneficiaries of the project; and

(8) a description of the extent and nature of homelessness and of the worst housing situations in the community.

(e) Eligible organizations

Organizations eligible to receive a grant under subsection (a) shall include private nonprofit entities and county and local governments.

(f) Matching funding

(1) In general

An organization eligible to receive a grant under subsection (a) shall specify matching contributions from any source other than a grant awarded under this part, that shall be made available in the geographic area in an amount equal to not less than 25 percent of the funds provided for the project or activity, except that grants for leasing shall not be subject to any match requirement.

(2) Limitations on in-kind match

The cash value of services provided to the beneficiaries or clients of an eligible organization by an entity other than the organization may count toward the contributions in paragraph (1) only when documented by a memorandum of understanding between the organization and the other entity that such services will be provided.

(3) Countable activities

The contributions required under paragraph (1) may consist of—

(A) funding for any eligible activity described under subsection (b); and

(B) subject to paragraph (2), in-kind provision of services of any eligible activity described under subsection (b).

(g) Selection criteria

The Secretary shall establish criteria for selecting recipients of grants under subsection (a), including—

(1) the participation of potential beneficiaries of the project in assessing the need for, and importance of, the project in the community;

(2) the degree to which the project addresses the most harmful housing situations present in the community;

(3) the degree of collaboration with others in the community to meet the goals described in subsection (a);

(4) the performance of the organization in improving housing situations, taking account of the severity of barriers of individuals and families served by the organization;

(5) for organizations that have previously received funding under this section, the extent of improvement in homelessness and the worst housing situations in the community since such funding began;

(6) the need for such funds, as determined by the formula established under section 11386a(b)(2) of this title; and

(7) any other relevant criteria as determined by the Secretary.

(h) Evaluation

(1) In general

Not later than 18 months after funding is first made available pursuant to the amendments made by title IV of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the Secretary shall conduct an evaluation of the program to—

(A) determine the effectiveness of the program in meeting the goals described in subsection (a) in the area served; and

(B) determine the types of assistance needed to meet the goals described in subsection (a) in rural areas.

(2) Report

Not later than 24 months after funding is first made available pursuant to the amendment made by title IV of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the Secretary shall submit to Congress the evaluation of the program conducted under paragraph

(1), including recommendations for any Federal administrative or legislative changes that may be necessary to improve the ability of rural communities to meet the goals described in subsection (a).

(i) Technical assistance

The Secretary shall provide technical assistance to eligible organizations in developing programs in accordance with this section, and in gaining access to other Federal resources that may be used to assist homeless persons in rural areas. Such assistance may be provided through regional workshops, and may be provided directly or through grants to, or contracts with, nongovernmental entities.

(j) Termination of assistance

If an individual or family who receives assistance under this section violates requirements of the assistance program provided by the organization receiving a grant under this section, the organization may terminate assistance in accordance with a formal process established by the organization that recognizes the rights of individuals receiving such assistance to due process of law, which may include a hearing.

(k) Definitions

For purposes of this section:

(1) Program

The term "program" means the rural housing stability grant program established under this section.

(2) Rural area; rural community

The terms "rural area" and "rural community" mean—

(A) any area or community, respectively, no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget;

(B) any area or community, respectively, that is—

(i) within an area designated as a metropolitan statistical area or considered as part of a metropolitan statistical area; and

(ii) located in a county where at least 75 percent of the population is rural; or

(C) any area or community, respectively, located in a State that has population density of less than 30 persons per square mile (as reported in the most recent decennial census), and of which at least 1.25 percent of the total acreage of such State is under Federal jurisdiction, provided that no metropolitan city (as such term is defined in section 5302 of this title) in such State is the sole beneficiary of the grant amounts awarded under this section.

(3) Secretary

The term "Secretary" means the Secretary of Housing and Urban Development.

(l) Program funding

(1) In general

The Secretary shall determine the total amount of funding attributable under section 11386a(b)(2) of this title to meet the needs of any geographic area in the Nation that applies for funding under this section. The Secretary shall transfer any amounts determined under this subsection from the Community Homeless Assistance Program and consolidate such transferred amounts for grants under this section, except that the Secretary shall transfer an amount not less than 5 percent of the amount available under part C for grants under this section. Any amounts so transferred and not used for grants under this section due to an insufficient number of applications shall be transferred to be used for grants under part C.

(2) Availability

Any amount paid to a grant recipient for a fiscal year that remains unobligated at the end of the year shall remain available to the recipient for the purposes for which the payment was made for

the next fiscal year. The Secretary shall take such action as may be necessary to recover any amount not obligated by the recipient at the end of the second fiscal year, and shall redistribute the amount to another eligible organization.

(m) Determination of funding source

For any fiscal year, in addition to funds awarded under part B, funds under this subchapter to be used in a city or county shall only be awarded under either part C or part D.

(Pub. L. 100–77, title IV, §491, as added Pub. L. 102–550, title XIV, §1408, Oct. 28, 1992, 106 Stat. 4035; amended Pub. L. 104–330, title V, §506(a)(10), Oct. 26, 1996, 110 Stat. 4045; Pub. L. 111–22, div. B, title IV, §1401(2), May 20, 2009, 123 Stat. 1696.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2), was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

Title IV of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, referred to in subsec. (h), is title IV of div. B of Pub. L. 111–22, which amended this section.

AMENDMENTS

2009—Pub. L. 111–22, §1401(2)(A), substituted "Rural housing stability grant program" for "Rural homelessness grant program" in section catchline.

Subsec. (a). Pub. L. 111–22, §1401(2)(B)(i), (ii), substituted "rural housing stability grant program" for "rural homelessness grant program" and inserted "in lieu of grants under part C" after "eligible organizations" in introductory provisions.

Subsec. (a)(1) to (3). Pub. L. 111–22, §1401(2)(B)(iii), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

"(1) assisting programs providing direct emergency assistance to homeless individuals and families;

"(2) providing homelessness prevention assistance to individuals and families at risk of becoming homeless; and

"(3) assisting individuals and families in obtaining access to permanent housing and supportive services."

Subsec. (b)(1)(D) to (K). Pub. L. 111–22, §1401(2)(C), added subpars. (D) to (H), redesignated former subpars. (E) to (G) as (I) to (K), respectively, and struck out former subpar. (D) which read as follows: "transitional housing;".

Subsecs. (b)(2), (c)(1)(A), (3). Pub. L. 111–22, §1401(2)(D), (E), substituted "transferred" for "appropriated".

Subsec. (d)(6). Pub. L. 111–22, §1401(2)(F)(ii)(I), substituted "a description of how individuals and families who are homeless or who have the lowest incomes in the community will be involved by the organization" for "an agreement by the organization that, to the maximum extent practicable, the organization will involve homeless individuals and families".

Subsec. (d)(7), (8). Pub. L. 111–22, §1401(2)(F)(i), (ii)(II), (iii), added pars. (7) and (8).

Subsecs. (f), (g). Pub. L. 111–22, §1401(2)(G), added subsecs. (f) and (g) and struck out former subsecs. (f) and (g) which related to the Federal share of the costs of providing assistance and participation of homeless individuals, respectively.

Subsec. (h)(1). Pub. L. 111–22, §1401(2)(H)(i)–(iii), substituted "Not later than 18 months after funding is first made available pursuant to the amendments made by title IV of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the" for "The" in introductory provisions, "meeting the goals described in subsection (a)" for "providing housing and other assistance to homeless persons" in subpar. (A), and "meet the goals described in subsection (a) in rural areas" for "address homelessness in rural areas" in subpar. (B).

Subsec. (h)(2). Pub. L. 111–22, §1401(2)(H)(iv), substituted "Not later than 24 months after funding is first made available pursuant to the amendment made by title IV of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the" for "The", struck out ", not later than 18 months after the date on which the Secretary first makes grants under the program," after "Congress", and substituted "meet the goals described in subsection (a)" for "prevent and respond to homelessness".

Subsec. (k)(1). Pub. L. 111–22, §1401(2)(I)(i), substituted "rural housing stability grant program" for "rural homelessness grant program".

Subsec. (k)(2)(B)(ii). Pub. L. 111–22, §1401(2)(I)(ii)(II), substituted "county where at least 75 percent of the population is rural; or" for "rural census tract."

Subsec. (k)(2)(C). Pub. L. 111–22, §1401(2)(I)(ii)(I), (III), added subpar. (C).

Subsec. (l). Pub. L. 111–22, §1401(2)(J)(i), substituted "Program funding" for "Authorization of appropriations" in heading.

Subsec. (l)(1). Pub. L. 111–22, §1401(2)(J)(ii), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out this section $30,000,000 for fiscal year 1993 and $31,260,000 for fiscal year 1994."

Subsec. (m). Pub. L. 111–22, §1401(2)(K), added subsec. (m).

1996—Subsec. (e). Pub. L. 104–330 struck out ", Indian tribes (as such term is defined in section 5302(a) of this title)," after "nonprofit entities".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–22 effective on the earlier of 18 months after May 20, 2009, or 3 months after publication of certain final regulations by Secretary of Housing and Urban Development, see section 1503 of Pub. L. 111–22, set out as a note under section 11302 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104–330, set out as a note under section 11371 of this title.

DEFINITION

For provisions relating to definition of "local government" as used in this section, see section 100261 of Pub. L. 112–141, set out as a HEARTH Act Technical Corrections note under section 11360 of this title.

§11408a. Use of FMHA inventory for transitional housing for homeless persons and for turnkey housing

(a) In general

The Secretary of Agriculture (in this section referred to as the "Secretary") shall, on a priority basis, lease or sell program and nonprogram inventory properties held by the Secretary under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.]—

(1) to provide transitional housing; and

(2) to provide turnkey housing for tenants of such transitional housing and for eligible families.

(b) Priority

The priority uses of inventory property under this section shall not have a higher priority than—

(1) the disposition of such property by sale to eligible families; or

(2) the disposition of such property by transfer for use as rental housing by eligible families.

(c) Transitional housing

(1) Leases authorized

The Secretary shall lease inventory properties to public agencies and nonprofit organizations to provide transitional housing for homeless families and individuals and to provide such agencies the option to provide turnkey housing opportunities for homeless persons and other inadequately housed families.

(2) Rental to eligible families

A public agency or nonprofit organization may rent housing leased to it under paragraph (1) to a family for up to 10 years and may, during that period, assist the tenant in obtaining a loan and credit assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] to purchase the housing from the Secretary.

(d) Lease procedures

(1) Identification of property

Upon receipt by the Secretary of written notification from a public agency or nonprofit organization that it proposes to lease a property for the purpose of providing transitional housing or for the purpose of providing transitional housing and turnkey housing opportunities, the Secretary shall—

(A) withdraw the property from the market for not more than 30 days for the purpose of negotiations under subparagraph (B);

(B) negotiate a lease agreement with the organization or agency; and

(C) if a lease is agreed to, commence the repairs necessary to make the property meet standards for decent, safe, and sanitary housing.

(2) Lease terms

A lease of inventory property under this section shall—

(A) be for a period of not more than 10 years;

(B) provide for the payment of $1 for the 10-year lease; and

(C) provide the nonprofit organization or public agency—

(i) the right to use the property for transitional housing; and

(ii) the option to arrange for the sale of the property to an eligible purchaser.

(e) Purchase procedures

(1) Identification of property

Upon receipt by the Secretary of written notification from a public agency or nonprofit organization that it proposes to purchase a property for the purpose of providing transitional housing or for the purpose of providing transitional housing and turnkey housing opportunities, the Secretary shall—

(A) withdraw the property from the market for not more than 30 days for the purpose of negotiations under subparagraph (B);

(B) negotiate a purchase agreement with the organization or agency; and

(C) if a purchase agreement is agreed to, commence the repairs necessary to make the property meet standards for decent, safe, and sanitary housing.

(2) Purchase terms

A purchase of inventory property under this section shall provide for a purchase price equal to not more than the fair market value of the property minus 10 percent.

(f) Employment of homeless individuals

A public agency or nonprofit organization may lease or purchase property under this section only if the agency or organization, to the maximum extent practicable, involves homeless individuals and families, through employment, volunteer services, or otherwise, in maintaining, operating, and renovating any properties leased or acquired under this section and in providing any services for occupants of properties assisted under this section.

(g) Participation of homeless individuals

(1) In general

The Secretary shall, by regulation, require each public agency and nonprofit organization leasing or purchasing property under this section to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of such agency or organization, to the extent that such organization or

applicant considers and makes policies and decisions regarding any property acquired under this section.

(2) Waiver

The Secretary may grant a waiver to a public agency or nonprofit organization that is unable to meet the requirement of paragraph (1), if the agency or organization agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Budget compliance

The authority provided to the Secretary under this section shall be effective only to the extent approved in advance in appropriations Acts.

(Pub. L. 100–77, title IV, §592[492], as added Pub. L. 102–550, title XIV, §1414, Oct. 28, 1992, 106 Stat. 4041.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (a) and (c)(2), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

SUBCHAPTER V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

§11411. Use of unutilized and underutilized public buildings and real property to assist the homeless

(a) Identification of suitable property

The Secretary of Housing and Urban Development shall, on a quarterly basis, request information from each landholding agency regarding Federal public buildings and other Federal real properties (including fixtures) that are excess property or surplus property or that are described as unutilized or underutilized in surveys by the heads of landholding agencies under section 524(a)(2) and (3) of title 40. No later than 25 days after receiving a request from the Secretary, the head of each landholding agency shall transmit such information to the Secretary. No later than 30 days after receiving such information, the Secretary shall identify which of those buildings and other properties are suitable for use to assist the homeless.

(b) Availability of property

(1) The Secretary shall promptly notify each Federal agency with respect to any property of that agency that the Secretary has identified under subsection (a). No later than 45 days after receipt of such a notice, the head of the appropriate landholding agency shall transmit to the Secretary the agency's response to property identifications contained in such notification, which shall include—

(A) in the case of unutilized or underutilized property—

(i) a statement of intention to determine the property excess to the agency's needs;

(ii) a statement of intention to make the property available for use to assist the homeless; or

(iii) a statement of the reasons (including a full explanation of the need) the property cannot be determined excess to the agency's needs or made available for use to assist the homeless; and

(B) in the case of excess property—

(i) a statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(ii) a statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(2) All properties identified by the Secretary under subsection (a) shall be available for application—

(A) in the case of property other than surplus property, for use to assist the homeless in accordance with the provisions of this section;

(B) in the case of surplus property, for use to assist the homeless either in accordance with this section or as a public health use in accordance with section 550(a)–(d) of title 40; and

(C) in the case of surplus property, the provision of permanent housing with or without supportive services is an eligible use to assist the homeless under this section.

(3) The Secretary shall maintain a written public record of—

(A) the identification of buildings and other properties by the Secretary under this subsection and the reasons for such identifications; and

(B) the responses of landholding agencies to such identifications.

(c) Publication of properties

(1)(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1), the Secretary shall publish on the Web site of the Department of Housing and Urban Development or the General Services Administration—

(i) a list of all properties reviewed by the Secretary under subsection (a); and

(ii) a list of all properties that are available under subsection (b)(2) for application for use to assist the homeless.

(B) Each publication of properties shall include a description and the location of each property (including the address and zip code) and the current classification of each property as unutilized, underutilized, excess property, or surplus property.

(C) The Secretary shall make available to the public upon request all information in the possession of the Department of Housing and Urban Development (other than valuation information), regardless of format, about all properties reviewed and not identified as being suitable for use to assist the homeless, including the reasons such properties were not so identified.

(D) The Secretary shall publish separately, on an annual basis, all properties identified as being suitable for use to assist the homeless, but reported to be unavailable, and the reasons such properties were unavailable.

(2)(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1), the Secretary shall transmit a copy of the list of available properties published under paragraph (1)(A)(ii) to the United States Interagency Council on Homelessness. The Council shall immediately distribute to all State and regional homeless coordinators area-relevant portions of the list.

(B) The Secretary, the Administrator, and the Secretary of Health and Human Services shall make such efforts as are necessary to ensure the widest possible dissemination of the information on such list.

(C) The Secretary shall establish a toll-free number to provide the public with specific information about properties on such list.

(3) The Secretary shall make available to the public upon request all information (other than valuation information) regardless of format in the possession of the Department of Housing and Urban Development about the properties published under paragraph (1)(A), including environmental assessment data. The Secretary shall maintain a current list of agency contacts for making referrals of inquiries for information about specific properties.

(4)(A) On December 31 of each year, the head of each landholding agency shall report to the

Secretary the current availability status and the current classification of each property controlled by the agency, that—

(i) was included in a list published in that year by the Secretary under paragraph (1)(A)(ii); and

(ii) remains available for application for use to assist the homeless or has become available for application during that year.

(B) No later than February 15 each year, the Secretary shall publish in the Federal Register a list of all properties reported under subparagraph (A) for the preceding year and the current classification of the properties.

(C) For purposes of subparagraph (A), property shall not be considered to remain available for application for use to assist the homeless after the 60-day holding period provided under subsection (d) if—

(i) an application for or written expression of interest in the property is made under any law for use of the property for any purpose; or

(ii) the Administrator receives a bona fide offer to purchase the property or advertises for the sale of the property by public auction.

(d) Holding period

(1) Properties published under subsection (c)(1)(A)(ii) as available for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date of such publication.

(2) If written notice of intent to apply for such a property for use to assist the homeless is received by the Secretary of Health and Human Services within the 30-day period described under paragraph (1), such property may not be made available for any other purpose until the date the Secretary of Health and Human Services or other appropriate landholding agency has completed action on the application submitted under subsection (e) with respect to that written notice of intent.

(3) Property that is reviewed by the Secretary under subsection (a) and that is not identified by the Secretary as being suitable for use to assist the homeless may not be made available for any other purpose for 20 days after the determination of unsuitability to allow for review of the determination at the request of the representative of the homeless. The Secretary shall disseminate immediately this information to the regional offices of the Department of Housing and Urban Development and to the United States Interagency Council on Homelessness. If no such review of the determination is requested within the 20-day period, such property will not be included in subsequent publications unless the landholding agency makes changes to the property (e.g. improvements) that may change the unsuitable determination and the Secretary subsequently determines the property is suitable.

(4)(A) Written notice of intent to apply for a property published under subsection (c)(1)(A)(ii) may be filed at any time after the 30-day period described in paragraph (1) has expired. In such case, an application submitted pursuant to the notice may be approved for disposal for use to assist the homeless only if the property remains available for application for use to assist the homeless. If the property remains available, the use to assist the homeless shall be given priority of consideration over other competing disposal opportunities under sections 541–555 of title 40, except as provided in subsection (f)(3)(A).

(B) Surplus property for which an application has been approved shall be assigned promptly to the Secretary of Health and Human Services for disposition in accordance with and subject to subsection (f).

(e) Application for property

(1) A representative of the homeless may submit an application to the Secretary of Health and Human Services for any property that is published under subsection (c)(1)(A)(ii) as available for application for use to assist the homeless.

(2)(A) No later than 75 days after the submission of written notice of intent to apply for a property, an applicant shall submit an initial application to the Secretary of Health and Human Services. The Secretary of Health and Human Services shall, with the concurrence of the appropriate landholding agency, grant reasonable extensions.

(B) An initial application shall set forth—

(i) the services that will be offered;

(ii) the need for the services; and

(iii) the experience of the applicant that demonstrates the ability to provide the services.

(3) No later than 10 days after receipt of an initial application, the Secretary of Health and Human Services shall review, make all determinations, and complete all actions on the application. The Secretary of Health and Human Services shall maintain a written public record of all actions taken in response to an application.

(4) If the Secretary of Health and Human Services approves an initial application, the applicant has 45 days in which to provide a final application that sets forth a reasonable plan to finance the approved program.

(5) No later than 15 days after receipt of the final application, the Secretary of Health and Human Services shall review, make a final determination, and complete all actions on the final application. The Secretary of Health and Human Services shall maintain a public record of all actions taken in response to an application.

(f) Making property available to representatives of homeless

(1) Subject to the provisions of this subsection, property for which the Secretary of Health and Human Services has approved an application under subsection (e) shall be made promptly available, at the applicant's discretion, by permit or lease, or by deed as a public health use under section 550(a)–(d) of title 40, to the representative of the homeless that submitted the application.

(2) Unutilized or underutilized property that is the subject of an agency's statement of intention under subsection (b)(1)(A)(ii) shall be made promptly available by the appropriate landholding agency to the approved applicant by lease or permit for a term of not less than 1 year, unless the applicant requests a shorter term.

(3)(A) In disposing of surplus property by deed or lease under sections 541–555 of title 40, the Administrator and the Secretary of Health and Human Services shall give priority of consideration to uses to assist the homeless, unless the Administrator or the Secretary of Health and Human Services determines that a competing request for the property under section 550 of title 40 is so meritorious and compelling as to outweigh the needs of the homeless.

(B) Whenever the Administrator or the Secretary of Health and Human Services makes a determination under subparagraph (A), the Administrator or the Secretary of Health and Human Services shall transmit to the appropriate committees of the Congress an explanatory statement detailing the need satisfied by conveyance of the surplus property and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) For any property made available by lease to a representative of the homeless before November 29, 1990, the Secretary of Health and Human Services may, upon written request by the representative, convey such property by deed to the representative in accordance with, and subject to the requirements of, section 550 of title 40. The lease term shall not be affected if a deed is not granted.

(g) Records

The Secretary shall maintain a written public record of—

(1) the reasons for determinations of the Secretary under this section that property is suitable or unsuitable for use to assist the homeless; and

(2) the responses of landholding agencies under subsection (b)(1).

(h) Applicability to property under base closure process

(1) The provisions of this section shall not apply to buildings and property at military installations that are approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) For provisions relating to the use to assist the homeless of buildings and property located at certain military installations approved for closure under such Act, or under title II of the Defense

Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note), before October 25, 1994, see section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

(i) Definitions

For purposes of this section—

(1) the term "Administrator" means the Administrator of General Services;

(2) each of the terms "excess property" and "surplus property" has the meaning given that term under section 102 of title 40;

(3) the term "landholding agency" means a Federal department or agency with statutory authority to control real property;

(4) the term "representative of the homeless" means a State or local government agency, or private nonprofit organization, which provides services to the homeless; and

(5) the term "Secretary" means the Secretary of Housing and Urban Development, except as otherwise provided.

(Pub. L. 100–77, title V, §501, July 22, 1987, 101 Stat. 509; Pub. L. 100–628, title V, §501, Nov. 7, 1988, 102 Stat. 3240; Pub. L. 101–645, title IV, §401(a), Nov. 29, 1990, 104 Stat. 4719; Pub. L. 102–484, div. B, title XXVIII, §2824, Oct. 23, 1992, 106 Stat. 2608; Pub. L. 103–421, §2(d), Oct. 25, 1994, 108 Stat. 4352; Pub. L. 108–199, div. G, title II, §216(4), Jan. 23, 2004, 118 Stat. 394; Pub. L. 114–287, §22, Dec. 16, 2016, 130 Stat. 1478.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (h), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

Title II of the Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (h)(2), is title II of Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2627, which is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

Section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994, referred to in subsec. (h)(2), is section 2(e) of Pub. L. 103–421, which is set out as a note under section 2687 of Title 10.

CODIFICATION

In subsec. (a), "section 524(a)(2) and (3) of title 40" substituted for "section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2))", in subsecs.(b)(2)(A)(ii) and (f)(1), "section 550(a)–(d) of title 40" substituted for "paragraphs (1) and (4) of section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1) and (4))", in subsecs. (d)(4)(A) and (f)(3)(A), "sections 541–555 of title 40" substituted for "section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)", in subsec. (f)(3)(A), "section 550 of title 40" substituted for "section 203(k) of such Act", meaning the Federal Property and Administrative Services Act of 1949, in subsec. (f)(4), "section 550 of title 40" substituted for "section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k))", and, in subsec. (i)(2), "section 102 of title 40" substituted for "section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)", on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2016—Subsec. (b)(2). Pub. L. 114–287, §22(1), struck out subpar. (A) designation after par. (2) designation, redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and added subpar. (C).

Subsec. (c)(1)(A). Pub. L. 114–287, §22(2), substituted "on the Web site of the Department of Housing and Urban Development or the General Services Administration" for "in the Federal Register" in introductory provisions.

Subsec. (d)(1). Pub. L. 114–287, §22(3)(A), substituted "period of 30 days" for "period of 60 days".

Subsec. (d)(2). Pub. L. 114–287, §22(3)(B), substituted "30-day period" for "60-day period".

Subsec. (d)(3). Pub. L. 114–287, §22(3)(C), inserted at end "If no such review of the determination is requested within the 20-day period, such property will not be included in subsequent publications unless the landholding agency makes changes to the property (e.g. improvements) that may change the unsuitable determination and the Secretary subsequently determines the property is suitable."

Subsec. (d)(4). Pub. L. 114–287, §22(3)(B), substituted "30-day period" for "60-day period".

Subsec. (e)(2). Pub. L. 114–287, §22(4)(A), designated existing provisions as subpar. (A), substituted "75 days" for "90 days" and "an initial application" for "a complete application", and added subpar. (B).

Subsec. (e)(3). Pub. L. 114–287, §22(4)(B), substituted "10 days after receipt of an initial application" for "25 days after receipt of a completed application".

Subsec. (e)(4), (5). Pub. L. 114–287, §22(4)(C), added pars. (4) and (5).

Subsec. (f)(1). Pub. L. 114–287, §22(5), substituted "available, at the applicant's discretion, by" for "available by".

2004—Subsecs. (c)(2)(A), (d)(3). Pub. L. 108–199 substituted "United States Interagency Council on Homelessness" for "Interagency Council on the Homeless".

1994—Subsecs. (h), (i). Pub. L. 103–421 added subsec. (h) and redesignated former subsec. (h) as (i).

1992—Subsec. (c)(4)(C). Pub. L. 102–484, §2824(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "For purposes of subparagraph (A), property shall be considered to remain available for application for use to assist the homeless if, subsequent to the 60-day holding period provided under subsection (d) of this section—

"(i) no application or written expression of interest has been made under any law for use of the property for any purpose; and

"(ii) the Administrator has not received a bona fide offer to purchase the property or advertised for the sale of the property by public auction."

Subsec. (f)(2). Pub. L. 102–484, §2824(b), inserted "or" after "Unutilized".

1990—Pub. L. 101–645 amended section generally, substituting present provisions consisting of subsecs. (a) to (h) for former provisions consisting of subsecs. (a) to (e).

1988—Pub. L. 100–628, §501(1), substituted "unutilized and underutilized" for "underutilized" in section catchline.

Subsec. (a). Pub. L. 100–628, §501(2), substituted "unutilized or underutilized" for "underutilized" in heading and text and inserted ", within 2 months after collecting such information," before "shall identify" in text.

Subsec. (b)(1). Pub. L. 100–628, §501(3)(A), inserted "or to make the property available, on an interim basis, for use as facilities to assist the homeless" after "agency's need".

Subsec. (b)(2). Pub. L. 100–628, §501(3)(B), inserted before period at end "or made available on an interim basis for use as facilities to assist the homeless".

Subsec. (d). Pub. L. 100–628, §501(4)(A), struck out "by lease" after "property" in heading.

Subsec. (d)(1). Pub. L. 100–628, §501(4)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Federal buildings or property may be made available under this section only through the use of leases for at least 1 year. Ownership of the buildings and property shall not be transferred from the Federal Government."

Subsec. (d)(2). Pub. L. 100–628, §501(4)(C), substituted "With respect to property identified under subsection (a) which has been designated as surplus property," for "To permit leases of surplus Federal buildings and other real property under this section,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–645, title IV, §401(b), Nov. 29, 1990, 104 Stat. 4723, provided that: "The amendment made by subsection (a) [amending this section] shall be effective 90 days after the date of the enactment of this Act [Nov. 29, 1990]."

REGULATIONS

Pub. L. 101–645, title IV, §401(d), Nov. 29, 1990, 104 Stat. 4723, provided that: "No later than 90 days after the date of the enactment of this Act [Nov. 29, 1990], the Administrator of General Services, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall promulgate regulations implementing this section and the amendment made by this section [amending this section and enacting provisions set out as notes under this section]."

EXEMPTION OF DEPARTMENT OF DEFENSE OFF-SITE USE AND OFF-SITE REMOVAL ONLY NON-MOBILE PROPERTIES FROM CERTAIN EXCESS PROPERTY DISPOSAL REQUIREMENTS

Pub. L. 115–232, div. B, title XXVIII, §2822, Aug. 13, 2018, 132 Stat. 2268, provided that:

"(a) IN GENERAL.—Excess or unutilized or underutilized non-mobile property of the Department of Defense that is situated on non-excess land shall be exempt from the requirements of title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 et seq.) upon a determination by the head of the department, agency, or other element of the Department having jurisdiction of the property that—

"(1) the property is not feasible to relocate;

"(2) the property is located in an area to which the general public is denied access in the interest of national security; and

"(3) the exemption would facilitate the efficient disposal of excess property or result in more efficient real property management.

"(b) CONSULTATION.—Before making an initial determination under the authority in subsection (a), and periodically thereafter, the head of a department, agency, or other element of the Department shall consult with the Executive Director of the United States Interagency Council on Homelessness on types of non-mobile properties that may be feasible for relocation and suitable to assist the homeless.

"(c) REPORTING REQUIREMENT.—

"(1) IN GENERAL.—If any head of a department, agency, or other element of the Department makes a determination under subsection (a) during a fiscal year, not later than 90 days after the end of that fiscal year, the Secretary of Defense shall submit to the appropriate committees of Congress a report listing all the buildings, facilities, and other properties for which a determination was made under that subsection during that fiscal year.

"(2) FORM.—Any report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

"(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

"(A) the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

"(B) the Committee on Armed Services, the Committee on Financial Services, and the Committee on Oversight and Government Reform [now Committee on Oversight and Accountability] of the House of Representatives.

"(d) SUNSET.—The authority under subsection (a) shall expire on September 30, 2021."

CONSULTATION AND REPORT REGARDING USE OF NATIONAL GUARD FACILITIES AS OVERNIGHT SHELTERS FOR HOMELESS INDIVIDUALS

Pub. L. 102–550, title XIV, §1411, Oct. 28, 1992, 106 Stat. 4039, required the Secretary of Housing and Urban Development to consult with the chief executive officers of the States and the Secretary of Defense to determine the availability of space at National Guard facilities for use by homeless organizations in providing overnight shelter for the homeless, determine the availability of incidental services at such facilities, and submit to Congress, not later than the expiration of the 1-year period beginning on Oct. 28, 1992, a report regarding the consultations and determinations made by the Secretary under this section, including recommendations.

UNUTILIZED AND UNDERUTILIZED PROPERTY FOR PURPOSES OF 1990 AMENDMENT

Pub. L. 101–645, title IV, §401(c), Nov. 29, 1990, 104 Stat. 4723, as amended by Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: "For purposes of section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411) (as amended by this Act) the terms 'unutilized' and 'underutilized' when used to describe property have the same meaning such terms had before the date of the enactment of this Act [Nov. 29, 1990] under such section 501."

§11412. Making surplus personal property available to nonprofit agencies

(a) Omitted

(b) Requirement for notification

Within 90 days after July 22, 1987, the Administrator of General Services shall require each State

agency administering a State plan under section 549(a)–(e) of title 40 to make generally available information about surplus personal property which may be used in the provision of food, shelter, or other services to homeless individuals.

(c) Costs

Surplus personal property identified pursuant to this section shall be made available to providers of assistance to homeless individuals by a State agency distributing such property at (1) a nominal cost to such organization or (2) at no cost when the Administrator agrees to reimburse the State agency for the costs of care and handling of such property.

(Pub. L. 100–77, title V, §502, July 22, 1987, 101 Stat. 510.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 502 of Pub. L. 100–77. Subsec. (a) of section 502 amended section 203(j)(3)(B) of the Federal Property and Administrative Services Act of 1949, which was classified to section 484(j)(3)(B) of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as section 549(c)(3)(B) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

In subsec (b), "section 549(a)–(e) of title 40" substituted for "203(j) of the Federal Property and Administrative Services Act of 1949" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

SUBCHAPTER VI—EDUCATION AND TRAINING

PART A—ADULT EDUCATION FOR HOMELESS

§11421. Repealed. Pub. L. 105–220, title I, §199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section, Pub. L. 100–77, title VII, §701, as added Pub. L. 103–382, title III, §322, Oct. 20, 1994, 108 Stat. 3956, related to State literacy initiatives.

A prior section 11421, Pub. L. 100–77, title VII, §702, July 22, 1987, 101 Stat. 525; Pub. L. 100–297, title VI, §6001, Apr. 28, 1988, 102 Stat. 423; Pub. L. 100–628, title VII, §701, Nov. 7, 1988, 102 Stat. 3244; Pub. L. 101–645, title VI, §611, Nov. 29, 1990, 104 Stat. 4734, related to State literacy initiatives, prior to the general amendment of this part by Pub. L. 103–382.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 105–220, title I, §199(c)(2)(A), Aug. 7, 1998, 112 Stat. 1059, which provided that the repeal made by subsection (b)(1) (repealing sections 11421, 11461 to 11466, 11471, and 11472 of this title) would take effect on July 1, 1999, was repealed by Pub. L. 113–128, title V, §511(a), July 22, 2014, 128 Stat. 1705.

PART B—EDUCATION FOR HOMELESS CHILDREN AND YOUTHS

§11431. Statement of policy

The following is the policy of the Congress:

(1) Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.

(2) In any State where compulsory residency requirements or other requirements, in laws, regulations, practices, or policies, may act as a barrier to the identification of, or the enrollment, attendance, or success in school of, homeless children and youths, the State educational agency and local educational agencies in the State will review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.

(3) Homelessness is not sufficient reason to separate students from the mainstream school environment.

(4) Homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging State academic standards to which all students are held.

(Pub. L. 100–77, title VII, §721, as added Pub. L. 107–110, title X, §1032, Jan. 8, 2002, 115 Stat. 1989; amended Pub. L. 114–95, title IX, §9101, Dec. 10, 2015, 129 Stat. 2124.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11431, Pub. L. 100–77, title VII, §721, as added Pub. L. 103–382, title III, §323, Oct. 20, 1994, 108 Stat. 3957, stated policy of Congress, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11431, Pub. L. 100–77, title VII, §721, July 22, 1987, 101 Stat. 525; Pub. L. 101–645, title VI, §612(a), Nov. 29, 1990, 104 Stat. 4735, stated policy of Congress, prior to the general amendment of this part by Pub. L. 103–382.

AMENDMENTS

2015—Par. (2). Pub. L. 114–95, §9101(1), substituted "In any State where compulsory residency requirements or other requirements, in laws, regulations, practices, or policies, may act as a barrier to the identification of, or the enrollment, attendance, or success in school of, homeless children and youths, the State educational agency and local educational agencies in the State will review" for "In any State that has a compulsory residency requirement as a component of the State's compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths, the State will review".

Par. (3). Pub. L. 114–95, §9101(2), struck out "alone" after "Homelessness".

Par. (4). Pub. L. 114–95, §9101(3), substituted "challenging State academic standards" for "challenging State student academic achievement standards".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–95, title IX, §9107, Dec. 10, 2015, 129 Stat. 2137, provided that: "Except as provided in section 9105(b) [set out as a note under section 11434a of this title] or as otherwise provided in this Act [see Tables for classification], this title [probably means "this part", meaning part A (§§9101–9107) of title IX of Pub. L. 114–95, amending this section and sections 11432 to 11435 of this title and enacting provisions set out as notes under section 11434a of this title] and the amendments made by this title take effect on October 1, 2016."

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§11432. Grants for State and local activities for the education of homeless children and youths

(a) General authority

The Secretary is authorized to make grants to States in accordance with the provisions of this section to enable such States to carry out the activities described in subsections (d) through (g).

(b) Grants from allotments

The Secretary shall make the grants to States from the allotments made under subsection (c)(1).

(c) Allocation and reservations

(1) Allocation

(A) Subject to subparagraph (B), the Secretary is authorized to allot to each State an amount that bears the same ratio to the amount appropriated for such year under section 11435 of this title that remains after the Secretary reserves funds under paragraph (2) and uses funds to carry out section 11434(d) and (h) of this title, as the amount allocated under section 1122 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6332] to the State for that year bears to the total amount allocated under section 1122 of such Act to all States for that year, except that no State shall receive less than the greater of—

(i) $150,000;

(ii) one-fourth of 1 percent of the amount appropriated under section 11435 of this title for that year; or

(iii) the amount such State received under this section for fiscal year 2001.

(B) If there are insufficient funds in a fiscal year to allot to each State the minimum amount under subparagraph (A), the Secretary shall ratably reduce the allotments to all States based on the proportionate share that each State received under this subsection for the preceding fiscal year.

(2) Reservations

(A) The Secretary is authorized to reserve 0.1 percent of the amount appropriated for each fiscal year under section 11435 of this title to be allocated by the Secretary among the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, according to their respective need for assistance under this part, as determined by the Secretary.

(B)(i) The Secretary shall transfer 1 percent of the amount appropriated for each fiscal year under section 11435 of this title to the Department of the Interior for programs for Indian students served by schools funded by the Secretary of the Interior, as determined under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.),[1] that are consistent with the purposes of the programs described in this part.

(ii) The Secretary and the Secretary of the Interior shall enter into an agreement, consistent with the requirements of this part, for the distribution and use of the funds described in clause (i) under terms that the Secretary determines best meet the purposes of the programs described in this part. Such agreement shall set forth the plans of the Secretary of the Interior for the use of the amounts transferred, including appropriate goals, objectives, and milestones.

(3) State defined

For purposes of this subsection, the term "State" does not include the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(d) Activities

Grants under this section shall be used for the following:

(1) To carry out the policies set forth in section 11431 of this title in the State.

(2) To provide services and activities to improve the identification of homeless children and youths (including preschool-aged homeless children) and enable such children and youths to enroll in, attend, and succeed in school, including, if appropriate, in preschool programs.

(3) To establish or designate in the State educational agency an Office of the Coordinator for Education of Homeless Children and Youths that can sufficiently carry out the duties described for the Office in this part in accordance with subsection (f).

(4) To prepare and carry out the State plan described in subsection (g).

(5) To develop and implement professional development programs for liaisons designated under subsection (g)(1)(J)(ii) and other local educational agency personnel—

(A) to improve their identification of homeless children and youths; and

(B) to heighten the awareness of the liaisons and personnel of, and their capacity to respond to, specific needs in the education of homeless children and youths.

(e) State and local subgrants

(1) Minimum disbursements by States

From the sums made available each year to a State through grants under subsection (a) to carry out this part, the State educational agency shall distribute not less than 75 percent in subgrants to local educational agencies for the purposes of carrying out section 11433 of this title, except that States funded at the minimum level set forth in subsection (c)(1) shall distribute not less than 50 percent in subgrants to local educational agencies for the purposes of carrying out section 11433 of this title.

(2) Use by State educational agency

A State educational agency may use the grant funds remaining after the State educational agency distributes subgrants under paragraph (1) to conduct activities under subsection (f) directly or through grants or contracts.

(3) Prohibition on segregating homeless students

(A) In general

Except as provided in subparagraph (B) and section 11433(a)(2)(B)(ii) of this title, in providing a free public education to a homeless child or youth, no State receiving funds under this part shall segregate such child or youth in a separate school, or in a separate program within a school, based on such child's or youth's status as homeless.

(B) Exception

Notwithstanding subparagraph (A), paragraphs (1)(J)(i) and (3) of subsection (g), section 11433(a)(2) of this title, and any other provision of this part relating to the placement of homeless children or youths in schools, a State that has a separate school for homeless children or youths that was operated in fiscal year 2000 in a covered county shall be eligible to receive funds under this part for programs carried out in such school if—

(i) the school meets the requirements of subparagraph (C);

(ii) any local educational agency serving a school that the homeless children and youths enrolled in the separate school are eligible to attend meets the requirements of subparagraph (E); and

(iii) the State is otherwise eligible to receive funds under this part.

(C) School requirements

For the State to be eligible under subparagraph (B) to receive funds under this part, the school described in such subparagraph shall—

(i) provide written notice, at the time any child or youth seeks enrollment in such school, and at least twice annually while the child or youth is enrolled in such school, to the parent or guardian of the child or youth (or, in the case of an unaccompanied youth, the youth) that—

(I) shall be signed by the parent or guardian (or, in the case of an unaccompanied youth, the youth);

(II) sets forth the general rights provided under this part;

(III) specifically states—

(aa) the choice of schools homeless children and youths are eligible to attend, as

provided in subsection (g)(3)(A);

(bb) that no homeless child or youth is required to attend a separate school for homeless children or youths;

(cc) that homeless children and youths shall be provided comparable services described in subsection (g)(4), including transportation services, educational services, and meals through school meals programs; and

(dd) that homeless children and youths should not be stigmatized by school personnel; and

(IV) provides contact information for the local liaison for homeless children and youths and the State Coordinator for Education of Homeless Children and Youths;

(ii)(I) provide assistance to the parent or guardian of each homeless child or youth (or, in the case of an unaccompanied youth, the youth) to exercise the right to attend the parent's or guardian's (or youth's) choice of schools, as provided in subsection (g)(3)(A); and

(II) coordinate with the local educational agency with jurisdiction for the school selected by the parent or guardian (or youth), to provide transportation and other necessary services;

(iii) ensure that the parent or guardian (or, in the case of an unaccompanied youth, the youth) shall receive the information required by this subparagraph in a manner and form understandable to such parent or guardian (or youth), including, if necessary and to the extent feasible, in the native language of such parent or guardian (or youth); and

(iv) demonstrate in the school's application for funds under this part that such school—

(I) is complying with clauses (i) and (ii); and

(II) is meeting (as of the date of submission of the application) the same Federal and State standards, regulations, and mandates as other public schools in the State (such as complying with section 1111 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311] and providing a full range of education and related services, including services applicable to students with disabilities).

(D) School ineligibility

A separate school described in subparagraph (B) that fails to meet the standards, regulations, and mandates described in subparagraph (C)(iv)(II) shall not be eligible to receive funds under this part for programs carried out in such school after the first date of such failure.

(E) Local educational agency requirements

For the State to be eligible to receive the funds described in subparagraph (B), the local educational agency described in subparagraph (B)(ii) shall—

(i) implement a coordinated system for ensuring that homeless children and youths—

(I) are advised of the choice of schools provided in subsection (g)(3)(A);

(II) are immediately enrolled, in accordance with subsection (g)(3)(C), in the school selected under subsection (g)(3)(A); and

(III) are promptly provided necessary services described in subsection (g)(4), including transportation, to allow homeless children and youths to exercise their choices of schools under subsection (g)(3)(A);

(ii) document that written notice has been provided—

(I) in accordance with subparagraph (C)(i) for each child or youth enrolled in a separate school under subparagraph (B); and

(II) in accordance with subsection (g)(6)(A)(vi);

(iii) prohibit schools within the agency's jurisdiction from referring homeless children or youths to, or requiring homeless children and youths to enroll in or attend, a separate school described in subparagraph (B);

(iv) identify and remove any barriers that exist in schools within the agency's jurisdiction

that may have contributed to the creation or existence of separate schools described in subparagraph (B); and

(v) not use funds received under this part to establish—

(I) new or additional separate schools for homeless children or youths; or

(II) new or additional sites for separate schools for homeless children or youths, other than the sites occupied by the schools described in subparagraph (B) in fiscal year 2000.

(F) Report

(i) Preparation

The Secretary shall prepare a report on the separate schools and local educational agencies described in subparagraph (B) that receive funds under this part in accordance with this paragraph. The report shall contain, at a minimum, information on—

(I) compliance with all requirements of this paragraph;

(II) barriers to school access in the school districts served by the local educational agencies;

(III) the progress the separate schools are making in integrating homeless children and youths into the mainstream school environment, including the average length of student enrollment in such schools; and

(IV) the progress the separate schools are making in helping all students meet the challenging State academic standards.

(ii) Compliance with information requests

For purposes of enabling the Secretary to prepare the report, the separate schools and local educational agencies shall cooperate with the Secretary and the State Coordinator for Education of Homeless Children and Youths established in the State under subsection (d)(3), and shall comply with any requests for information by the Secretary and State Coordinator for such State.

(iii) Submission

The Secretary shall submit the report described in clause (i) to—

(I) the President;

(II) the Committee on Education and the Workforce of the House of Representatives; and

(III) the Committee on Health, Education, Labor, and Pensions of the Senate.

(G) Definition

For purposes of this paragraph, the term "covered county" means—

(i) San Joaquin County, California;

(ii) Orange County, California;

(iii) San Diego County, California; and

(iv) Maricopa County, Arizona.

(f) Functions of the Office of the Coordinator

The Coordinator for Education of Homeless Children and Youths established in each State shall—

(1) gather and make publicly available reliable, valid, and comprehensive information on—

(A) the number of homeless children and youths identified in the State, which shall be posted annually on the State educational agency's website;

(B) the nature and extent of the problems homeless children and youths have in gaining access to public preschool programs and to public elementary schools and secondary schools;

(C) the difficulties in identifying the special needs and barriers to the participation and achievement of such children and youths;

(D) any progress made by the State educational agency and local educational agencies in the State in addressing such problems and difficulties; and

(E) the success of the programs under this part in identifying homeless children and youths and allowing such children and youths to enroll in, attend, and succeed in, school;

(2) develop and carry out the State plan described in subsection (g);

(3) collect data for and transmit to the Secretary, at such time and in such manner as the Secretary may reasonably require, a report containing information necessary to assess the educational needs of homeless children and youths within the State, including data necessary for the Secretary to fulfill the responsibilities under section 11434(h) of this title;

(4) in order to improve the provision of comprehensive education and related services to homeless children and youths and their families, coordinate activities and collaborate with—

(A) educators, including teachers, special education personnel, administrators, and child development and preschool program personnel;

(B) providers of services to homeless children and youths and their families, including public and private child welfare and social services agencies, law enforcement agencies, juvenile and family courts, agencies providing mental health services, domestic violence agencies, child care providers, runaway and homeless youth centers, and providers of services and programs funded under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); [1]

(C) providers of emergency, transitional, and permanent housing to homeless children and youths, and their families, including public housing agencies, shelter operators, operators of transitional housing facilities, and providers of transitional living programs for homeless youths;

(D) local educational agency liaisons designated under subsection (g)(1)(J)(ii) for homeless children and youths; and

(E) community organizations and groups representing homeless children and youths and their families;

(5) provide technical assistance to and conduct monitoring of local educational agencies in coordination with local educational agency liaisons designated under subsection (g)(1)(J)(ii), to ensure that local educational agencies comply with the requirements of subsection (e)(3) and paragraphs (3) through (7) of subsection (g);

(6) provide professional development opportunities for local educational agency personnel and the local educational agency liaison designated under subsection (g)(1)(J)(ii) to assist such personnel and liaison in identifying and meeting the needs of homeless children and youths, and provide training on the definitions of terms related to homelessness specified in sections 11302, 11360, and 11434a of this title to the liaison; and

(7) respond to inquiries from parents and guardians of homeless children and youths, and (in the case of unaccompanied youths) such youths, to ensure that each child or youth who is the subject of such an inquiry receives the full protections and services provided by this part.

(g) State plan

(1) In general

For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan to provide for the education of homeless children and youths within the State. Such plan shall include the following:

(A) A description of how such children and youths are (or will be) given the opportunity to meet the same challenging State academic standards as all students are expected to meet.

(B) A description of the procedures the State educational agency will use to identify such children and youths in the State and to assess their needs.

(C) A description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths.

(D) A description of programs for school personnel (including liaisons designated under subparagraph (J)(ii), principals and other school leaders, attendance officers, teachers, enrollment personnel, and specialized instructional support personnel) to heighten the awareness of such school personnel of the specific needs of homeless children and youths, including such children and youths who are runaway and homeless youths.

(E) A description of procedures that ensure that homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local nutrition programs.

(F) A description of procedures that ensure that—

(i) homeless children have access to public preschool programs, administered by the State educational agency or local educational agency, as provided to other children in the State;

(ii) youths described in section 11434a(2) of this title and youths separated from public schools are identified and accorded equal access to appropriate secondary education and support services, including by identifying and removing barriers that prevent youths described in this clause from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school policies; and

(iii) homeless children and youths who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the State and local levels.

(G) Strategies to address problems identified in the report provided to the Secretary under subsection (f)(3).

(H) Strategies to address other problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays that are caused by—

(i) requirements of immunization and other required health records;

(ii) residency requirements;

(iii) lack of birth certificates, school records, or other documentation;

(iv) guardianship issues; or

(v) uniform or dress code requirements.

(I) A demonstration that the State educational agency and local educational agencies in the State have developed, and shall review and revise, policies to remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths in schools in the State, including barriers to enrollment and retention due to outstanding fees or fines, or absences.

(J) Assurances that the following will be carried out:

(i) The State educational agency and local educational agencies in the State will adopt policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless.

(ii) The local educational agencies will designate an appropriate staff person, able to carry out the duties described in paragraph (6)(A), who may also be a coordinator for other Federal programs, as a local educational agency liaison for homeless children and youths.

(iii) The State and the local educational agencies in the State will adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin (as determined under paragraph (3)), in accordance with the following, as applicable:

(I) If the child or youth continues to live in the area served by the local educational agency in which the school of origin is located, the child's or youth's transportation to and from the school of origin shall be provided or arranged by the local educational agency in which the school of origin is located.

(II) If the child's or youth's living arrangements in the area served by the local educational agency of origin terminate and the child or youth, though continuing the child's or youth's education in the school of origin, begins living in an area served by another local educational agency, the local educational agency of origin and the local educational agency in which the child or youth is living shall agree upon a method to apportion the

responsibility and costs for providing the child or youth with transportation to and from the school of origin. If the local educational agencies are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally.

(iv) The State and the local educational agencies in the State will adopt policies and practices to ensure participation by liaisons described in clause (ii) in professional development and other technical assistance activities provided pursuant to paragraphs (5) and (6) of subsection (f), as determined appropriate by the Office of the Coordinator.

(K) A description of how youths described in section 11434a(2) of this title will receive assistance from counselors to advise such youths, and prepare and improve the readiness of such youths for college.

(2) Compliance

(A) In general

Each plan adopted under this subsection shall also describe how the State will ensure that local educational agencies in the State will comply with the requirements of paragraphs (3) through (7).

(B) Coordination

Such plan shall indicate what technical assistance the State will furnish to local educational agencies and how compliance efforts will be coordinated with the local educational agency liaisons designated under paragraph (1)(J)(ii).

(3) Local educational agency requirements

(A) In general

The local educational agency serving each child or youth to be assisted under this part shall, according to the child's or youth's best interest—

(i) continue the child's or youth's education in the school of origin for the duration of homelessness—

(I) in any case in which a family becomes homeless between academic years or during an academic year; and

(II) for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or

(ii) enroll the child or youth in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

(B) School stability

In determining the best interest of the child or youth under subparagraph (A), the local educational agency shall—

(i) presume that keeping the child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the child's or youth's parent or guardian, or (in the case of an unaccompanied youth) the youth;

(ii) consider student-centered factors related to the child's or youth's best interest, including factors related to the impact of mobility on achievement, education, health, and safety of homeless children and youth, giving priority to the request of the child's or youth's parent or guardian or (in the case of an unaccompanied youth) the youth;

(iii) if, after conducting the best interest determination based on consideration of the presumption in clause (i) and the student-centered factors in clause (ii), the local educational agency determines that it is not in the child's or youth's best interest to attend the school of origin or the school requested by the parent or guardian, or (in the case of an unaccompanied youth) the youth, provide the child's or youth's parent or guardian or the unaccompanied youth with a written explanation of the reasons for its determination, in a manner and form

understandable to such parent, guardian, or unaccompanied youth, including information regarding the right to appeal under subparagraph (E); and

(iv) in the case of an unaccompanied youth, ensure that the local educational agency liaison designated under paragraph (1)(J)(ii) assists in placement or enrollment decisions under this subparagraph, gives priority to the views of such unaccompanied youth, and provides notice to such youth of the right to appeal under subparagraph (E).

(C) Immediate enrollment

(i) In general

The school selected in accordance with this paragraph shall immediately enroll the homeless child or youth, even if the child or youth—

(I) is unable to produce records normally required for enrollment, such as previous academic records, records of immunization and other required health records, proof of residency, or other documentation; or

(II) has missed application or enrollment deadlines during any period of homelessness.

(ii) Relevant academic records

The enrolling school shall immediately contact the school last attended by the child or youth to obtain relevant academic and other records.

(iii) Relevant health records

If the child or youth needs to obtain immunizations or other required health records, the enrolling school shall immediately refer the parent or guardian of the child or youth, or (in the case of an unaccompanied youth) the youth, to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall assist in obtaining necessary immunizations or screenings, or immunization or other required health records, in accordance with subparagraph (D).

(D) Records

Any record ordinarily kept by the school, including immunization or other required health records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, regarding each homeless child or youth shall be maintained—

(i) so that the records involved are available, in a timely fashion, when a child or youth enters a new school or school district; and

(ii) in a manner consistent with section 1232g of title 20.

(E) Enrollment disputes

If a dispute arises over eligibility, or school selection or enrollment in a school—

(i) the child or youth shall be immediately enrolled in the school in which enrollment is sought, pending final resolution of the dispute, including all available appeals;

(ii) the parent or guardian of the child or youth or (in the case of an unaccompanied youth) the youth shall be provided with a written explanation of any decisions related to school selection or enrollment made by the school, the local educational agency, or the State educational agency involved, including the rights of the parent, guardian, or unaccompanied youth to appeal such decisions;

(iii) the parent, guardian, or unaccompanied youth shall be referred to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and

(iv) in the case of an unaccompanied youth, the liaison shall ensure that the youth is immediately enrolled in the school in which the youth seeks enrollment pending resolution of such dispute.

(F) Placement choice

The choice regarding placement shall be made regardless of whether the child or youth lives

with the homeless parents or has been temporarily placed elsewhere.

(G) Privacy

Information about a homeless child's or youth's living situation shall be treated as a student education record, and shall not be deemed to be directory information, under section 1232g of title 20.

(H) Contact information

Nothing in this part shall prohibit a local educational agency from requiring a parent or guardian of a homeless child or youth to submit contact information.

(I) School of origin defined

In this paragraph:

(i) In general

The term "school of origin" means the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool.

(ii) Receiving school

When the child or youth completes the final grade level served by the school of origin, as described in clause (i), the term "school of origin" shall include the designated receiving school at the next grade level for all feeder schools.

(4) Comparable services

Each homeless child or youth to be assisted under this part shall be provided services comparable to services offered to other students in the school selected under paragraph (3), including the following:

(A) Transportation services.

(B) Educational services for which the child or youth meets the eligibility criteria, such as services provided under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) or similar State or local programs, educational programs for children with disabilities, and educational programs for English learners.

(C) Programs in career and technical education.

(D) Programs for gifted and talented students.

(E) School nutrition programs.

(5) Coordination

(A) In general

Each local educational agency serving homeless children and youths that receives assistance under this part shall coordinate—

(i) the provision of services under this part with local social services agencies and other agencies or entities providing services to homeless children and youths and their families, including services and programs funded under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); [1] and

(ii) transportation, transfer of school records, and other interdistrict activities, with other local educational agencies.

(B) Housing assistance

If applicable, each State educational agency and local educational agency that receives assistance under this part shall coordinate with State and local housing agencies responsible for developing the comprehensive housing affordability strategy described in section 12705 of this title to minimize educational disruption for children and youths who become homeless.

(C) Coordination purpose

The coordination required under subparagraphs (A) and (B) shall be designed to—

(i) ensure that all homeless children and youths are promptly identified;

(ii) ensure that all homeless children and youths have access to, and are in reasonable proximity to, available education and related support services; and

(iii) raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homelessness.

(D) Homeless children and youths with disabilities

For children and youths who are to be assisted both under this part, and under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) or section 794 of title 29, each local educational agency shall coordinate the provision of services under this part with the provision of programs for children with disabilities served by that local educational agency and other involved local educational agencies.

(6) Local educational agency liaison

(A) Duties

Each local educational agency liaison for homeless children and youths, designated under paragraph (1)(J)(ii), shall ensure that—

(i) homeless children and youths are identified by school personnel through outreach and coordination activities with other entities and agencies;

(ii) homeless children and youths are enrolled in, and have a full and equal opportunity to succeed in, schools of that local educational agency;

(iii) homeless families and homeless children and youths have access to and receive educational services for which such families, children, and youths are eligible, including services through Head Start programs (including Early Head Start programs) under the Head Start Act (42 U.S.C. 9831 et seq.), early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), and other preschool programs administered by the local educational agency;

(iv) homeless families and homeless children and youths receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;

(v) the parents or guardians of homeless children and youths are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;

(vi) public notice of the educational rights of homeless children and youths is disseminated in locations frequented by parents or guardians of such children and youths, and unaccompanied youths, including schools, shelters, public libraries, and soup kitchens, in a manner and form understandable to the parents and guardians of homeless children and youths, and unaccompanied youths;

(vii) enrollment disputes are mediated in accordance with paragraph (3)(E);

(viii) the parent or guardian of a homeless child or youth, and any unaccompanied youth, is fully informed of all transportation services, including transportation to the school of origin, as described in paragraph (1)(J)(iii), and is assisted in accessing transportation to the school that is selected under paragraph (3)(A);

(ix) school personnel providing services under this part receive professional development and other support; and

(x) unaccompanied youths—

(I) are enrolled in school;

(II) have opportunities to meet the same challenging State academic standards as the State establishes for other children and youth, including through implementation of the procedures under paragraph (1)(F)(ii); and

(III) are informed of their status as independent students under section 1087vv of title 20 and that the youths may obtain assistance from the local educational agency liaison to receive verification of such status for purposes of the Free Application for Federal Student Aid described in section 1090 of title 20.

(B) Notice

State Coordinators established under subsection (d)(3) and local educational agencies shall inform school personnel, service providers, advocates working with homeless families, parents and guardians of homeless children and youths, and homeless children and youths of the duties of the local educational agency liaisons, and publish an annually updated list of the liaisons on the State educational agency's website.

(C) Local and State coordination

Local educational agency liaisons for homeless children and youths shall, as a part of their duties, coordinate and collaborate with State Coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youths. Such coordination shall include collecting and providing to the State Coordinator the reliable, valid, and comprehensive data needed to meet the requirements of paragraphs (1) and (3) of subsection (f).

(D) Homeless status

A local educational agency liaison designated under paragraph (1)(J)(ii) who receives training described in subsection (f)(6) may affirm, without further agency action by the Department of Housing and Urban Development, that a child or youth who is eligible for and participating in a program provided by the local educational agency, or the immediate family of such a child or youth, who meets the eligibility requirements of this chapter for a program or service authorized under subchapter IV, is eligible for such program or service.

(7) Review and revisions

(A) In general

Each State educational agency and local educational agency that receives assistance under this part shall review and revise any policies that may act as barriers to the identification of homeless children and youths or the enrollment of homeless children and youths in schools that are selected under paragraph (3).

(B) Consideration

In reviewing and revising such policies, consideration shall be given to issues concerning transportation, immunization, residency, birth certificates, school records and other documentation, and guardianship.

(C) Special attention

Special attention shall be given to ensuring the identification, enrollment, and attendance of homeless children and youths who are not currently attending school.

(Pub. L. 100–77, title VII, §722, as added Pub. L. 107–110, title X, §1032, Jan. 8, 2002, 115 Stat. 1990; amended Pub. L. 110–289, div. B, title IX, §2901(b), July 30, 2008, 122 Stat. 2875; Pub. L. 114–95, title IX, §9102, Dec. 10, 2015, 129 Stat. 2124.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), referred to in subsec. (c)(2)(B)(i), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians, prior to editorial reclassification as chapter 46 (§5301 et seq.) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 25 and Tables.

The Runaway and Homeless Youth Act, referred to in subsecs. (f)(4)(B) and (g)(5)(A)(i), is title III of Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1129, which was classified generally to subchapter III (§5701 et seq.) of chapter 72 of this title, prior to editorial reclassification and renumbering as subchapter III (§11201 et seq.) of chapter 111 of Title 34, Crime Control and Law Enforcement. For complete classification of this Act to the Code, see Short Title of 1974 Act note set out under section 10101 of Title 34 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (g)(4)(B), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (g)(5)(D), (6)(A)(iii), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Head Start Act, referred to in subsec. (g)(6)(A)(iii), is subchapter B (§635 et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

This chapter, referred to in subsec. (g)(6)(D), was in the original "this Act", meaning Pub. L. 100–77, July 22, 1987, 101 Stat. 482, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 11432, Pub. L. 100–77, title VII, §722, as added Pub. L. 103–382, title III, §323, Oct. 20, 1994, 108 Stat. 3957, related to grants for State and local activities for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11432, Pub. L. 100–77, title VII, §722, July 22, 1987, 101 Stat. 525; Pub. L. 100–628, title VII, §702(a), Nov. 7, 1988, 102 Stat. 3245; Pub. L. 101–645, title VI, §612(b), Nov. 29, 1990, 104 Stat. 4735, related to grants for State and local activities for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 103–382.

AMENDMENTS

2015—Subsec. (b). Pub. L. 114–95, §9102(1), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: "No State may receive a grant under this section unless the State educational agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require."

Subsec. (d)(2). Pub. L. 114–95, §9102(2)(A), substituted "To provide services and activities to improve the identification of homeless children and youths (including preschool-aged homeless children) and enable" for "To provide activities for, and services to, homeless children, including preschool-aged homeless children, and youths that enable" and "including, if" for "or, if".

Subsec. (d)(3). Pub. L. 114–95, §9102(2)(B), substituted "designate in the State educational agency an Office of the Coordinator for Education of Homeless Children and Youths that can sufficiently carry out the duties described for the Office in this part in accordance with subsection (f)." for "designate an Office of Coordinator for Education of Homeless Children and Youths in the State educational agency in accordance with subsection (f) of this section."

Subsec. (d)(5). Pub. L. 114–95, §9102(2)(C), added par. (5) and struck out former par. (5) which read as follows: "To develop and implement professional development programs for school personnel to heighten their awareness of, and capacity to respond to, specific problems in the education of homeless children and youths."

Subsec. (e)(1). Pub. L. 114–95, §9102(3)(A), inserted "a State through grants under subsection (a) to" after "each year to".

Subsec. (e)(2). Pub. L. 114–95, §9102(3)(B), substituted "the grant funds remaining after the State educational agency distributes subgrants under paragraph (1)" for "funds made available for State use under this part".

Subsec. (e)(3)(C)(iv)(II). Pub. L. 114–95, §9102(3)(C)(i), substituted "section 1111" for "sections 1111 and 1116".

Subsec. (e)(3)(E)(ii)(II). Pub. L. 114–95, §9102(3)(C)(ii), substituted "subsection (g)(6)(A)(vi)"for "subsection (g)(6)(A)(v)".

Subsec. (e)(3)(F)(i)(IV). Pub. L. 114–95, §9102(3)(C)(iii)(I), added subcl. (IV).

Subsec. (e)(3)(F)(iii). Pub. L. 114–95, §9102(3)(C)(iii)(II), substituted "The" for "Not later than 2 years after January 8, 2002, the".

Subsec. (f). Pub. L. 114–95, §9102(4), added subsec. (f) and struck out former subsec. (f) which related to the functions of the Office of Coordinator.

Subsec. (g). Pub. L. 114–95, §9102(5), added subsec. (g) and struck out former subsec. (g) which related to State plans to provide for the education of homeless children and youths.

Subsec. (h). Pub. L. 114–95, §9102(6), struck out subsec. (h) which related to emergency assistance for certain individuals who become homeless due to home foreclosure.

2008—Subsec. (h). Pub. L. 110–289 added subsec. (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Oct. 1, 2016, see section 9107 of Pub. L. 114–95, set out as a note under section 11431 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

[1] *See References in Text note below.*

§11433. Local educational agency subgrants for the education of homeless children and youths

(a) General authority

(1) In general

The State educational agency shall, in accordance with section 11432(e) of this title, and from amounts made available to such agency under section 11435 of this title, make subgrants to local educational agencies for the purpose of facilitating the identification, enrollment, attendance, and success in school of homeless children and youths.

(2) Services

(A) In general

Services under paragraph (1)—

(i) may be provided through programs on school grounds or at other facilities;

(ii) shall, to the maximum extent practicable, be provided through existing programs and mechanisms that integrate homeless children and youths with nonhomeless children and youths; and

(iii) shall be designed to expand or improve services provided as part of a school's regular academic program, but not to replace such services provided under such program.

(B) Services on school grounds

If services under paragraph (1) are provided on school grounds, the related schools—

(i) may use funds under this part to provide the same services to other children and youths who are determined by the local educational agency to be at risk of failing in, or dropping out of, school, subject to the requirements of clause (ii); and

(ii) except as otherwise provided in section 11432(e)(3)(B) of this title, shall not provide services in settings within a school that segregate homeless children and youths from other children and youths, except as necessary for short periods of time—

(I) for health and safety emergencies; or

(II) to provide temporary, special, and supplementary services to meet the unique needs of homeless children and youths.

(3) Requirement

Services provided under this section shall not replace the regular academic program and shall be designed to expand upon or improve services provided as part of the school's regular academic program.

(4) Duration of grants

Subgrants made under this section shall be for terms of not to exceed 3 years.

(b) Application

A local educational agency that desires to receive a subgrant under this section shall submit an application to the State educational agency at such time, in such manner, and containing or accompanied by such information as the State educational agency may reasonably require. Such application shall include the following:

(1) An assessment of the educational and related needs of homeless children and youths in the area served by such agency (which may be undertaken as part of needs assessments for other disadvantaged groups).

(2) A description of the services and programs for which assistance is sought to address the needs identified in paragraph (1).

(3) An assurance that the local educational agency's combined fiscal effort per student, or the aggregate expenditures of that agency and the State with respect to the provision of free public education by such agency for the fiscal year preceding the fiscal year for which the determination is made, was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second fiscal year preceding the fiscal year for which the determination is made.

(4) An assurance that the applicant complies with, or will use requested funds to comply with, paragraphs (3) through (7) of section 11432(g) of this title.

(5) A description of policies and procedures, consistent with section 11432(e)(3) of this title, that the agency will implement to ensure that activities carried out by the agency will not isolate or stigmatize homeless children and youths.

(6) An assurance that the local educational agency will collect and promptly provide data requested by the State Coordinator pursuant to paragraphs (1) and (3) of section 11432(f) of this title.

(7) An assurance that the local educational agency will meet the requirements of section 11432(g)(3) of this title.

(c) Awards

(1) In general

The State educational agency shall, in accordance with the requirements of this part and from amounts made available to it under section 11435 of this title, make competitive subgrants to local educational agencies that submit applications under subsection (b). Such subgrants shall be awarded on the basis of the need of such agencies for assistance under this part and the quality of the applications submitted.

(2) Need

In determining need under paragraph (1), the State educational agency may consider the number of homeless children and youths enrolled in early childhood education and other preschool programs, elementary schools, and secondary schools, within the area served by the local educational agency, and shall consider the needs of such children and youths and the ability of the local educational agency to meet such needs. The State educational agency may also consider the following:

(A) The extent to which the proposed use of funds will facilitate the identification, enrollment, retention, and educational success of homeless children and youths.

(B) The extent to which the application reflects coordination with other local and State agencies that serve homeless children and youths.

(C) The extent to which the applicant exhibits in the application and in current practice (as of the date of submission of the application) a commitment to education for all homeless children and youths.

(D) Such other criteria as the State agency determines appropriate.

(3) Quality

In determining the quality of applications under paragraph (1), the State educational agency shall consider the following:

(A) The applicant's needs assessment under subsection (b)(1) and the likelihood that the program presented in the application will meet such needs.

(B) The types, intensity, and coordination of the services to be provided under the program.

(C) The extent to which the applicant will promote meaningful involvement of parents or guardians of homeless children or youths in the education of their children.

(D) The extent to which homeless children and youths will be integrated into the regular education program.

(E) The quality of the applicant's evaluation plan for the program.

(F) The extent to which services provided under this part will be coordinated with other services available to homeless children and youths and their families.

(G) The extent to which the local educational agency will use the subgrant to leverage resources, including by maximizing nonsubgrant funding for the position of the liaison described in section 11432(g)(1)(J)(ii) of this title and the provision of transportation.

(H) How the local educational agency will use funds to serve homeless children and youths under section 1113(c)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(c)(3)).

(I) The extent to which the applicant's program meets such other measures as the State educational agency considers indicative of a high-quality program, such as the extent to which the local educational agency will provide case management or related services to unaccompanied youths.

(d) Authorized activities

A local educational agency may use funds awarded under this section for activities that carry out the purpose of this part, including the following:

(1) The provision of tutoring, supplemental instruction, and enriched educational services that are linked to the achievement of the same challenging State academic standards as the State establishes for other children and youths.

(2) The provision of expedited evaluations of the strengths and needs of homeless children and youths, including needs and eligibility for programs and services (such as educational programs for gifted and talented students, children with disabilities, and English learners, services provided under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or similar State or local programs, programs in career and technical education, and school nutrition programs).

(3) Professional development and other activities for educators and specialized instructional support personnel that are designed to heighten the understanding and sensitivity of such personnel to the needs of homeless children and youths, the rights of such children and youths under this part, and the specific educational needs of runaway and homeless youths.

(4) The provision of referral services to homeless children and youths for medical, dental, mental, and other health services.

(5) The provision of assistance to defray the excess cost of transportation for students under section 11432(g)(4)(A) of this title, not otherwise provided through Federal, State, or local funding, where necessary to enable students to attend the school selected under section 11432(g)(3) of this title.

(6) The provision of developmentally appropriate early childhood education programs, not otherwise provided through Federal, State, or local funding, for preschool-aged homeless children.

(7) The provision of services and assistance to attract, engage, and retain homeless children and youths, particularly homeless children and youths who are not enrolled in school, in public school programs and services provided to nonhomeless children and youths.

(8) The provision for homeless children and youths of before- and after-school, mentoring, and summer programs in which a teacher or other qualified individual provides tutoring, homework assistance, and supervision of educational activities.

(9) If necessary, the payment of fees and other costs associated with tracking, obtaining, and

transferring records necessary to enroll homeless children and youths in school, including birth certificates, immunization or other required health records, academic records, guardianship records, and evaluations for special programs or services.

(10) The provision of education and training to the parents and guardians of homeless children and youths about the rights of, and resources available to, such children and youths, and other activities designed to increase the meaningful involvement of parents and guardians of homeless children or youths in the education of such children or youths.

(11) The development of coordination between schools and agencies providing services to homeless children and youths, as described in section 11432(g)(5) of this title.

(12) The provision of specialized instructional support services (including violence prevention counseling) and referrals for such services.

(13) Activities to address the particular needs of homeless children and youths that may arise from domestic violence and parental mental health or substance abuse problems.

(14) The adaptation of space and purchase of supplies for any nonschool facilities made available under subsection (a)(2) to provide services under this subsection.

(15) The provision of school supplies, including those supplies to be distributed at shelters or temporary housing facilities, or other appropriate locations.

(16) The provision of other extraordinary or emergency assistance needed to enable homeless children and youths to attend school and participate fully in school activities.

(Pub. L. 100–77, title VII, §723, as added Pub. L. 107–110, title X, §1032, Jan. 8, 2002, 115 Stat. 2001; amended Pub. L. 114–95, title IX, §9103, Dec. 10, 2015, 129 Stat. 2134.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(2), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 11433, Pub. L. 100–77, title VII, §723, as added Pub. L. 103–382, title III, §323, Oct. 20, 1994, 108 Stat. 3962, related to local educational agency grants for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11433, Pub. L. 100–77, title VII, §723, July 22, 1987, 101 Stat. 527; Pub. L. 100–628, title VII, §702(b), Nov. 7, 1988, 102 Stat. 3245; Pub. L. 101–645, title VI, §612(c), Nov. 29, 1990, 104 Stat. 4739, related to local educational agency grants for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 103–382.

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114–95, §9103(1)(A), substituted "facilitating the identification, enrollment," for "facilitating the enrollment,".

Subsec. (a)(2)(B). Pub. L. 114–95, §9103(1)(B), inserted "the related" before "schools" in introductory provisions.

Subsec. (a)(4). Pub. L. 114–95, §9103(1)(C), added par. (4).

Subsec. (b)(6), (7). Pub. L. 114–95, §9103(2), added pars. (6) and (7).

Subsec. (c)(2). Pub. L. 114–95, §9103(3)(A)(i), substituted "early childhood education and other preschool programs, elementary schools, and secondary schools," for "preschool, elementary, and secondary schools" in introductory provisions.

Subsec. (c)(2)(A). Pub. L. 114–95, §9103(3)(A)(ii), inserted "identification," before "enrollment,".

Subsec. (c)(2)(B). Pub. L. 114–95, §9103(3)(A)(iii), substituted "application reflects coordination with other local and State agencies that serve homeless children and youths." for "application—

"(i) reflects coordination with other local and State agencies that serve homeless children and youths; and

"(ii) describes how the applicant will meet the requirements of section 11432(g)(3) of this title."

Subsec. (c)(2)(C). Pub. L. 114–95, §9103(3)(A)(iv), inserted "(as of the date of submission of the

application)" after "practice".

Subsec. (c)(3)(C). Pub. L. 114–95, §9103(3)(B)(i), inserted "extent to which the applicant will promote meaningful" after "The".

Subsec. (c)(3)(D). Pub. L. 114–95, §9103(3)(B)(ii), substituted "into" for "within".

Subsec. (c)(3)(G), (H). Pub. L. 114–95, §9103(3)(B)(iv), added subpars. (G) and (H). Former subpar. (G) redesignated (I).

Subsec. (c)(3)(I). Pub. L. 114–95, §9103(3)(B)(iii), (v), redesignated subpar. (G) as (I) and substituted "The extent to which the applicant's program meets such" for "Such".

Subsec. (c)(4). Pub. L. 114–95, §9103(3)(C), struck out par. (4). Text read as follows: "Grants awarded under this section shall be for terms not to exceed 3 years."

Subsec. (d)(1). Pub. L. 114–95, §9103(4)(A), substituted "the same challenging State academic standards as" for "the same challenging State academic content standards and challenging State student academic achievement standards".

Subsec. (d)(2). Pub. L. 114–95, §9103(4)(B), substituted "English learners" for "students with limited English proficiency" and "career" for "vocational".

Subsec. (d)(3). Pub. L. 114–95, §9103(4)(C), substituted "specialized instructional support" for "pupil services".

Subsec. (d)(7). Pub. L. 114–95, §9103(4)(D), substituted "particularly homeless children and youths who are not enrolled in school," for "and unaccompanied youths,".

Subsec. (d)(9). Pub. L. 114–95, §9103(4)(E), substituted "other required health" for "medical".

Subsec. (d)(10). Pub. L. 114–95, §9103(4)(F), substituted "parents and guardians" for "parents" and inserted before period at end ", and other activities designed to increase the meaningful involvement of parents and guardians of homeless children or youths in the education of such children or youths".

Subsec. (d)(12). Pub. L. 114–95, §9103(4)(G), substituted "specialized instructional support services" for "pupil services".

Subsec. (d)(13). Pub. L. 114–95, §9103(4)(H), inserted before period at end "and parental mental health or substance abuse problems".

Subsec. (d)(16). Pub. L. 114–95, §9103(4)(I), inserted before period at end "and participate fully in school activities".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Oct. 1, 2016, see section 9107 of Pub. L. 114–95, set out as a note under section 11431 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§11434. Secretarial responsibilities

(a) Review of State plans

In reviewing the State plan submitted by a State educational agency under section 11432(g) of this title, the Secretary shall use a peer review process and shall evaluate whether State laws, policies, and practices described in such plan adequately address the problems of homeless children and youths relating to access to education and placement as described in such plan.

(b) Technical assistance

The Secretary shall provide support and technical assistance to a State educational agency to assist such agency in carrying out its responsibilities under this part, if requested by the State educational agency.

(c) Notice

(1) In general

The Secretary shall, before the next school year that begins after December 10, 2015, update

and disseminate nationwide the public notice described in this subsection (as in effect prior to such date) of the educational rights of homeless children and youths.

(2) Dissemination

The Secretary shall disseminate the notice nationwide to all Federal agencies, and grant recipients, serving homeless families or homeless children and youths.

(d) Evaluation, dissemination, and technical assistance

The Secretary shall conduct evaluation, dissemination, and technical assistance activities for programs designed to meet the educational needs of homeless elementary and secondary school students, and may use funds appropriated under section 11435 of this title to conduct such activities.

(e) Submission and distribution

The Secretary shall require applications for grants under this part to be submitted to the Secretary not later than the expiration of the 120-day period beginning on the date that funds are available for purposes of making such grants and shall make such grants not later than the expiration of the 180-day period beginning on such date.

(f) Determination by Secretary

The Secretary, based on the information received from the States and information gathered by the Secretary under subsection (h), shall determine the extent to which State educational agencies are ensuring that each homeless child and homeless youth has access to a free appropriate public education, as described in section 11431(1) of this title. The Secretary shall provide support and technical assistance to State educational agencies, concerning areas in which documented barriers to a free appropriate public education persist.

(g) Guidelines

The Secretary shall develop, issue, and publish in the Federal Register, not later than 60 days after December 10, 2015, guidelines concerning ways in which a State—

(1) may assist local educational agencies to implement the provisions related to homeless children and youths amended by that Act; and

(2) may review and revise State policies and procedures that may present barriers to the identification of homeless children and youths, and the enrollment, attendance, and success of homeless children and youths in school.

(h) Information

(1) In general

From funds appropriated under section 11435 of this title, the Secretary shall, directly or through grants, contracts, or cooperative agreements, periodically collect and disseminate data and information regarding—

(A) the number and primary nighttime residence of homeless children and youths in all areas served by local educational agencies;

(B) the education and related services such children and youths receive;

(C) the extent to which the needs of homeless children and youths are being met; and

(D) such other data and information as the Secretary determines to be necessary and relevant to carry out this part.

(2) Coordination

The Secretary shall coordinate such collection and dissemination with other agencies and entities that receive assistance and administer programs under this part.

(i) Report

Not later than 4 years after December 10, 2015, the Secretary shall prepare and submit to the President and the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the status of education of homeless children and youths, which shall include information on—

(1) the education of homeless children and youths; and

(2) the actions of the Secretary and the effectiveness of the programs supported under this part.

(Pub. L. 100–77, title VII, §724, as added Pub. L. 107–110, title X, §1032, Jan. 8, 2002, 115 Stat. 2004; amended Pub. L. 114–95, title IX, §9104, Dec. 10, 2015, 129 Stat. 2136.)

EDITORIAL NOTES

REFERENCES IN TEXT

That Act, referred to in subsec. (g)(1), is Pub. L. 114–95, Dec. 10, 2015, 129 Stat. 1802, known as The Every Student Succeeds Act. For complete classification of this Act to the Code, see Short Title of 2015 Amendment note set out under section 6301 of this title and Tables.

PRIOR PROVISIONS

A prior section 11434, Pub. L. 100–77, title VII, §724, as added Pub. L. 103–382, title III, §323, Oct. 20, 1994, 108 Stat. 3964, related to Secretarial responsibilities, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11434, Pub. L. 100–77, title VII, §724, July 22, 1987, 101 Stat. 528; Pub. L. 101–645, title VI, §612(d), Nov. 29, 1990, 104 Stat. 4742, related to national responsibilities, prior to the general amendment of this part by Pub. L. 103–382.

AMENDMENTS

2015—Subsec. (c). Pub. L. 114–95, §9104(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "The Secretary shall, before the next school year that begins after January 8, 2002, create and disseminate nationwide a public notice of the educational rights of homeless children and youths and disseminate such notice to other Federal agencies, programs, and grantees, including Head Start grantees, Health Care for the Homeless grantees, Emergency Food and Shelter grantees, and homeless assistance programs administered by the Department of Housing and Urban Development."

Subsec. (d). Pub. L. 114–95, §9104(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "The Secretary shall conduct evaluation and dissemination activities of programs designed to meet the educational needs of homeless elementary and secondary school students, and may use funds appropriated under section 11435 of this title to conduct such activities."

Subsec. (e). Pub. L. 114–95, §9104(3), substituted "120-day" for "60-day" and "180-day" for "120-day".

Subsec. (f). Pub. L. 114–95, §9104(4), inserted at end "The Secretary shall provide support and technical assistance to State educational agencies, concerning areas in which documented barriers to a free appropriate public education persist."

Subsec. (g). Pub. L. 114–95, §9104(5), added subsec. (g) and struck out former subsec. (g). Prior to amendment, text read as follows: "The Secretary shall develop, issue, and publish in the Federal Register, not later than 60 days after January 8, 2002, school enrollment guidelines for States with respect to homeless children and youths. The guidelines shall describe—

"(1) successful ways in which a State may assist local educational agencies to immediately enroll homeless children and youths in school; and

"(2) how a State can review the State's requirements regarding immunization and medical or school records and make such revisions to the requirements as are appropriate and necessary in order to enroll homeless children and youths in school immediately."

Subsec. (h)(1)(A). Pub. L. 114–95, §9104(6), substituted "primary nighttime residence" for "location" and inserted before semicolon at end "in all areas served by local educational agencies".

Subsec. (i). Pub. L. 114–95, §9104(7), substituted "December 10, 2015" for "January 8, 2002".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Oct. 1, 2016, see section 9107 of Pub. L. 114–95, set out as a note under section 11431 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§11434a. Definitions

For purposes of this part:

(1) The terms "enroll" and "enrollment" include attending classes and participating fully in school activities.

(2) The term "homeless children and youths"—

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) [1] of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

(3) The terms "local educational agency" and "State educational agency" have the meanings given such terms in section 7801 of title 20.

(4) The term "Secretary" means the Secretary of Education.

(5) The term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) The term "unaccompanied youth" includes a homeless child or youth not in the physical custody of a parent or guardian.

(Pub. L. 100–77, title VII, §725, as added Pub. L. 107–110, title X, §1032, Jan. 8, 2002, 115 Stat. 2005; amended Pub. L. 114–95, title IX, §§9105(a), 9215(zz), Dec. 10, 2015, 129 Stat. 2136, 2184.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 11302 of this title, referred to in par. (2)(B)(ii), was amended by Pub. L. 111–22, div. B, §1003(a)(2), May 20, 2009, 123 Stat. 1664, and, as so amended, section 11302(a)(2) of this title no longer contains a subpar. (C).

PRIOR PROVISIONS

A prior section 11434a, Pub. L. 100–77, title VII, §725, as added Pub. L. 103–382, title III, §323, Oct. 20, 1994, 108 Stat. 3965, defined terms, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11434a, Pub. L. 100–77, title VII, §725, as added Pub. L. 101–645, title VI, §613(2), Nov. 29, 1990, 104 Stat. 4743, related to reports by Comptroller General, prior to the general amendment of this part by Pub. L. 103–382.

A prior section 725 of Pub. L. 100–77 was renumbered section 726 and was classified to section 11435 of this title, prior to the general amendment of this part by Pub. L. 103–382.

AMENDMENTS

2015—Par. (2)(B)(i). Pub. L. 114–95, §9105(a)(1), inserted "or" before "are abandoned" and struck out "or are awaiting foster care placement;" after "hospitals;".

Par. (3). Pub. L. 114–95, §9215(zz), made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

Pub. L. 114–95, §9105(a)(2), which directed technical amendment to reference in original act which appears in text as reference to section 7801 of title 20, could not be executed because of the intervening amendment by Pub. L. 114–95, §9215(zz). See above and Effective Date of 2015 Amendment notes below.

Par. (6). Pub. L. 114–95, §9105(a)(3), substituted "homeless child or youth not" for "youth not".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by section 9215(zz) of Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of this title.

Pub. L. 114–95, title IX, §9105(b), Dec. 10, 2015, 129 Stat. 2137, provided that:

"(1) IN GENERAL.—In the case of a State that is not a covered State, the amendment made by subsection (a)(1) [amending this section] shall take effect on the date that is 1 year after the date of enactment of this Act [Dec. 10, 2015].

"(2) COVERED STATE.—In the case of a covered State, the amendment made by subsection (a)(1) shall take effect on the date that is 2 years after the date of enactment of this Act."

Amendment by section 9105(a) of Pub. L. 114–95 effective Oct. 1, 2016, except as provided in section 9105(b) of Pub. L. 114–95 (set out above), see section 9107 of Pub. L. 114–95, set out as a note under section 11431 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

DEFINITION OF COVERED STATE

Pub. L. 114–95, title IX, §9105(c), Dec. 10, 2015, 129 Stat. 2137, provided that: "For purposes of this section [amending this section and enacting provisions set out as a note above] the term 'covered State' means a State that has a statutory law that defines or describes the phrase 'awaiting foster care placement', for purposes of a program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)."

[1] *See References in Text note below.*

§11435. Authorization of appropriations

There are authorized to be appropriated to carry out this part $85,000,000 for each of fiscal years 2017 through 2020.

(Pub. L. 100–77, title VII, §726, as added Pub. L. 107–110, title X, §1032, Jan. 8, 2002, 115 Stat. 2006; amended Pub. L. 110–289, div. B, title IX, §2901(a), July 30, 2008, 122 Stat. 2875; Pub. L. 114–95, title IX, §9106, Dec. 10, 2015, 129 Stat. 2137.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11435, Pub. L. 100–77, title VII, §726, as added Pub. L. 103–382, title III, §323, Oct. 20, 1994, 108 Stat. 3965, authorized appropriations, prior to the general amendment of this part by Pub. L. 107–110.

Another prior section 11435, Pub. L. 100–77, title VII, §726, formerly §725, July 22, 1987, 101 Stat. 528; Pub. L. 100–628, title VII, §702(c), Nov. 7, 1988, 102 Stat. 3245; renumbered §726, Pub. L. 101–645, title VI, §613(1), Nov. 29, 1990, 104 Stat. 4743, defined terms used in this part, prior to the general amendment of this part by Pub. L. 103–382.

AMENDMENTS

2015—Pub. L. 114–95, §9106, amended section generally. Prior to amendment, text read as follows: "For

the purpose of carrying out this part, there are authorized to be appropriated $100,000,000 for fiscal year 2009 and such sums as may be necessary for each subsequent fiscal year."

2008—Pub. L. 110–289 substituted "$100,000,000 for fiscal year 2009 and such sums as may be necessary for each subsequent fiscal year" for "$70,000,000 for fiscal year 2002 and such sums as may be necessary for each of fiscal years 2003 through 2007".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Oct. 1, 2016, see section 9107 of Pub. L. 114–95, set out as a note under section 11431 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

PART C—JOB TRAINING FOR HOMELESS

§§11441 to 11447. Repealed. Pub. L. 105–220, title I, §199(a)(5), Aug. 7, 1998, 112 Stat. 1059

Section 11441, Pub. L. 100–77, title VII, §731, July 22, 1987, 101 Stat. 528, authorized demonstration program for homeless individuals.

Section 11442, Pub. L. 100–77, title VII, §732, July 22, 1987, 101 Stat. 528, related to State coordination with demonstration grant recipients.

Section 11443, Pub. L. 100–77, title VII, §733, July 22, 1987, 101 Stat. 529; Pub. L. 101–645, title VI, §621(a), Nov. 29, 1990, 104 Stat. 4743, related to application for grants.

Section 11444, Pub. L. 100–77, title VII, §734, July 22, 1987, 101 Stat. 529, related to authorized activities.

Section 11445, Pub. L. 100–77, title VII, §735, July 22, 1987, 101 Stat. 529, related to payments, Federal share, and limitations.

Section 11446, Pub. L. 100–77, title VII, §736, July 22, 1987, 101 Stat. 530, related to evaluation of projects.

Section 11447, Pub. L. 100–77, title VII, §737, July 22, 1987, 101 Stat. 530; Pub. L. 100–628, title VII, §703(a), Nov. 7, 1988, 102 Stat. 3246, defined terms.

§11448. Repealed. Pub. L. 107–95, §5(e)(4), Dec. 21, 2001, 115 Stat. 918

Section, Pub. L. 100–77, title VII, §738, July 22, 1987, 101 Stat. 530; Pub. L. 102–590, §11(a), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 104–110, title I, §102(d)(1), Feb. 13, 1996, 110 Stat. 769; Pub. L. 104–275, title VI, §601(b), Oct. 9, 1996, 110 Stat. 3344; Pub. L. 105–114, title II, §203(c)(1), Nov. 21, 1997, 111 Stat. 2288, related to programs to expedite the reintegration of homeless veterans into the labor force.

§§11449, 11450. Repealed. Pub. L. 105–220, title I, §199(a)(5), Aug. 7, 1998, 112 Stat. 1059

Section 11449, Pub. L. 100–77, title VII, §739, July 22, 1987, 101 Stat. 531; Pub. L. 100–628, title VII, §703(b), (c), Nov. 7, 1988, 102 Stat. 3246; Pub. L. 101–165, title IX, §9119(a), Nov. 21, 1989, 103 Stat. 1157; Pub. L. 101–645, title VI, §621(b), Nov. 29, 1990, 104 Stat. 4744; Pub. L. 102–590, §11(b)(1), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 103–239, title VII, §701(a), May 4, 1994, 108 Stat. 605, authorized appropriations.

Section 11450, Pub. L. 100–77, title VII, §741, July 22, 1987, 101 Stat. 532; Pub. L. 101–645, title VI, §621(c), Nov. 29, 1990, 104 Stat. 4744; Pub. L. 102–590, §11(b)(2), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 103–239, title VII, §701(b), May 4, 1994, 108 Stat. 606; Pub. L. 104–110, title I, §102(d)(2), Feb. 13, 1996,

110 Stat. 769; Pub. L. 105–114, title II, §203(c)(2), Nov. 21, 1997, 111 Stat. 2288, provided for termination of this part on Dec. 31, 1999.

PART D—EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

§§11461 to 11466. Repealed. Pub. L. 105–220, title I, §199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section 11461, Pub. L. 100–77, title VII, §751, July 22, 1987, 101 Stat. 532, established emergency community services homeless grant program.

Section 11462, Pub. L. 100–77, title VII, §752, July 22, 1987, 101 Stat. 532; Pub. L. 100–628, title VII, §704(a), Nov. 7, 1988, 102 Stat. 3246, related to allocation of grants.

Section 11463, Pub. L. 100–77, title VII, §753, July 22, 1987, 101 Stat. 532; Pub. L. 100–628, title VII, §704(b), (c), Nov. 7, 1988, 102 Stat. 3246; Pub. L. 101–645, title VI, §631(a), (b), Nov. 29, 1990, 104 Stat. 4746, related to program requirements.

Section 11464, Pub. L. 100–77, title VII, §754, July 22, 1987, 101 Stat. 533; Pub. L. 100–628, title VII, §704(d), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 101–645, title VI, §631(c), Nov. 29, 1990, 104 Stat. 4746; Pub. L. 103–252, title II, §206, May 18, 1994, 108 Stat. 656, authorized appropriations.

Section 11465, Pub. L. 100–77, title VII, §755, as added Pub. L. 101–645, title VI, §641, Nov. 29, 1990, 104 Stat. 4746, related to evaluation of services provided to homeless individuals.

Section 11466, Pub. L. 100–77, title VII, §756, as added Pub. L. 101–645, title VI, §641, Nov. 29, 1990, 104 Stat. 4747, required report by General Accounting Office.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 199(c)(2)(A) of Pub. L. 105–220, as amended, set out as a note under section 11421 of this title.

PART E—MISCELLANEOUS PROVISIONS

§§11471, 11472. Repealed. Pub. L. 105–220, title I, §199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section 11471, Pub. L. 100–77, title VII, §761, July 22, 1987, 101 Stat. 533, authorized grant for study of causes of youth homelessness.

Section 11472, Pub. L. 100–77, title VII, §762, July 22, 1987, 101 Stat. 533, related to set-asides for Native Americans.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 199(c)(2)(A) of Pub. L. 105–220, as amended, set out as a note under section 11421 of this title.

PART F—FAMILY SUPPORT CENTERS

§§11481 to 11489. Repealed. Pub. L. 104–235, title I, §142(b), Oct. 3, 1996, 110 Stat. 3089

Section 11481, Pub. L. 100–77, title VII, §771, as added Pub. L. 101–645, title VI, §651, Nov. 29, 1990, 104 Stat. 4747, related to definitions for this part.

Section 11482, Pub. L. 100–77, title VII, §772, as added Pub. L. 101–645, title VI, §651, Nov. 29, 1990, 104 Stat. 4749; amended Pub. L. 103–382, title III, §370(a), Oct. 20, 1994, 108 Stat. 3976, related to general grants for demonstration programs to encourage provision of supportive services to low-income individuals and families.

Section 11483, Pub. L. 100–77, title VII, §773, as added Pub. L. 101–645, title VI, §651, Nov. 29, 1990, 104 Stat. 4752, related to requirement that family support grant recipients were to use not more than 7 percent of such grant to improve the retention and effectiveness of staff and volunteers.

Section 11484, Pub. L. 100–77, title VII, §774, as added Pub. L. 101–645, title VI, §651, Nov. 29, 1990, 104 Stat. 4752; amended Pub. L. 103–382, title III, §370(d), Oct. 20, 1994, 108 Stat. 3977, related to family case managers.

Section 11485, Pub. L. 100–77, title VII, §775, as added Pub. L. 101–645, title VI, §651, Nov. 29, 1990, 104 Stat. 4752, related to Gateway programs.

Section 11486, Pub. L. 100–77, title VII, §776, as added Pub. L. 101–645, title VI, §651, Nov. 29, 1990, 104 Stat. 4754, related to evaluation of programs and entities that received assistance under this subchapter.

Section 11487, Pub. L. 100–77, title VII, §777, as added Pub. L. 101–645, title VI, §651, Nov. 29, 1990, 104 Stat. 4754; amended Pub. L. 103–382, title III, §370(b), Oct. 20, 1994, 108 Stat. 3977, related to submission of reports to Congress by the Secretary.

Section 11488, Pub. L. 100–77, title VII, §778, as added Pub. L. 101–645, title VI, §651, Nov. 29, 1990, 104 Stat. 4755, provided that nothing in this part was to be construed to modify Federal selection preferences described in section 1437d of this title or authorized policies and procedures of governmental housing authorities operating under annual assistance contracts pursuant to section 1437 et seq. of this title with respect to admissions, tenant selection and evictions.

Section 11489, Pub. L. 100–77, title VII, §779, as added Pub. L. 101–645, title VI, §651, Nov. 29, 1990, 104 Stat. 4755; amended Pub. L. 103–382, title III, §370(c), Oct. 20, 1994, 108 Stat. 3977, authorized appropriations to carry out this part.

CHAPTER 120—ENTERPRISE ZONE DEVELOPMENT

Sec.

11501. Designation of enterprise zones.
11502. Evaluation and reporting requirements.
11503. Interaction with other Federal programs.
11504. Waiver or modification of housing and community development rules in enterprise zones.
11505. Coordination with CDBG and UDAG programs.

§11501. Designation of enterprise zones

(a) Designation of zones

(1) "Enterprise zone" defined

For purposes of this section, the term "enterprise zone" means any area that—

(A) is nominated by one or more local governments and the State or States in which it is located for designation as an enterprise zone (in this section referred to as a "nominated area"); and

(B) the Secretary of Housing and Urban Development designates as an enterprise zone, after consultation with—

(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Director of the Office of Management and Budget, and the Administrator of the Small Business

Administration; and

(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

(2) Number of designations

(A) In general

The Secretary of Housing and Urban Development may designate not more than 100 nominated areas as enterprise zones.

(B) Minimum designation in rural areas

Of the areas designated under subparagraph (A), not less than 1/3 shall be areas that—

(i) are within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined under the most recent census data available);

(ii) are outside of a metropolitan statistical area (as designated by the Director of the Office of Management and Budget); or

(iii) that are determined by the Secretary, after consultation with the Secretary of Commerce, to be rural areas.

(3) Areas designated based solely on degree of poverty

(A) In general

Except as provided in subparagraph (B), the Secretary shall designate (i) the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C) and (D) of subsection (c)(3), and the 1 criterion set forth in subparagraph (E)(i) or (E)(ii) of subsection (c)(3) that gives an area a higher ranking; and (ii) for areas described in paragraph (2)(B), the nominated areas with the highest ranking with respect to the 1 criterion set forth in subparagraph (C), (D), (E)(i), or (E)(ii) of subsection (c)(3) that gives an area a higher ranking. For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area that exceeds such criterion by the greatest amount given the highest ranking.

(B) Exception where inadequate course of action, etc.

An area shall not be designated under subparagraph (A) if the Secretary determines that the course of action with respect to such area is inadequate.

(C) Separate application to rural and other areas

Subparagraph (A) shall be applied separately with respect to areas described in paragraph (2)(B) and to other areas.

(4) Limitation on designations

(A) Publication of regulations

Before designating any area as an enterprise zone, the Secretary shall prescribe by regulation not later than 4 months following February 5, 1988, after consultation with the officials described in paragraph (1)(B)—

(i) the procedures for nominating an area under paragraph (1)(A);

(ii) the parameters relating to the size and population characteristics of an enterprise zone; and

(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d).

(B) Time limitations

The Secretary shall designate nominated areas as enterprise zones only during the 24-month period beginning on the 1st day of the 1st month following the month in which the date of the enactment of the Housing and Community Development Act of 1992 occurs.

(C) Procedural rules

The Secretary shall not make any designation under paragraph (1) unless—

(i) the local governments and the State in which the nominated area is located have the authority—

(I) to nominate such area for designation as an enterprise zone;

(II) to make the State and local commitments under subsection (d); and

(III) to provide assurances satisfactory to the Secretary that such commitments will be fulfilled;

(ii) a nomination therefor is submitted in such a manner and in such form, and contains such information, as the Secretary shall by regulation prescribe;

(iii) the Secretary determines that any information furnished is reasonably accurate; and

(iv) the State and local governments certify that no portion of the area nominated is already included in an enterprise zone or in an area otherwise nominated to be an enterprise zone.

(5) Nomination process for Indian reservations

In the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

(b) Period for which designation is in effect

(1) In general

Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A) December 31 of the 24th calendar year following the calendar year in which such date occurs;

(B) the termination date designated by the State and local governments as provided for in their nomination pursuant to subsection (a)(4)(C)(ii); or

(C) the date the Secretary revokes such designation under paragraph (2).

(2) Revocation of designation

The Secretary, after consultation with the officials described in subsection (a)(1)(B) and a hearing on the record involving officials of the State or local government involved, may revoke the designation of an area if the Secretary determines that the local government or the State in which it is located is not complying substantially with the State and local commitments pursuant to subsection (d).

(c) Area and eligibility requirements

(1) In general

The Secretary may make a designation of any nominated area under subsection (a)(1) only if it meets the requirements of paragraphs (2) and (3).

(2) Area requirements

A nominated area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of the local government;

(B) the boundary of the area is continuous; and

(C) the area—

(i) has a population, as determined by the most recent census data available, of not less than—

(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i)) is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

(II) 1,000 in any other case; or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(3) Eligibility requirements

For purposes of paragraph (1), a nominated area meets the requirements of this paragraph if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that—

(A) the area is one of pervasive poverty, unemployment, and general distress;

(B) the area is located wholly within the jurisdiction of a local government that is eligible for Federal assistance under section 5318 of this title, as in effect on October 28, 1992;

(C) the unemployment rate, as determined by the appropriate available data, was not less than 1.5 times the national unemployment rate for that period;

(D) the poverty rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was not less than 20 percent for the period to which such data relate; and

(E) the area meets at least one of the following criteria:

(i) Not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the local government (determined in the same manner as under section 5318 of this title).

(ii) The population of the area decreased by 20 percent or more between 1970 and 1980 (as determined from the most recent census available).

(4) Eligibility requirements for rural areas

For purposes of paragraph (1), a nominated area that is a rural area described in subsection (a)(2)(B) meets the requirements of paragraph (3) if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that the area meets—

(A) the criteria set forth in subparagraphs (A) and (B) of paragraph (3); and

(B) not less than one of the criteria set forth in the other subparagraphs of paragraph (3).

(d) Required State and local commitments

(1) In general

No nominated area shall be designated as an enterprise zone unless the local government and the State in which it is located agree in writing that, during any period during which the area is an enterprise zone, such governments will follow a specified course of action designated to reduce the various burdens borne by employers or employees in such area. A course of action shall not be treated as meeting the requirements of this paragraph unless the course of action include provisions described in not less than 4 of the subparagraphs of paragraph (2).

(2) Course of action

The course of action under paragraph (1) may be implemented by both such governments and private nongovernmental entities, may be funded from proceeds of any program administered by the Secretary of Housing and Urban Development or of any program administered by the Secretary of Agriculture under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], and may include, but is not limited to—

(A) a reduction of tax rates or fees applying within the enterprise zone;

(B) an increase in the level of public services, or in the efficiency of the delivery of public services, within the enterprise zone;

(C) actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;

(D) involvement in the program by public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area;

(E) the giving of special preference to contractors owned and operated by members of any minority; and

(F) the gift (or sale at below fair market value) of surplus land in the enterprise zone to

neighborhood organizations agreeing to operate a business on the land.

(3) Recognition of past efforts

In evaluating courses of action agreed to by any State or local government, the Secretary shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

(4) Prohibition of assistance for business relocations

(A) In general

The course of action implemented under paragraph (1) may not include any action to assist—

(i) any establishment relocating from one area to another area; or

(ii) any subcontractor whose purpose is to divest, or whose economic success is dependent upon divesting, any other contractor or subcontractor of any contract customarily performed by such other contractor or subcontractor.

(B) Exception

The limitations established in subparagraph (A) shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary if the Secretary—

(i) finds that the establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operations; and

(ii) has no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

(e) Definitions

For purposes of this section:

(1) Government

If more than one government seeks to nominate an area as an enterprise zone, any reference to, or requirement of, this section shall apply to all such governments.

(2) Local government

The term "local government" means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State;

(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary; and

(C) the District of Columbia.

(3) Secretary

The term "Secretary" means the Secretary of Housing and Urban Development.

(4) State

The term "State" includes Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

(Pub. L. 100–242, title VII, §701, Feb. 5, 1988, 101 Stat. 1957; Pub. L. 100–628, title X, §1090(a), (b), Nov. 7, 1988, 102 Stat. 3283; Pub. L. 102–550, title VIII, §834(a), Oct. 28, 1992, 106 Stat. 3855.)

EDITORIAL NOTES

REFERENCES IN TEXT

The date of the enactment of the Housing and Community Development Act of 1992, referred to in subsec.

(a)(4)(B), is the date of enactment of Pub. L. 102–550, which was approved Oct. 28, 1992.

The Housing Act of 1949, referred to in subsec. (d)(2), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(4)(B). Pub. L. 102–550, §834(a)(1), substituted "the date of the enactment of the Housing and Community Development Act of 1992 occurs" for "the effective date of the regulations described in subparagraph (A) occurs".

Subsec. (c)(3)(B). Pub. L. 102–550, §834(a)(2), substituted "October 28, 1992" for "February 5, 1988".

1988—Subsec. (a)(2)(B). Pub. L. 100–628, §1090(b), substituted "under subparagraph (A)" for "under clause (i)" in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 100–628, §1090(a), amended first sentence generally. Prior to amendment, first sentence read as follows: "Except as provided in subparagraph (B), the Secretary shall designate the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C), (D), and (E) of subsection (c)(3) of this section."

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATIONS

Pub. L. 100–628, title X, §1090(c), Nov. 7, 1988, 102 Stat. 3283, provided that not later than 30 days after Nov. 7, 1988, the Secretary of Housing and Urban Development was to revise the regulations issued by the Secretary to carry out title VII of Pub. L. 100–242 (42 U.S.C. 11501 et seq.) by issuing a final regulation that carried out the amendments made to this section by section 1090 of Pub. L. 100–628.

§11502. Evaluation and reporting requirements

Not later than the close of the 4th calendar year after the year in which the Secretary of Housing and Urban Development first designates areas as enterprise zones pursuant to the amendments made by section 834 of the Housing and Community Development Act of 1992, and at the close of each 4th calendar year thereafter, the Secretary shall prepare and submit to the Congress a report on the effects of such designation in accomplishing the purposes of this chapter.

(Pub. L. 100–242, title VII, §702, Feb. 5, 1988, 101 Stat. 1961; Pub. L. 102–550, title VIII, §834(b), Oct. 28, 1992, 106 Stat. 3855.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 834 of the Housing and Community Development Act of 1992, referred to in text, is section 834 of Pub. L. 102–550, which amended this section and section 11501 of this title.

AMENDMENTS

1992—Pub. L. 102–550 inserted "pursuant to the amendments made by section 834 of the Housing and Community Development Act of 1992" after "zones".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to quadriennial submittal of report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 106 of House Document No. 103–7.

§11503. Interaction with other Federal programs

(a) Coordination with relocation assistance

The designation of an enterprise zone under section 11501 of this title shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.)); or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(b) Enterprise zones treated as labor surplus areas

Any area that is designated as an enterprise zone under section 11501 of this title shall be treated for all purposes under Federal law as a labor surplus area.

(Pub. L. 100–242, title VII, §703, Feb. 5, 1988, 101 Stat. 1961.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, referred to in subsec. (a), probably means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, which is classified principally to chapter 61 (§4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

§11504. Waiver or modification of housing and community development rules in enterprise zones

(a) In general

Upon the written request of the governments that designated and approved an area that has been designated as an enterprise zone under section 11501 of this title, the Secretary of Housing and Urban Development (or, with respect to any rule issued under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Agriculture) may, in order to further the job creation, community development, or economic revitalization objectives of the zone, waive or modify all or part of any rule that the Secretary has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the zone.

(b) Limitation

No provision of this section may be construed to authorize the Secretary to waive or modify any rule adopted to carry out a statute or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, marital status, national origin, age, or handicap.

(c) Submission of requests

A request under subsection (a) shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If a request is made to the Secretary of Agriculture, the requesting governments shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

(d) Consideration of requests

In considering a request, the Secretary shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area that would be affected by the change. The Secretary shall

approve the request whenever the Secretary finds, in the discretion of the Secretary, that the public interest that the proposed change would serve in furthering such job creation, community development or economic revitalization outweighs the public interest that continuation of the rule unchanged would serve in furthering such underlying purposes. The Secretary shall not approve any request to waive or modify a rule if that waiver or modification would—

(1) directly violate a statutory requirement; or

(2) be likely to present a significant risk to the public health, including environmental health or safety.

(e) Notice of disapproval

If a request is disapproved, the Secretary shall inform the requesting governments in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d).

(f) Period for determination

The Secretary shall discharge the responsibilities of the Secretary under this section in an expeditious manner, and shall make a determination on requests not later than 90 days after their receipt.

(g) Applicable procedures

A waiver or modification of a rule under subsection (a) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of title 5. To facilitate reaching a decision on any requested waiver or modification, the Secretary may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering the request. The Secretary shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section.

(h) Effect of subsequent amendment of rules

In the event that the Secretary proposes to amend a rule for which a waiver or modification under this section is in effect, the Secretary shall not change the waiver or modification to impose additional requirements unless the Secretary determines, consistent with standards contained in subsection (d), that such action is necessary.

(i) Expiration of waivers and modifications

No waiver or modification of a rule under this section shall remain in effect for a longer period than the period for which the enterprise zone designation remains in effect for the area in which the waiver or modification applies.

(j) Definitions

For purposes of this section:

(1) Rule

The term "rule" means—

(A) any rule as defined in section 551(4) of title 5; or

(B) any rulemaking conducted on the record after opportunity for an agency hearing pursuant to sections 556 and 557 of title 5.

(2) Secretary

The term "Secretary" means the Secretary of Housing and Urban Development or, with respect to any rule issued under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Agriculture.

(Pub. L. 100–242, title VII, §704, Feb. 5, 1988, 101 Stat. 1962.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (a) and (j)(2), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§11505. Coordination with CDBG and UDAG programs

It is the policy of the Congress that amounts provided under the community development block grant and urban development action grant programs under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] shall not be reduced in any fiscal year in which the provisions of this chapter are in effect.

(Pub. L. 100–242, title VII, §706, Feb. 5, 1988, 101 Stat. 1964.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CHAPTER 121—INTERNATIONAL CHILD ABDUCTION REMEDIES

Sec.
11601 to 11611. Transferred or Repealed.

§§11601 to 11610. Transferred

EDITORIAL NOTES

CODIFICATION

Section 11601, Pub. L. 100–300, §2, Apr. 29, 1988, 102 Stat. 437, which provided findings and declarations related to the International Child Abduction Remedies Act, was transferred to section 9001 of Title 22, Foreign Relations and Intercourse.

Section 11602, Pub. L. 100–300, §3, Apr. 29, 1988, 102 Stat. 437, which provided definitions, was transferred to section 9002 of Title 22.

Section 11603, Pub. L. 100–300, §4, Apr. 29, 1988, 102 Stat. 438, which related to judicial remedies, was transferred to section 9003 of Title 22.

Section 11604, Pub. L. 100–300, §5, Apr. 29, 1988, 102 Stat. 439, which related to provisional remedies, was transferred to section 9004 of Title 22.

Section 11605, Pub. L. 100–300, §6, Apr. 29, 1988, 102 Stat. 439, which related to admissibility of documents, was transferred to section 9005 of Title 22.

Section 11606, Pub. L. 100–300, §7, Apr. 29, 1988, 102 Stat. 439; Pub. L. 105–277, div. G, title XXII, §2213, Oct. 21, 1998, 112 Stat. 2681–812; Pub. L. 108–370, §2, Oct. 25, 2004, 118 Stat. 1750, which related to the United States Central Authority, was transferred to section 9006 of Title 22.

Section 11607, Pub. L. 100–300, §8, Apr. 29, 1988, 102 Stat. 440, which related to costs and fees, was transferred to section 9007 of Title 22.

Section 11608, Pub. L. 100–300, §9, Apr. 29, 1988, 102 Stat. 440, which related to collection, maintenance, and dissemination of information, was transferred to section 9008 of Title 22.

Section 11608a, Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title II, §201], Nov. 29, 1999, 113 Stat. 1536, 1501A–419, which related to the Office of Children's Issues, was transferred to section 9009 of Title 22.

Section 11609, Pub. L. 100–300, §10, Apr. 29, 1988, 102 Stat. 441, which related to an interagency coordinating group, was transferred to section 9010 of Title 22.

Section 11610, Pub. L. 100–300, §12, Apr. 29, 1988, 102 Stat. 442, which related to authorization of appropriations, was transferred to section 9011 of Title 22.

§11611. Repealed. Pub. L. 113–150, title I, §101(e), Aug. 8, 2014, 128 Stat. 1815

Section, Pub. L. 105–277, div. G, title XXVIII, §2803, Oct. 21, 1998, 112 Stat. 2681–846; Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title II, §202], Nov. 29, 1999, 113 Stat. 1536, 1501A–420; Pub. L. 107–228, div. A, title II, §212, Sept. 30, 2002, 116 Stat. 1365, related to report on compliance with the Hague Convention on International Child Abduction.

CHAPTER 122—NATIVE HAWAIIAN HEALTH CARE

Sec.

11701. Findings.
11702. Declaration of policy.
11703. Comprehensive health care master plan for Native Hawaiians.
11704. Functions of Papa Ola Lokahi.
11705. Native Hawaiian health care systems.
11706. Administrative grant for Papa Ola Lokahi.
11707. Administration of grants and contracts.
11708. Assignment of personnel.
11709. Native Hawaiian health scholarships.
11710. Report.
11711. Definitions.
11712. Rule of construction.
11713. Compliance with Budget Act.
11714. Severability.

EDITORIAL NOTES

CODIFICATION

As originally enacted, this chapter was comprised of Pub. L. 100–579 (§§1–12) and subtitle D (§§2301–2312) of title II of Pub. L. 100–690, which enacted substantially identical sections and which were both known as the Native Hawaiian Health Care Act of 1988. Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948, subsequently amended the Act generally. As so amended, the Act was renamed the Native Hawaiian Health Care Improvement Act and consists of sections 1 to 16 which enacted this chapter, repealed section 1621d of Title 25, Indians, and enacted provisions set out as a Short Title note under section 11701 of this title. For purposes of codification, sections 1 to 16 are considered to be sections of Pub. L. 100–579 only.

§11701. Findings

The Congress finds that:

(1) Native Hawaiians comprise a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago whose society was organized as a Nation prior to the arrival of the first nonindigenous people in 1778.

(2) The Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.

(3) The constitution and statutes of the State of Hawaii:

(A) acknowledge the distinct land rights of Native Hawaiian people as beneficiaries of the public lands trust; and

(B) reaffirm and protect the unique right of the Native Hawaiian people to practice and perpetuate their cultural and religious customs, beliefs, practices, and language.

(4) At the time of the arrival of the first nonindigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistence social system based on communal land tenure with a sophisticated language, culture, and religion.

(5) A unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii.

(6) Throughout the 19th century and until 1893, the United States: (A) recognized the independence of the Hawaiian Nation; (B) extended full and complete diplomatic recognition to the Hawaiian Government; and (C) entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875 and 1887.

(7) In the year 1893, the United States Minister assigned to the sovereign and independent Kingdom of Hawaii, John L. Stevens, conspired with a small group of non-Hawaiian residents of the Kingdom, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii.

(8) In pursuance of that conspiracy, the United States Minister and the naval representative of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian Nation in support of the overthrow of the indigenous and lawful Government of Hawaii and the United States Minister thereupon extended diplomatic recognition of a provisional government formed by the conspirators without the consent of the native people of Hawaii or the lawful Government of Hawaii in violation of treaties between the two nations and of international law.

(9) In a message to Congress on December 18, 1893, then President Grover Cleveland reported fully and accurately on these illegal actions, and acknowledged that by these acts, described by the President as acts of war, the government of a peaceful and friendly people was overthrown, and the President concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people required that we should endeavor to repair".

(10) Queen Lili'uokalani, the lawful monarch of Hawaii, and the Hawaiian Patriotic League, representing the aboriginal citizens of Hawaii, promptly petitioned the United States for redress of these wrongs and for restoration of the indigenous government of the Hawaiian nation, but this petition was not acted upon.

(11) In 1898, the United States annexed Hawaii through the Newlands Resolution without the consent of or compensation to the indigenous people of Hawaii or their sovereign government who were thereby denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands and ocean resources.

(12) Through the Newlands Resolution and the 1900 Organic Act, the United States Congress received 1.75 million acres of lands formerly owned by the Crown and Government of the Hawaiian Kingdom and exempted the lands from then existing public land laws of the United States by mandating that the revenue and proceeds from these lands be "used solely for the benefit of the inhabitants of the Hawaiian Islands for education and other public purposes", thereby establishing a special trust relationship between the United States and the inhabitants of Hawaii.

(13) In 1921, Congress enacted the Hawaiian Homes Commission Act, 1920 which designated 200,000 acres of the ceded public lands for exclusive homesteading by Native Hawaiians, thereby affirming the trust relationship between the United States and the Native Hawaiians, as expressed by then Secretary of the Interior Franklin K. Lane who was cited in the Committee Report of the United States House of Representatives Committee on Territories as stating, "One thing that impressed me . . . was the fact that the natives of the islands who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty.".

(14) In 1938, the United States Congress again acknowledged the unique status of the Hawaiian people by including in the Act of June 20, 1938 (52 Stat. 781 et seq.), a provision to lease lands within the extension to Native Hawaiians and to permit fishing in the area "only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance".

(15) Under the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for the

administration of the Hawaiian Home Lands to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the exclusive power to enforce the trust, including the power to approve land exchanges, and legislative amendments affecting the rights of beneficiaries under such Act.

(16) Under the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for administration over portions of the ceded public lands trust not retained by the United States to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the legal responsibility of the State for the betterment of the conditions of Native Hawaiians under section 5(f) of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4, 6).

(17) The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii.

(18) In furtherance of the trust responsibility for the betterment of the conditions of Native Hawaiians, the United States has established a program for the provision of comprehensive health promotion and disease prevention services to maintain and improve the health status of the Hawaiian people.

(19) This historical and unique legal relationship has been consistently recognized and affirmed by the Congress through the enactment of Federal laws which extend to the Hawaiian people the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities, including the Native American Programs Act of 1974 [42 U.S.C. 2991 et seq.]; the American Indian Religious Freedom Act [42 U.S.C. 1996, 1996a]; the National Museum of the American Indian Act [20 U.S.C. 80q et seq.]; and the Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 et seq.].

(20) The United States has also recognized and reaffirmed the trust relationship to the Hawaiian people through legislation which authorizes the provision of services to Native Hawaiians, specifically, the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, the Veterans' Benefits and Services Act of 1988, the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], the Native Hawaiian Health Care Act of 1988, the Health Professions Reauthorization Act of 1988, the Nursing Shortage Reduction and Education Extension Act of 1988, the Handicapped Programs Technical Amendments Act of 1988, the Indian Health Care Amendments of 1988, and the Disadvantaged Minority Health Improvement Act of 1990.

(21) The United States has also affirmed the historical and unique legal relationship to the Hawaiian people by authorizing the provision of services to Native Hawaiians to address problems of alcohol and drug abuse under the Anti-Drug Abuse Act of 1986.

(22) Despite such services, the unmet health needs of the Native Hawaiian people are severe and the health status of Native Hawaiians continues to be far below that of the general population of the United States.

(Pub. L. 100–579, §2, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100–690, title II, §2302, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Newlands Resolution, referred to in pars. (11) and (12), is act July 7, 1898, No. 55, 30 Stat. 750. For complete classification of this act to the Code, see Tables.

The 1900 Organic Act, referred to in par. (12), probably means the Hawaiian Organic Act, act Apr. 30, 1900, ch. 339, 31 Stat. 141, which was classified principally to chapter 3 (§491 et seq.) of Title 48, Territories and Insular Possessions, and was omitted from the Code. For complete classification of this Act to the Code, see Tables.

The Hawaiian Homes Commission Act, 1920, referred to in par. (13), is act July 9, 1921, ch. 42, 42 Stat.

108, which was classified generally to sections 691 to 718 of Title 48 and was omitted from the Code.

Act of June 20, 1938, referred to in par. (14), is act June 20, 1938, ch. 530, 52 Stat. 781, which is classified to sections 391b, 391b–1, 392b, 392c, 396, and 396a of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

An Act to provide for the admission of the State of Hawaii into the Union, referred to in pars. (15) and (16), is Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, popularly known as the Hawaii Statehood Admissions Act, which is set out as a note preceding former section 491 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.

The Native American Programs Act of 1974, referred to in par. (19), is title VIII of Pub. L. 88–452, as added by Pub. L. 93–644, §11, Jan. 4, 1975, 88 Stat. 2324, which is classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see section 2991 of this title and Tables.

The American Indian Religious Freedom Act, referred to in par. (19), is Pub. L. 95–341, Aug. 11, 1978, 92 Stat. 469, which is classified to sections 1996 and 1996a of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of this title and Tables.

The National Museum of the American Indian Act, referred to in par. (19), is Pub. L. 101–185, Nov. 28, 1989, 103 Stat. 1336, which is classified generally to subchapter XIII (§80q et seq.) of chapter 3 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 80q of Title 20 and Tables.

The Native American Graves Protection and Repatriation Act, referred to in par. (19), is Pub. L. 101–601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 25 and Tables.

The Older Americans Act of 1965, referred to in par. (20), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, referred to in par. (20), is Pub. L. 100–146, Oct. 29, 1987, 101 Stat. 840. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6000 of this title and Tables.

The Veterans' Benefits and Services Act of 1988, referred to in par. (20), is Pub. L. 100–322, May 20, 1988, 102 Stat. 487. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 101 of Title 38, Veterans' Benefits, and Tables.

The Rehabilitation Act of 1973, referred to in par. (20), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Native Hawaiian Health Care Act of 1988, referred to in par. (20), was Pub. L. 100–579, Oct. 31, 1988, 102 Stat. 2916, and subtitle D of title II of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4222, which were classified generally to this chapter prior to being amended generally and renamed the Native Hawaiian Health Care Improvement Act by Pub. L. 102–396. For complete classification of this Act to the Code, see Tables.

The Health Professions Reauthorization Act of 1988, referred to in par. (20), is title VI of Pub. L. 100–607, Nov. 4, 1988, 102 Stat. 3122. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

The Nursing Shortage Reduction and Education Extension Act of 1988, referred to in par. (20), is title VII of Pub. L. 100–607, Nov. 4, 1988, 102 Stat. 3153. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

The Handicapped Programs Technical Amendments Act of 1988, referred to in par. (20), is Pub. L. 100–630, Nov. 7, 1988, 102 Stat. 3289. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1400 of Title 20, Education, and Tables.

The Indian Health Care Amendments of 1988, referred to in par. (20), is Pub. L. 100–713, Nov. 23, 1988, 102 Stat. 4784. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1601 of Title 25, Indians, and Tables.

The Disadvantaged Minority Health Improvement Act of 1990, referred to in par. (20), is Pub. L. 101–527, Nov. 6, 1990, 104 Stat. 2311. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 201 of this title and Tables.

The Anti-Drug Abuse Act of 1986, referred to in par. (21), is Pub. L. 99–570, Oct. 27, 1986, 100 Stat. 3207. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 801 of Title 21, Food and Drugs, and Tables.

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections. The text of this section is based on section 2 of Pub. L. 100–579, as subsequently amended.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally substituting pars. (1) to (22) for former pars. (1) to (3) which set forth findings of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 100–579, §1, Oct. 31, 1988, 102 Stat. 2916, and Pub. L. 100–690, title II, subtitle D, §2301, Nov. 18, 1988, 102 Stat. 4222, as amended by Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948, provided that: "This Act [enacting this chapter and repealing section 1621d of Title 25, Indians] may be cited as the 'Native Hawaiian Health Care Improvement Act'."

[The note set out above is based on section 1 of Pub. L. 100–579 as amended generally by Pub. L. 102–396. See Codification note preceding this section.]

§11702. Declaration of policy

(a) Congress

The Congress hereby declares that it is the policy of the United States in fulfillment of its special responsibilities and legal obligations to the indigenous people of Hawaii resulting from the unique and historical relationship between the United States and the Government of the indigenous people of Hawaii—

(1) to raise the health status of Native Hawaiians to the highest possible health level; and

(2) to provide existing Native Hawaiian health care programs with all resources necessary to effectuate this policy.

(b) Intent of Congress

It is the intent of the Congress that the Nation meet the following health objectives with respect to Native Hawaiians by the year 2000:

(1) Reduce coronary heart disease deaths to no more than 100 per 100,000.

(2) Reduce stroke deaths to no more than 20 per 100,000.

(3) Increase control of high blood pressure to at least 50 percent of people with high blood pressure.

(4) Reduce blood cholesterol to an average of no more than 200 mg/dl.

(5) Slow the rise in lung cancer deaths to achieve a rate of no more than 42 per 100,000.

(6) Reduce breast cancer deaths to no more than 20.6 per 100,000 women.

(7) Increase Pap tests every 1 to 3 years to at least 85 percent of women age 18 and older.

(8) Increase fecal occult blood testing every 1 to 2 years to at least 50 percent of people age 50 and older.

(9) Reduce diabetes-related deaths to no more than 34 per 100,000.

(10) Reduce the most severe complications of diabetes as follows:

(A) end-stage renal disease to no more than 1.4 in 1,000;

(B) blindness to no more than 1.4 in 1,000;

(C) lower extremity amputation to no more than 4.9 in 1,000;

(D) perinatal mortality to no more than 2 percent; and

(E) major congenital malformations to no more than 4 percent.

(11) Reduce infant mortality to no more than 7 deaths per 1,000 live births.

(12) Reduce low birth weight to no more than 5 percent of live births.

(13) Increase first trimester prenatal care to at least 90 percent of live births.

(14) Reduce teenage pregnancies to no more than 50 per 1,000 girls age 17 and younger.

(15) Reduce unintended pregnancies to no more than 30 percent of pregnancies.

(16) Increase to at least 60 percent the proportion of primary care providers who provide age-appropriate preconception care and counseling.

(17) Increase years of healthy life to at least 65 years.

(18) Eliminate financial barriers to clinical preventive services.

(19) Increase childhood immunization levels to at least 90 percent of 2-year-olds.

(20) Reduce the prevalence of dental caries to no more than 35 percent of children by age 8.

(21) Reduce untreated dental caries so that the proportion of children with untreated caries (in permanent or primary teeth) is no more than 20 percent among children age 6 through 8 and no more than 15 percent among adolescents age 15.

(22) Reduce edentulism to no more than 20 percent in people age 65 and older.

(23) Increase moderate daily physical activity to at least 30 percent of the population.

(24) Reduce sedentary lifestyles to no more than 15 percent of the population.

(25) Reduce overweight to a prevalence of no more than 20 percent of the population.

(26) Reduce dietary fat intake to an average of 30 percent of calories or less.

(27) Increase to at least 75 percent the proportion of primary care providers who provide nutrition assessment and counseling or referral to qualified nutritionists or dieticians.

(28) Reduce cigarette smoking prevalence to no more than 15 percent of adults.

(29) Reduce initiation of smoking to no more than 15 percent by age 20.

(30) Reduce alcohol-related motor vehicle crash deaths to no more than 8.5 per 100,000 adjusted for age.

(31) Reduce alcohol use by school children age 12 to 17 to less than 13 percent.

(32) Reduce marijuana use by youth age 18 to 25 to less than 8 percent.

(33) Reduce cocaine use by youth aged [1] 18 to 25 to less than 3 percent.

(34) Confine HIV infection to no more than 800 per 100,000.

(35) Reduce gonorrhea infections to no more than 225 per 100,000.

(36) Reduce syphilis infections to no more that 10 per 100,000.

(37) Reduce significant hearing impairment to a prevalance [2] of no more than 82 per 1,000.

(38) Reduce acute middle ear infections among children age 4 and younger, as measured by days of restricted activity or school absenteeism, to no more than 105 days per 100 children.

(39) Reduce indigenous cases of vaccine-preventable diseases as follows:

(A) Diphtheria among individuals age 25 and younger to 0;

(B) Tetanus among individuals age 25 and younger to 0;

(C) Polio (wild-type virus) to 0;

(D) Measles to 0;

(E) Rubella to 0;

(F) Congenital Rubella Syndrome to 0;

(G) Mumps to 500; and

(H) Pertussis to 1,000; and [3]

(40) Reduce significant visual impairment to a prevalence of no more than 30 per 1,000.

(c) Report

The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 11710 of this title, a report on the progress made in each area toward meeting each of the objectives described in subsection (b).

(Pub. L. 100–579, §3, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100–690, title II, §2303, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections. The text of this section is based on section 3 of Pub. L. 100–579, as subsequently amended.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to comprehensive health care master plan for Native Hawaiians.

[1] So in original. Probably should be "age".

[2] So in original. Probably should be "prevalence".

[3] So in original. The "; and" probably should be a period.

§11703. Comprehensive health care master plan for Native Hawaiians

(a) Development

The Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of coordinating, implementing and updating a Native Hawaiian comprehensive health care master plan designed to promote comprehensive health promotion and disease prevention services and to maintain and improve the health status of Native Hawaiians. The master plan shall be based upon an assessment of the health care status and health care needs of Native Hawaiians. To the extent practicable, assessments made as of the date of such grant or contract shall be used by Papa Ola Lokahi, except that any such assessment shall be updated as appropriate.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out subsection (a).

(Pub. L. 100–579, §4, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100–690, title II, §2304, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted substantially identical sections. The text of this section is based on section 4 of Pub. L. 100–579, as subsequently amended.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to Native Hawaiian health centers.

§11704. Functions of Papa Ola Lokahi

(a) Responsibility

Papa Ola Lokahi shall be responsible for the—

(1) coordination, implementation, and updating, as appropriate, of the comprehensive health care master plan developed pursuant to section 11703 of this title;

(2) training for the persons described in section 11705(c)(1)(B) of this title;

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services; and

(4) the development of an action plan outlining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this chapter.

(b) Special project funds

Papa Ola Lokahi is authorized to receive special project funds that may be appropriated for the purpose of research on the health status of Native Hawaiians or for the purpose of addressing the health care needs of Native Hawaiians.

(c) Clearinghouse

Papa Ola Lokahi shall serve as a clearinghouse for:

(1) the collection and maintenance of data associated with the health status of Native Hawaiians;

(2) the identification and research into diseases affecting Native Hawaiians;

(3) the availability of Native Hawaiian project funds, research projects and publications;

(4) the collaboration of research in the area of Native Hawaiian health; and

(5) the timely dissemination of information pertinent to the Native Hawaiian health care systems.

(d) Coordination of programs and services

Papa Ola Lokahi shall, to the maximum extent possible, coordinate and assist the health care programs and services provided to Native Hawaiians.

(e) Technical support

Papa Ola Lokahi shall act as a statewide infrastructure to provide technical support and coordination of training and technical assistance to the Native Hawaiian health care systems.

(f) Relationships with other agencies

Papa Ola Lokahi is authorized to enter into agreements or memoranda of understanding with relevant agencies or organizations that are capable of providing resources or services to the Native Hawaiian health care systems.

(Pub. L. 100–579, §5, Oct. 31, 1988, 102 Stat. 2919; Pub. L. 100–690, title II, §2305, Nov. 18, 1988, 102 Stat. 4225; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted substantially identical sections. The text of this section is based on section 5 of Pub. L. 100–579, as subsequently amended.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to administrative grant for Papa Ola Lokahi.

§11705. Native Hawaiian health care systems

(a) Comprehensive health promotion, disease prevention, and primary health services

(1)(A) The Secretary, in consultation with Papa Ola Lokahi, may make grants to, or enter into contracts with, any qualified entity for the purpose of providing comprehensive health promotion and disease prevention services as well as primary health services to Native Hawaiians.

(B) In making grants and entering into contracts under this paragraph, the Secretary shall give preference to Native Hawaiian health care systems and Native Hawaiian organizations and, to the extent feasible, health promotion and disease prevention services shall be performed through Native Hawaiian health care systems.

(2) In addition to paragraph (1), the Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of planning Native Hawaiian health care systems to serve the health needs of Native Hawaiian communities on each of the islands of O'ahu, Moloka'i, Maui, Hawai'i, Lana'i, Kaua'i, and Ni'ihau in the State of Hawaii.

(b) Qualified entity

An entity is a qualified entity for purposes of subsection (a)(1) if the entity is a Native Hawaiian health care system.

(c) Services to be provided

(1) Each recipient of funds under subsection (a)(1) shall provide the following services:

(A) outreach services to inform Native Hawaiians of the availability of health services;

(B) education in health promotion and disease prevention of the Native Hawaiian population by, wherever possible, Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators;

(C) services of physicians, physicians' assistants, nurse practitioners or other health professionals;

(D) immunizations;

(E) prevention and control of diabetes, high blood pressure, and otitis media;

(F) pregnancy and infant care; and

(G) improvement of nutrition.

(2) In addition to the mandatory services under paragraph (1), the following services may be provided pursuant to subsection (a)(1):

(A) identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians;

(B) collection of data related to the prevention of diseases and illnesses among Native Hawaiians; and

(C) services within the meaning of the terms "health promotion", "disease prevention", and "primary health services", as such terms are defined in section 11711 of this title, which are not specifically referred to in paragraph (1) of this subsection.

(3) The health care services referred to in paragraphs (1) and (2) which are provided under grants or contracts under subsection (a)(1) may be provided by traditional Native Hawaiian healers.

(4) HEALTH AND EDUCATION.—In order to enable privately funded organizations to continue to supplement public efforts to provide educational programs designed to improve the health, capability, and well-being of Native Hawaiians and to continue to provide health services to Native Hawaiians, notwithstanding any other provision of Federal or State law, it shall be lawful for the private educational organization identified in section 7512(16) of title 20 (as such section was in effect on the day before December 10, 2015) to continue to offer its educational programs and services to Native Hawaiians (as defined in section 7517 of title 20) first and to others only after the need for such programs and services by Native Hawaiians has been met.

(d) Limitation of number of entities

During a fiscal year, the Secretary under this chapter may make a grant to, or hold a contract with, not more than 5 Native Hawaiian health care systems.

(e) Matching funds

(1) The Secretary may not make a grant or provide funds pursuant to a contract under subsection (a)(1) to a Native Hawaiian health care system—

(A) in an amount exceeding 83.3 percent of the costs of providing health services under the grant or contract; and

(B) unless the Native Hawaiian health care system agrees that the Native Hawaiian health care system or the State of Hawaii will make available, directly or through donations to the Native Hawaiian health care system, non-Federal contributions toward such costs in an amount equal to not less than $1 (in cash or in kind under paragraph (2)) for each $5 of Federal funds provided in such grant or contract.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions.

(3) The Secretary may waive the requirement established in paragraph (1) if—

(A) the Native Hawaiian health care system involved is a nonprofit private entity described in subsection (b); and

(B) the Secretary, in consultation with Papa Ola Lokahi, determines that it is not feasible for the Native Hawaiian health care system to comply with such requirement.

(f) Restriction on use of grant and contract funds

The Secretary may not make a grant to, or enter into a contract with, any entity under subsection (a)(1) unless the entity agrees that, amounts received pursuant to such subsection will not, directly or through contract, be expended—

(1) for any purpose other than the purposes described in subsection (c);

(2) to provide inpatient services;

(3) to make cash payments to intended recipients of health services; or

(4) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(g) Limitation on charges for services

The Secretary may not make a grant, or enter into a contract with, any entity under subsection (a)(1) unless the entity agrees that, whether health services are provided directly or through contract—

(1) health services under the grant or contract will be provided without regard to ability to pay for the health services; and

(2) the entity will impose a charge for the delivery of health services, and such charge—

(A) will be made according to a schedule of charges that is made available to the public, and

(B) will be adjusted to reflect the income of the individual involved.

(h) Authorization of appropriations

(1) There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2019 to carry out subsection (a)(1).

(2) There are authorized to be appropriated such sums as may be necessary to carry out subsection (a)(2).

(Pub. L. 100–579, §6, Oct. 31, 1988, 102 Stat. 2919; Pub. L. 100–690, title II, §2306, Nov. 18, 1988, 102 Stat. 4226; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948; Pub. L. 111–148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935; Pub. L. 114–95, title IX, §9215(jjj), Dec. 10, 2015, 129 Stat. 2187.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7512(16) of title 20 (as such section was in effect on the day before December 10, 2015), referred to in subsec. (c)(4), means section 7512(16) of title 20 prior to amendment by Pub. L. 114–95, title VI, §§6001(a), (b)(1), 6003(a), Dec. 10, 2015, 129 Stat. 2046, 2063.

CODIFICATION

Amendments by Pub. L. 111–148 are based on section 202(a), (b)(1), of title II of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted identical sections. The text of this section is based on section 6 of Pub. L. 100–579, as subsequently amended.

AMENDMENTS

2015—Subsec. (c)(4). Pub. L. 114–95 substituted "private educational organization identified in section 7512(16) of title 20 (as such section was in effect on the day before December 10, 2015) to continue to offer its educational programs and services to Native Hawaiians (as defined in section 7517 of title 20) first and to others" for "private educational organization identified in section 7512(16) of title 20 to continue to offer its educational programs and services to Native Hawaiians (as defined in section 7517 of title 20) first and to others".

2010—Subsec. (c)(4). Pub. L. 111–148, which directed the amendment of section 6(c) of the Native Hawaiian Health Care Act of 1988 by adding par. (4), was executed by making the amendment to this section, which is section 6 of the Native Hawaiian Health Care Improvement Act, to reflect the probable intent of Congress.

Subsec. (h)(1). Pub. L. 111–148, which directed the amendment of section 6(h)(1) of the Native Hawaiian Health Care Act of 1988 by substituting "2019" for "2001", was executed by making the amendment to this section, which is section 6 of the Native Hawaiian Health Care Improvement Act, to reflect the probable intent of Congress.

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to administration of grants and contracts.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2010 AMENDMENT

Section 202(b)(2) of title II of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by Pub. L. 111–148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935, provided that: "The amendment made by paragraph (1) [amending this section] takes effect on December 5, 2006."

§11706. Administrative grant for Papa Ola Lokahi

(a) In general

In addition to any other grant or contract under this chapter, the Secretary may make grants to, or enter into contracts with, Papa Ola Lokahi for—

(1) coordination, implementation, and updating (as appropriate) of the comprehensive health care master plan developed pursuant to section 11703 of this title;

(2) training for the persons described in section 11705(c)(1)(B) of this title;

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services;

(4) the development of an action plan outlining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this chapter;

(5) a clearinghouse function for—

(A) the collection and maintenance of data associated with the health status of Native Hawaiians;

(B) the identification and research into diseases affecting Native Hawaiians; and

(C) the availability of Native Hawaiian project funds, research projects and publications;

(6) the coordination of the health care programs and services provided to Native Hawaiians; and

(7) the administration of special project funds.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2019 to carry out subsection (a).

(Pub. L. 100–579, §7, Oct. 31, 1988, 102 Stat. 2921; Pub. L. 100–690, title II, §2307, Nov. 18, 1988, 102 Stat. 4227; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948; Pub. L. 111–148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935.)

EDITORIAL NOTES

CODIFICATION

Amendment by Pub. L. 111–148 is based on section 202(a) of title II of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted substantially identical sections. The text of this section is based on section 7 of Pub. L. 100–579, as subsequently amended.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–148, which directed the amendment of section 7(b) of the Native Hawaiian Health Care Act of 1988 by substituting "2019" for "2001", was executed by making the amendment to this section, which is section 7 of the Native Hawaiian Health Care Improvement Act, to reflect the probable intent of Congress.

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to assignment of personnel.

§11707. Administration of grants and contracts

(a) Terms and conditions

The Secretary shall include in any grant made or contract entered into under this chapter such terms and conditions as the Secretary considers necessary or appropriate to ensure that the objectives of such grant or contract are achieved.

(b) Periodic review

The Secretary shall periodically evaluate the performance of, and compliance with, grants and contracts under this chapter.

(c) Administrative requirements

The Secretary may not make a grant or enter into a contract under this chapter with an entity unless the entity—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant or contract;

(2) agrees to ensure the confidentiality of records maintained on individuals receiving health services under the grant or contract;

(3) with respect to providing health services to any population of Native Hawaiians, a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant or contract through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan;

(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]—

(A) if the entity will provide under the grant or contract any such health services directly—

(i) the entity has entered into a participation agreement under such plans; and

(ii) the entity is qualified to receive payments under such plan; and

(B) if the entity will provide under the grant or contract any such health services through a contract with an organization—

(i) the organization has entered into a participation agreement under such plan; and

(ii) the organization is qualified to receive payments under such plan; and

(5) agrees to submit to the Secretary and to Papa Ola Lokahi an annual report that describes the utilization and costs of health services provided under the grant or contract (including the average cost of health services per user) and that provides such other information as the Secretary determines to be appropriate.

(d) Contract evaluation

(1) If, as a result of evaluations conducted by the Secretary, the Secretary determines that an entity has not complied with or satisfactorily performed a contract entered into under section 11705 of this title, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such entity and is authorized to enter into a contract under section 11705 of this title with another entity referred to in section 11705(b) of this title that provides services to the same population of Native Hawaiians which is served by the entity whose contract is not renewed by reason of this subsection.

(2) In determining whether to renew a contract entered into with an entity under this chapter, the Secretary shall consider the results of the evaluation under this section.

(3) All contracts entered into by the Secretary under this chapter shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and may be exempted from the provisions of sections 3131 and 3133 of title 40.

(4) Payments made under any contract entered into under this chapter may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this chapter.

(e) Limitation on use of funds for administrative expenses

Except for grants and contracts under section 11706 of this title, the Secretary may not grant to, or enter into a contract with, an entity under this chapter unless the entity agrees that the entity will not expend more than 10 percent of amounts received pursuant to this chapter for the purpose of administering the grant or contract.

(f) Report

(1) For each fiscal year during which an entity receives or expends funds pursuant to a grant or contract under this chapter, such entity shall submit to the Secretary and to Papa Ola Lokahi a quarterly report on—

(A) activities conducted by the entity under the grant or contract;

(B) the amounts and purposes for which Federal funds were expended; and

(C) such other information as the Secretary may request.

(2) The reports and records of any entity which concern any grant or contract under this chapter shall be subject to audit by the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General of the United States.

(g) Annual private audit

The Secretary shall allow as a cost of any grant made or contract entered into under this chapter the cost of an annual private audit conducted by a certified public accountant.

(Pub. L. 100–579, §8, Oct. 31, 1988, 102 Stat. 2921; Pub. L. 100–690, title II, §2308, Nov. 18, 1988, 102 Stat. 4228; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsec. (d)(3), "sections 3131 and 3133 of title 40" substituted for "the Act of August 24, 1935 (40 U.S.C. 270a et seq.)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted substantially identical sections. The text of this section is based on section 8 of Pub. L. 100–579, as subsequently amended.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section defined terms for purposes of this chapter.

§11708. Assignment of personnel

(a) In general

The Secretary is authorized to enter into an agreement with any entity under which the Secretary is authorized to assign personnel of the Department of Health and Human Services with expertise identified by such entity to such entity on detail for the purposes of providing comprehensive health promotion and disease prevention services to Native Hawaiians.

(b) Applicable Federal personnel provisions

Any assignment of personnel made by the Secretary under any agreement entered into under the authority of subsection (a) shall be treated as an assignment of Federal personnel to a local government that is made in accordance with subchapter VI of chapter 33 of title 5.

(Pub. L. 100–579, §9, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, §2309, Nov. 18, 1988, 102 Stat. 4229; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100–579 and Pub. L. 100–690 enacted substantially identical sections. The text of this section is based on section 9 of Pub. L. 100–579, as subsequently amended.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to rule of construction.

§11709. Native Hawaiian health scholarships

(a) Eligibility

Subject to the availability of funds appropriated under the authority of subsection (c) of this section, the Secretary shall provide funds through a direct grant or a cooperative agreement to Papa Ola Lokahi for the purpose of providing scholarship assistance to students who—

(1) meet the requirements of paragraphs (1), (3), and (4) of section 254l(b) of this title, and

(2) are Native Hawaiians.

(b) Terms and conditions

(1) The scholarship assistance provided under subsection (a) of this section shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 254l of this title, provided that—

(A) the provision of scholarships in each type of health care profession training shall correspond to the need for each type of health care professional identified in the Native Hawaiian comprehensive health care master plan implemented under section 11703 of this title to serve the Native Hawaiian health care systems, as identified by Papa Ola Lokahi;

(B) the primary health services covered under the scholarship assistance program under this section shall be the services included under the definition of that term under section 11711(8) of this title;

(C) to the maximum extent practicable, the Secretary shall select scholarship recipients from a list of eligible applicants submitted by the Papa Ola Lokahi;

(D) the obligated service requirement for each scholarship recipient shall be fulfilled through the full-time clinical or nonclinical practice of the health profession of the scholarship recipient, in an order of priority that would provide for practice—

(i) first, in any one of the five Native Hawaiian health care systems; and

(ii) second, in—

(I) a health professional shortage area or medically underserved area located in the State of Hawaii; or

(II) a geographic area or facility that is—

(aa) located in the State of Hawaii; and

(bb) has a designation that is similar to a designation described in subclause (I) made by the Secretary, acting through the Public Health Service;

(E) the provision of counseling, retention and other support services shall not be limited to scholarship recipients, but shall also include recipients of other scholarship and financial aid programs enrolled in appropriate health professions training programs,[1]

(F) the obligated service of a scholarship recipient shall not be performed by the recipient through membership in the National Health Service Corps; and

(G) the requirements of sections 254d through 254k of this title, section 254m of this title, other

than subsection (b)(5) of that section, and section 254n of this title applicable to scholarship assistance provided under section 254l of this title shall not apply to the scholarship assistance provided under subsection (a) of this section.

(2) The Native Hawaiian Health Scholarship program shall not be administered by or through the Indian Health Service.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2019 for the purpose of funding the scholarship assistance provided under subsection (a) of this section.

(Pub. L. 100–579, §10, as added Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948; amended Pub. L. 105–256, §12, Oct. 14, 1998, 112 Stat. 1899; Pub. L. 107–116, title V, §514(a), Jan. 10, 2002, 115 Stat. 2219; Pub. L. 111–148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935.)

EDITORIAL NOTES

CODIFICATION

Amendment by Pub. L. 111–148 is based on section 202(a) of title II of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 11709, Pub. L. 100–579, §11, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, §2311, Nov. 18, 1988, 102 Stat. 4229, which related to compliance with Budget Act, was amended generally by Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948, and transferred to section 11710 of this title.

A prior section 10 of Pub. L. 100–579 repealed former section 1621d of Title 25, Indians.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–148, which directed the amendment of section 10(c) of the Native Hawaiian Health Care Act of 1988 by substituting "2019" for "2001", was executed by making the amendment to this section, which is section 10 of the Native Hawaiian Health Care Improvement Act, to reflect the probable intent of Congress.

2002—Subsec. (a). Pub. L. 107–116, §514(a)(1), substituted "Papa Ola Lokahi" for "Kamehameha School/Bishop Estate" in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 107–116, §514(a)(2), which directed the substitution of "Papa Ola Lokahi" for "Kamehameha School/Bishop Estate", was executed by making the substitution for "Kamehameha Schools/Bishop Estate" to reflect the probable intent of Congress.

1998—Subsec. (a)(1). Pub. L. 105–256, §12(a), which directed amendment of subsec. (a)(1) by substituting "meet the requirements of paragraphs (1), (3), and (4) of section 254l(b) of this title" for "meet the requirements of section 254l of this title", was executed by making the substitution for "meet the requirements of section 254b of this title", to reflect the probable intent of Congress.

Subsec. (b)(1)(A). Pub. L. 105–256, §12(b)(1), inserted "identified in the Native Hawaiian comprehensive health care master plan implemented under section 11703 of this title" after "health care professional".

Subsec. (b)(1)(B). Pub. L. 105–256, §12(b)(2), (3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(1)(C). Pub. L. 105–256, §12(b)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 105–256, §12(b)(4), added subpar. (D) and struck out former subpar. (D) which read as follows: "the obligated service requirement for each scholarship recipient shall be fulfilled through service, in order of priority, in (i) any one of the five Native Hawaiian health care systems, or (ii) health professions shortage areas, medically underserved areas, or geographic areas or facilities similarly designated by the United States Public Health Service in the State of Hawaii; and".

Pub. L. 105–256, §12(b)(2), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).
Subsec. (b)(1)(E). Pub. L. 105–256, §12(b)(2), redesignated subpar. (D) as (E).
Subsec. (b)(1)(F), (G). Pub. L. 105–256, §12(b)(5), (6), added subpars. (F) and (G).

[1] *So in original. The comma probably should be a semicolon.*

§11710. Report

The President shall, at the time the budget is submitted under section 1105 of title 31, for each fiscal year transmit to the Congress a report on the progress made in meeting the objectives of this chapter, including a review of programs established or assisted pursuant to this chapter and an assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Native Hawaiians, and ensure a health status for Native Hawaiians, which are at a parity with the health services available to, and the health status of, the general population.

(Pub. L. 100–579, §11, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, §2311, Nov. 18, 1988, 102 Stat. 4229; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Section was formerly classified to section 11709 of this title prior to the general amendment of this chapter by Pub. L. 102–396.

Pub. L. 100–579 and Pub. L. 100–690 enacted substantially identical sections. The text of this section is based on section 11 of Pub. L. 100–579, as subsequently amended.

PRIOR PROVISIONS

A prior section 11710, Pub. L. 100–579, §12, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, §2312, Nov. 18, 1988, 102 Stat. 4230, which related to severability, was amended generally by Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948, and transferred to section 11711 of this title.

AMENDMENTS

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to compliance with Budget Act.

§11711. Definitions

For purposes of this chapter:

(1) Disease prevention

The term "disease prevention" includes—

(A) immunizations,
(B) control of high blood pressure,
(C) control of sexually transmittable diseases,
(D) prevention and control of diabetes,
(E) control of toxic agents,
(F) occupational safety and health,
(G) accident prevention,
(H) fluoridation of water,
(I) control of infectious agents, and

(J) provision of mental health care.

(2) Health promotion

The term "health promotion" includes—

(A) pregnancy and infant care, including prevention of fetal alcohol syndrome,

(B) cessation of tobacco smoking,

(C) reduction in the misuse of alcohol and drugs,

(D) improvement of nutrition,

(E) improvement in physical fitness,

(F) family planning,

(G) control of stress, and

(H) educational programs with the mission of improving the health, capability, and well-being of Native Hawaiians.

(3) Native Hawaiian

The term "Native Hawaiian" means any individual who is—

(A) a citizen of the United States, and

(B) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

(i) genealogical records,

(ii) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

(iii) birth records of the State of Hawaii.

(4) Native Hawaiian health center

The term "Native Hawaiian health center" means an entity—

(A) which is organized under the laws of the State of Hawaii,

(B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,

(C) which is a public or nonprofit private entity, and

(D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

(5) Native Hawaiian organization

The term "Native Hawaiian organization" means any organization—

(A) which serves the interests of Native Hawaiians,

(B) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portions of programs) authorized under this chapter for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and capacity to provide the services, and meet the requirements, under the contract the organization enters into with, or grant the organization receives from, the Secretary under this chapter,

(C) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services, and

(D) which is a public or nonprofit private entity.

(6) Native Hawaiian health care system

The term "Native Hawaiian health care system" means an entity—

(A) which is organized under the laws of the State of Hawaii,

(B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,

(C) which is a public or nonprofit private entity,

(D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health care services,

(E) which may be composed of as many Native Hawaiian health centers as necessary to meet the health care needs of each island's Native Hawaiians, and

(F) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs, or portions of programs, authorized by this chapter for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and the capacity to provide the services and meet the requirements under the contract the Native Hawaiian health care system enters into with the Secretary or the grant the Native Hawaiian health care system receives from the Secretary pursuant to this chapter.

(7) Papa Ola Lokahi

(A) The term "Papa Ola Lokahi" means an organization composed of—

(i) E Ola Mau;

(ii) the Office of Hawaiian Affairs of the State of Hawaii;

(iii) Alu Like Inc.;

(iv) the University of Hawaii;

(v) the Office of Hawaiian Health of the Hawaii State Department of Health;

(vi) Ho'ola Lahui Hawaii, or a health care system serving the islands of Kaua'i and Ni'ihau, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

(vii) Ke Ola Mamo, or a health care system serving the island of O'ahu, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

(viii) Na Pu'uwai or a health care system serving the islands of Moloka'i and Lana'i, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

(ix) Hui No Ke Ola Pono, or a health care system serving the island of Maui, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

(x) Hui Malama Ola Ha'Oiwi or a health care system serving the island of Hawaii, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island; and

(xi) such other member organizations as the Board of Papa Ola Lokahi may admit from time to time, based upon satisfactory demonstration of a record of contribution to the health and well-being of Native Hawaiians, and upon satisfactory development of a mission statement in relation to this chapter, including clearly defined goals and objectives, a 5-year action plan outlining the contributions that each organization will make in carrying out the policy of this chapter, and an estimated budget.

(B) Such term does not include any such organization identified in subparagraph (A) if the Secretary determines that such organization has not developed a mission statement with clearly defined goals and objectives for the contributions the organization will make to the Native Hawaiian health care systems, and an action plan for carrying out those goals and objectives.

(8) Primary health services

The term "primary health services" means—

(A) services of physicians, physicians' assistants, nurse practitioners, and other health professionals;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;
(F) preventive dental services; and
(G) pharmaceutical services, as may be appropriate for particular health centers.

(9) Secretary

The term "Secretary" means the Secretary of Health and Human Services.

(10) Traditional Native Hawaiian healer

The term "traditional Native Hawaiian healer" means a practitioner—
(A) who—
(i) is of Hawaiian ancestry, and
(ii) has the knowledge, skills, and experience in direct personal health care of individuals, and

(B) whose knowledge, skills, and experience are based on demonstrated learning of Native Hawaiian healing practices acquired by—
(i) direct practical association with Native Hawaiian elders, and
(ii) oral traditions transmitted from generation to generation.

(Pub. L. 100–579, §12, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, §2312, Nov. 18, 1988, 102 Stat. 4230; Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948; Pub. L. 111–148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935.)

EDITORIAL NOTES

CODIFICATION

Amendment by Pub. L. 111–148 is based on section 202(c) of title II of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Section was formerly classified to section 11710 of this title prior to the general amendment of this chapter by Pub. L. 102–396.

Pub. L. 100–579 and Pub. L. 100–690 enacted substantially identical sections. The text of this section is based on section 12 of Pub. L. 100–579, as subsequently amended.

AMENDMENTS

2010—Par. (2)(H). Pub. L. 111–148, which directed the amendment of section 12(2) of the Native Hawaiian Health Care Act of 1988 by adding subpar. (H), was executed by making the amendment to this section, which is section 12 of the Native Hawaiian Health Care Improvement Act, to reflect the probable intent of Congress.

1992—Pub. L. 102–396 amended section generally. Prior to amendment, section related to severability.

§11712. Rule of construction

Nothing in this chapter shall be construed to restrict the authority of the State of Hawaii to license health practitioners.

(Pub. L. 100–579, §13, as added Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7,

1992, which was enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

§11713. Compliance with Budget Act

Any new spending authority (described in subsection (c)(2)(A) or (B) of section 651 [1] of title 2) which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 100–579, §15, as added Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 651 of title 2, referred to in text, was amended by Pub. L. 105–33, title X, §10116(a)(3), Aug. 5, 1997, 111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

[1] *See References in Text note below.*

§11714. Severability

If any provision of this chapter, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this chapter, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 100–579, §16, as added Pub. L. 102–396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

EDITORIAL NOTES

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102–396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

CHAPTER 123—DRUG ABUSE EDUCATION AND PREVENTION

SUBCHAPTER I—DRUG EDUCATION AND PREVENTION RELATING TO YOUTH GANGS

Sec.

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SUBCHAPTER I—DRUG EDUCATION AND PREVENTION RELATING TO YOUTH GANGS

§11801. Establishment of drug abuse education and prevention program relating to youth gangs

The Secretary of Health and Human Services, through the Administration on Children, Youth, and Families, shall make grants to, and enter into contracts with, public and nonprofit private agencies (including agencies described in paragraph (7)(A) acting jointly), organizations (including community based organizations with demonstrated experience in this field), institutions, and individuals, to carry out projects and activities—

(1) to prevent and to reduce the participation of youth in the activities of gangs that engage in illicit drug-related activities,

(2) to promote the involvement of youth in lawful activities in communities in which such gangs commit drug-related crimes,

(3) to prevent the abuse of drugs by youth, to educate youth about such abuse, and to refer for treatment and rehabilitation members of such gangs who abuse drugs,

(4) to support activities of local police departments and other local law enforcement agencies to conduct educational outreach activities in communities in which gangs commit drug-related crimes,

(5) to inform gang members and their families of the availability of treatment and rehabilitation services for drug abuse,

(6) to facilitate Federal and State cooperation with local school officials to assist youth who are likely to participate in gangs that commit drug-related crimes,

(7) to facilitate coordination and cooperation among—

(A) local education, juvenile justice, employment and social service agencies, and

(B) drug abuse referral, treatment, and rehabilitation programs,

for the purpose of preventing or reducing the participation of youth in activities of gangs that commit drug-related crimes, and

(8) to provide technical assistance to eligible organizations in planning and implementing drug abuse education, prevention, rehabilitation, and referral programs for youth who are members of gangs that commit drug-related crimes.

(Pub. L. 100–690, title III, §3501, Nov. 18, 1988, 102 Stat. 4254; Pub. L. 102–132, §1(a), Oct. 18, 1991, 105 Stat. 630.)

EDITORIAL NOTES

AMENDMENTS

1991—Pub. L. 102–132 inserted "(including agencies described in paragraph (7)(A) acting jointly)" after "agencies" in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–132, §3, Oct. 18, 1991, 105 Stat. 631, provided that: "This Act [enacting section 11806 of this title and amending this section and sections 11805 and 11823 of this title] shall take effect on October 1, 1991."

§11802. Application for grants and contracts

(a) Submission of applications

Any agency, organization, institution, or individual desiring to receive a grant, or to enter into a contract, under section 11801 of this title shall submit to the Secretary an application at such time, in such manner, and containing or accompanied by such information as the Secretary may require by rule.

(b) Contents of application

Each application for assistance under this subchapter shall—

(1) set forth a project or activity for carrying out one or more of the purposes specified in section 11801 of this title and specifically identify each such purpose such project or activity is designed to carry out,

(2) provide that such project or activity shall be administered by or under the supervision of the applicant,

(3) provide for the proper and efficient administration of such project or activity,

(4) provide for regular evaluation of the operation of such project or activity,

(5) provide that regular reports on such project or activity shall be submitted to the Secretary, and

(6) provide such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter.

(Pub. L. 100–690, title III, §3502, Nov. 18, 1988, 102 Stat. 4254.)

§11803. Approval of applications

In selecting among applications submitted under section 11802(a) of this title, the Secretary shall give priority to applicants who propose to carry out projects and activities—

(1) for the purposes specified in section 11801 of this title in geographical areas in which frequent and severe drug-related crimes are committed by gangs whose membership is composed primarily of youth, and

(2) that the applicant demonstrates have the broad support of community based organizations in such geographical areas.

(Pub. L. 100–690, title III, §3503, Nov. 18, 1988, 102 Stat. 4255; Pub. L. 101–204, title X, §1001(a), Dec. 7, 1989, 103 Stat. 1826.)

EDITORIAL NOTES

AMENDMENTS

1989—Par. (2). Pub. L. 101–204 substituted "have" for "that it has".

§11804. Coordination with juvenile justice programs

The Secretary shall coordinate the program established by section 11801 of this title with the programs and activities carried out under the Juvenile Justice and Delinquency Prevention Act of 1974 [34 U.S.C. 11101 et seq.] and with the programs and activities of the Attorney General, to ensure that all such programs and activities are complementary and not duplicative.

(Pub. L. 100–690, title III, §3504, Nov. 18, 1988, 102 Stat. 4255.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in text, is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which was classified principally to chapter 72 (§5601 et seq.) of this title, prior to editorial reclassification and renumbering as chapter 111 (§11101 et seq.) of Title 34, Crime Control and Law Enforcement. For complete classification of this Act to the Code, see Short Title of 1974 Act note set out under section 10101 of Title 34 and Tables.

§11805. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated $16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.

(Pub. L. 100–690, title III, §3505, Nov. 18, 1988, 102 Stat. 4255; Pub. L. 102–132, §1(b), Oct. 18, 1991, 105 Stat. 630.)

EDITORIAL NOTES

AMENDMENTS

1991—Pub. L. 102–132 substituted "$16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994" for "$15,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–132 effective Oct. 1, 1991, see section 3 of Pub. L. 102–132, set out as a note under section 11801 of this title.

§11806. Annual report

Not later than 180 days after the end of each fiscal year, the Secretary shall submit, to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report describing—

(1) the types of projects and activities for which grants and contracts were made under this subchapter for such fiscal year,

(2) the number and characteristics of the youth and families served by such projects and activities, and

(3) each of such projects and activities the Secretary considers to be exemplary.

(Pub. L. 100–690, title III, §3506, as added Pub. L. 102–132, §1(c), Oct. 18, 1991, 105 Stat. 630.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 3 of Pub. L. 102–132, set out as an Effective Date of 1991 Amendment note under section 11801 of this title.

SUBCHAPTER II—PROGRAM FOR RUNAWAY AND HOMELESS YOUTH

§11821. Establishment of program

(a) Program aims

The Secretary shall make grants to public and private nonprofit agencies, organizations, and institutions to carry out research, demonstration, and services projects designed—

(1) to provide individual, family, and group counseling to runaway youth and their families and to homeless youth for the purpose of preventing or reducing the illicit use of drugs by such youth,

(2) to develop and support peer counseling programs for runaway and homeless youth related to the illicit use of drugs,

(3) to develop and support community education activities related to illicit use of drugs by runaway and homeless youth, including outreach to youth individually,

(4) to provide to runaway and homeless youth in rural areas assistance (including the development of community support groups) related to the illicit use of drugs,

(5) to provide to individuals involved in providing services to runaway and homeless youth, information and training regarding issues related to the illicit use of drugs by runaway and homeless youth,

(6) to support research on the illicit drug use by runaway and homeless youth, and the effects on such youth of drug abuse by family members, and any correlation between such use and attempts at suicide, and

(7) to improve the availability and coordination of local services related to drug abuse, for runaway and homeless youth.

(b) Priority

In selecting among applicants for grants under subsection (a), the Secretary shall give priority to agencies and organizations that have experience in providing services to runaway and homeless youth.

(c) Limitation

Grants under this section may be made for a period not to exceed 3 years.

(Pub. L. 100–690, title III, §3511, Nov. 18, 1988, 102 Stat. 4255.)

§11822. Annual report

Not later than 180 days after the end of a fiscal year for which funds are appropriated to carry out this subchapter, the Secretary shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report that contains—

(1) a description of the types of projects and activities for which grants were made under this subchapter for such fiscal year,

(2) a description of the number and characteristics of the youth and families served by such projects and activities, and

(3) a description of exemplary projects and activities for which grants were made under this subchapter for such fiscal year.

(Pub. L. 100–690, title III, §3512, Nov. 18, 1988, 102 Stat. 4256.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under this section is listed as the 12th item on page 92), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§11823. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated $16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.

(Pub. L. 100–690, title III, §3513, Nov. 18, 1988, 102 Stat. 4256; Pub. L. 102–132, §2, Oct. 18, 1991, 105 Stat. 630.)

EDITORIAL NOTES

AMENDMENTS

1991—Pub. L. 102–132 amended section generally. Prior to amendment, section read as follows:

"(a) AUTHORIZATION.—Subject to subsection (b) of this section, to carry out this subchapter, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(b) LIMITATION.—No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5701–5751) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–132 effective Oct. 1, 1991, see section 3 of Pub. L. 102–132, set out as a note under section 11801 of this title.

§11824. Applications

(a) Submission of application

Any State, unit of local government (or combination of units of local government), agency, organization, institution, or individual desiring to receive a grant, or enter into a contract, under this subchapter shall submit an application at such time, in such manner, and containing or accompanied by such information as may be prescribed by the Federal officer who is authorized to make such grant or enter into such contract (hereinafter in this subchapter referred to as the "appropriate Federal officer").

(b) Contents of application

In accordance with guidelines established by the appropriate Federal officer, each application for assistance under this subchapter shall—

(1) set forth a project or activity for carrying out one or more of the purposes for which such grant or contract is authorized to be made and expressly identify each such purpose such project or activity is designed to carry out,

(2) provide that such project or activity shall be administered by or under the supervision of the applicant,

(3) provide for the proper and efficient administration of such project or activity,

(4) provide for regular evaluation of such project or activity,

(5) provide that regular reports on such project or activity shall be sent to the appropriate Federal officer, and

(6) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter.

(Pub. L. 100–690, title III, §3514, Nov. 18, 1988, 102 Stat. 4256.)

§11825. Review of applications

(a) Consideration of factors

In reviewing applications submitted under this subchapter, the appropriate Federal officer shall consider—

(1) the relative cost and effectiveness of the proposed project or activity in carrying out purposes for which the requested grant or contract is authorized to be made,

(2) the extent to which such project or activity will incorporate new or innovative techniques,

(3) the increase in capacity of the State or the public or nonprofit private agency, organization, institution, or individual involved to provide services to address the illicit use of drugs by runaway and homeless youth,

(4) the extent to which such project or activity serves communities which have high rates of illicit drug use by juveniles (including runaway and homeless youth),

(5) the extent to which such project or activity will provide services in geographical areas where similar services are unavailable or in short supply, and

(6) the extent to which such project or activity will increase the level of services, or coordinate other services, in the community available to eligible youth.

(b) Competitive process

(1) Applications submitted under this subchapter shall be selected for approval through a competitive process to be established by rule by the appropriate Federal officer. As part of such a process, such officer shall publish a notice in the Federal Register—

(A) announcing the availability of funds to carry out this subchapter,

(B) stating the general criteria applicable to the selection of applicants to receive such funds, and

(C) describing the procedures applicable to submitting and reviewing applications for such funds.

(2) As part of such process, each application referred to in subsection (a) shall be subject to peer review by individuals (excluding officers and employees of the Department of Justice and the Department of Health and Human Services) who have expertise in the subject matter related to the project or activity proposed in such application.

(c) Expedited review

The appropriate Federal officer shall expedite the consideration of an application referred to in subsection (a) if the applicant demonstrates, to the satisfaction of the [1] such officer, that the failure to expedite such consideration would prevent the effective implementation of the project or activity set forth in such application.

(Pub. L. 100–690, title III, §3515, Nov. 18, 1988, 102 Stat. 4257; Pub. L. 101–204, title X, §1001(b), Dec. 7, 1989, 103 Stat. 1826.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(1)(A), was in the original "this part" and was translated as

reading "this chapter" to reflect the probable intent of Congress because subtitle B of title III of Pub. L. 100–690, which comprises subchapters I to III of this chapter, does not contain parts.

AMENDMENTS

1989—Subsec. (b)(1)(B). Pub. L. 101–204, §1001(b)(1)(A), inserted "stating" before "the general criteria". Subsec. (b)(1)(C). Pub. L. 101–204, §1001(b)(1)(B), substituted "describing" for "a description of". Subsec. (c). Pub. L. 101–204, §1001(b)(2), substituted "such officer" for "Administrator".

[1] *So in original. The word "the" probably should not appear.*

SUBCHAPTER III—COMMUNITY PROGRAM

§11841. Community youth activity program

(a) Block grant program

The Secretary of Health and Human Services shall make grants to eligible States to enable such States to carry out the activities described in subsection (e).

(b) Application

(1) In general

To be eligible to receive a grant under this section, a State, acting on its own behalf or on behalf of a person, shall submit to the Secretary an application that contains such information and is in such form as may be required by the Secretary.

(2) Demonstration of need

In the application submitted under paragraph (1), the State shall demonstrate a need for the activities described in subsection (e) and provide a description of those activities and projects that will receive financial assistance from a grant made under this section to the State.

(c) Amount of grant

(1) Minimum amount

Each State that submits for a fiscal year an application under subsection (b) that meets the requirements of the Secretary shall, subject to the availability of appropriations, receive a grant in an amount determined in accordance with paragraph (3).

(2) Programs of national significance

Of amounts appropriated or otherwise available to carry out this section for any fiscal year, the Secretary shall reserve 5 percent to be provided for activities and projects of national significance or projects expected to have a significant impact in preventing the abuse of drugs by youth.

(3) Specified appropriations

(A) In general

Of the aggregate amount appropriated under subsection (g) for any fiscal year and after reserving the amount required by paragraph (2), the Secretary shall—

(i) allot—

(I) 25 percent equally among the eligible States if such amount is less than $40,000,000; or

(II) $250,000 to each eligible State if such amount equals or exceeds $40,000,000;

(ii) allot one-half of 1 percent of such amount on the basis of need among Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(iii) set aside the remainder to be disbursed as described in subparagraph (B).

For purposes of this subparagraph, the term "State" does not include Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(B) Remainder

Amounts referred to in subparagraph (A)(iii) shall be used by the Secretary to make grants, on a competitive basis and taking into consideration with respect to the States—

(i) the highest proportions of school-aged youth are [1] at risk of drug abuse;

(ii) if a tangible need has been identified by the State involved; and

(iii) if the State involved has proposed the funding of additional projects targeted at the areas of highest need;

to carry out the activities and projects that are consistent with the activities described in subsection (e)(1). The activities and projects for which such grants are made shall be selected by the Secretary from among proposed activities and projects submitted to the Secretary by the States. Such grants shall be made to the States for redistribution to the persons on whose behalf the State submitted an application under subsection (b).

(d) Priority

In making grants under this section, the Secretary shall give priority to—

(1) projects aimed at youth who are not in school or who are at risk of dropping out of school;

(2) projects that seek to reinvolve dropouts in educational programs, involve youth community-based activities, develop training or employment opportunities for dropouts, or provide youth with alternatives to drug abuse;

(3) projects to provide after-school, vacation, and weekend activities designed to give youth opportunities to actively participate in a variety of activities, including youth sports programs;

(4) activities and projects that are consistent with activities and projects described in subsection (e)(1) and that include participation by the business community;

(5) projects that provide outreach to individuals of all ages who are at high risk of involvement with drug abuse;

(6) projects targeted to communities with the most serious drug abuse problems to enable such communities to develop programs that coordinate Federal, State, and local efforts to develop comprehensive, long-term, community-wide prevention and education strategies;

(7) projects that seek to involve youth who are members of gangs or who may join a gang, in—

(A) educational programs;

(B) community-based activities;

(C) training or employment opportunities; or

(D) other alternatives to gang involvement;

(8) programs for unsupervised children before and after school, including—

(A) education and instruction consistent with part A of title IV of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7101 et seq.];

(B) athletic activities;

(C) creative activities; and

(D) other programs designed to reduce the risk of drug abuse; and

(9) projects that seek to inform youth regarding the existence and operation of the projects referred to in paragraph (7).

(e) Activities and projects

Financial assistance may be provided with a grant received under subsection (a) [2] under this section by a State as follows:

(1) Community services and partnerships

Such assistance may be provided for community services and partnerships designed to develop community activities targeted at drug abuse prevention through education, training, and recreation projects. Such services may be provided by, and such partnerships may be entered into with—

(A) local educational agencies;
(B) law enforcement agencies;
(C) community-based organizations;
(D) community action agencies;
(E) local or State recreational departments; or
(F) business organizations; and

in consultation with local and State health departments and with community health or mental health centers when appropriate. Such assistance may be provided to any entity described in subparagraphs (A) through (F), either individually or in partnerships. Applications for such assistance shall include a description of the method to be used to evaluate the impact the particular service or partnership is designed to have on the drug abuse problem within the community.

(2) Other activities and projects

Such assistance may be provided to carry out projects or activities that are consistent with the activities and projects described in paragraph (1).

(f) Project evaluations

The Secretary shall provide for the evaluation of activities and projects conducted with financial assistance received under this section. Applications for grants under this section shall include a description of the method to be used in evaluating the impact such activities and programs have on the drug abuse problem within the communities in which such activities and projects are carried out.

(g) Authorization of appropriations

To carry out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1989, $55,000,000 for fiscal year 1990, $60,000,000 for fiscal year 1991, $66,550,000 for fiscal year 1992, and $73,205,000 for fiscal year 1993.

(Pub. L. 100–690, title III, §3521, Nov. 18, 1988, 102 Stat. 4258; Pub. L. 101–93, §4(1), Aug. 16, 1989, 103 Stat. 611; Pub. L. 101–226, §23, Dec. 12, 1989, 103 Stat. 1941; Pub. L. 103–382, title III, §394(b), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 105–285, title II, §202(d), Oct. 27, 1998, 112 Stat. 2755; Pub. L. 114–95, title IX, §9215(k), Dec. 10, 2015, 129 Stat. 2168.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(8)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Part A of title IV of the Act is classified generally to part A (§7101 et seq.) of subchapter IV of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

2015—Subsec. (d)(8)(A). Pub. L. 114–95 substituted "education and instruction consistent with part A of title IV of the Elementary and Secondary Education Act of 1965" for "education and instruction consistent with title IV of the Elementary and Secondary Education Act of 1965".

1998—Subsec. (c)(2). Pub. L. 105–285 struck out ", such as activities authorized by section 9910(a)(2)(F) of this title," after "national significance".

1994—Subsec. (d)(8)(A). Pub. L. 103–382 substituted "title IV of the Elementary and Secondary Education Act of 1965" for "the Drug-Free Schools and Communities Act of 1986".

1989—Subsec. (b)(2). Pub. L. 101–93, §4(1)(A), substituted "subsection (e)" for "subsections (c)(3)(B) and (e)".

Subsec. (c)(3)(A). Pub. L. 101–93, §4(1)(B), substituted "subsection (g)" for "subsection (h)".

Subsec. (d). Pub. L. 101–226, which directed amendment of section 3521(d) of the National Narcotics Leadership Act of 1988 by adding par. (8) and redesignating former par. (8) as (9), was executed to section 3521(d) of Pub. L. 100–690, the Anti-Drug Abuse Act of 1988, as the probable intent of Congress. Subtitle A (§§1001–1012) of title I of Pub. L. 100–690 is the National Narcotics Leadership Act of 1988.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] So in original. Probably should be "who are".

[2] So in original. Words "under subsection (a)" probably should not appear.

§11842. Evaluation of drug abuse education and prevention efforts

(a) Method

The Secretary of Health and Human Services shall develop and conduct a structured evaluation of the different approaches utilized across the Nation to reduce drug abuse.

(b) Grants

The Secretary of Health and Human Services may make grants to or enter into contracts with appropriate entities for the purpose of conducting the evaluations required by subsection (a).

(c) Time of reports

The Secretary shall submit a report based on the evaluations prepared under subsection (a) not later than 1 year after November 18, 1988, and another report based on such evaluations not later than 3 years after November 18, 1988. A third report based on such evaluations shall be submitted by the Secretary not later than January 1, 1994.

(d) Authorization of appropriations

To carry out this section, there are authorized to be appropriated $12,000,000 in fiscal year 1989, and $15,000,000 for each of the fiscal years 1990 through 1993.

(Pub. L. 100–690, title III, §3522, Nov. 18, 1988, 102 Stat. 4260; Pub. L. 101–93, §4(2), Aug. 16, 1989, 103 Stat. 611; Pub. L. 101–204, title X, §1001(c)(1), Dec. 7, 1989, 103 Stat. 1826.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–93 and Pub. L. 101–204, §1001(c)(1)(A)(ii), made identical amendments, striking out "(as defined in section 11851(6) of this title)" after "drug abuse".

Pub. L. 101–204, §1001(c)(1)(A)(i), struck out ", acting through the Administrator," before "shall develop".

Subsec. (b). Pub. L. 101–204, §1001(c)(1)(B), substituted "Secretary of Health and Human Services" for "Administrator".

SUBCHAPTER IV—MISCELLANEOUS

§11851. Definitions

Unless otherwise defined by an Act amended by this title,[1] for purposes of this title [1] and the amendments made by this title— [1]

(1) the term "community based" has the meaning given it in section 11103(1) of title 34,

(2) the term "controlled substance" has the meaning given it in section 802(6) of title 21,

(3) the term "controlled substance analogue" has the meaning given it in section 802(32) of title 21,

(4) the term "drug" means—

(A) a beverage containing alcohol,

(B) a controlled substance, or

(C) a controlled substance analogue,

(5) the term "Director" means the Chief Executive Officer of the Corporation for National and Community Service,

(6) the term "illicit" means unlawful or injurious,

(7) the term "institution of higher education" has the meaning given it in section 1001 of title 20,

(8) the term "public agency" has the meaning given it in section 11103(11) of title 34,

(9) the term "Secretary" means—

(A) the Secretary of Education for purposes of subtitle A (other than section 3201),

(B) the Secretary of Agriculture for purposes of the amendments made by section 3201, and

(C) the Secretary of Health and Human Services for purposes of subtitle B,

(10) the term "State" has the meaning given it in section 11103(7) of title 34,

(11) the term "treatment" has the meaning given it in section 11103(15) of title 34, and

(12) the term "unit of general local government" has the meaning given it in section 11103(8) [1] of title 34.

(Pub. L. 100–690, title III, §3601, Nov. 18, 1988, 102 Stat. 4260; Pub. L. 101–204, title X, §1001(c)(2), Dec. 7, 1989, 103 Stat. 1827; Pub. L. 103–82, title IV, §405(n), Sept. 21, 1993, 107 Stat. 922; Pub. L. 105–244, title I, §102(a)(13)(J), Oct. 7, 1998, 112 Stat. 1621.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in introductory provisions, means title III of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4244, which enacted this chapter and sections 3156–1, 3201, and 3227 of Title 20, Education, and amended sections 1786, 4994, and 5081 of this title and sections 3156a, 3181, 3191 to 3195, 3197, 3212, and 3222 of Title 20. For complete classification of title III to the Code, see Tables.

Subtitle A (other than section 3201), referred to in par. (9)(A), is subtitle A (§§3101–3402) of title III of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4245, which enacted former sections 3156–1, 3201, and 3227 of Title 20, and amended sections 4994 and 5081 of this title and former sections 3156a, 3181, 3191 to 3195, 3197, 3212, and 3222 of Title 20. For complete classification of subtitle A to the Code, see Tables.

Section 3201, referred to in par. (9)(A), (B), is section 3201 of Pub. L. 100–690, title III, Nov. 18, 1988, 102 Stat. 4246, which amended section 1786 of this title.

Subtitle B, referred to in par. (9)(C), is subtitle B (§§3501–3522) of title III of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4254, which enacted subchapters I to III of this chapter. For complete classification of subtitle B to the Code, see Tables.

Section 11103(8) of title 34, referred to in par. (12), was subsequently amended, and no longer defines "unit of general local government". However, it now defines "unit of local government".

AMENDMENTS

1998—Par. (7). Pub. L. 105–244 substituted "section 1001" for "section 1141(a)".

1993—Par. (5). Pub. L. 103–82 added par. (5) and struck out former par. (5) which read as follows: "the term 'Director' means the Director of the ACTION Agency,".

1989—Pub. L. 101–204 redesignated pars. (2) to (13) as (1) to (12), respectively, and struck out former par. (1) which read as follows: "the term 'Administrator' means the Administrator of the Office of Juvenile Justice and Delinquency Prevention,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

[1] *See References in Text note below.*